

PURCHASE OF SERVICE AGREEMENT

THIS AGREEMENT ("Agreement") is made this 25th day of September 2015, by and between the Adams County Board of County Commissioners, located at 4430 South Adams County Parkway, Brighton, Colorado 80601, hereinafter referred to as the "County," and Merrick & Company, located at 5970 Greenwood Plaza Blvd., Greenwood Village, CO 80111 hereinafter referred to as the "Contractor." The County and the Contractor may be collectively referred to herein as the "Parties".

The County and the Contractor, for the consideration herein set forth, agree as follows:

1. SERVICES OF THE CONTRACTOR:

- 1.1. All work shall be in accordance with the Post Design Services Scope of Work for Clay Community Trail – 60th Ave. to Clear Creek dated March 31, 2015 attached hereto as Exhibit A, and incorporated herein by reference. Should there be any discrepancy between Exhibit A and this Agreement the terms and conditions of this Agreement shall prevail.
- 1.2. Emergency Services: In the event the Adams County Board of County Commissioners declares an emergency, the County may request additional services (of the type described in this Agreement or otherwise within the expertise of the Contractor) to be performed by the Contractor. If the County requests such additional services, the Contractor shall provide such services in a timely fashion given the nature of the emergency, pursuant to the terms of this Agreement. Unless otherwise agreed to in writing by the parties, the Contractor shall bill for such services at the rates provided for in this Agreement.

2. RESPONSIBILITIES OF THE COUNTY: The County shall provide information as necessary or requested by the Contractor to enable the Contractor's performance under this Agreement.

3. TERM:

- 3.1. Term of Agreement: The Term of this Agreement shall be for one-year from the date of this Agreement.
- 3.2. Extension Option: The County, at its sole option, may offer to extend this Agreement as necessary for up to two, one year extensions providing satisfactory service is given and all terms and conditions of this Agreement have been fulfilled. Such extensions must be mutually agreed upon in writing by the County and the Contractor.

4. PAYMENT AND FEE SCHEDULE: The County shall pay the Contractor for services furnished under this Agreement, and the Contractor shall accept as full payment for those services, the sum of twenty-three thousand nine hundred seventy five dollars (\$23,975.00).

- 4.1. Payment pursuant to this Agreement, whether in full or in part, is subject to and contingent upon the continuing availability of County funds for the purposes hereof. In the event that funds become unavailable, as determined by the County, the County may immediately terminate this Agreement or amend it accordingly.

5. **INDEPENDENT CONTRACTOR:** In providing services under this Agreement, the Contractor acts as an independent contractor and not as an employee of the County. The Contractor shall be solely and entirely responsible for his/her acts and the acts of his/her employees, agents, servants, and subcontractors during the term and performance of this Agreement. No employee, agent, servant, or subcontractor of the Contractor shall be deemed to be an employee, agent, or servant of the County because of the performance of any services or work under this Agreement. The Contractor, at its expense, shall procure and maintain workers' compensation insurance as required by law. **Pursuant to the Workers' Compensation Act § 8-40-202(2)(b)(IV), C.R.S., as amended, the Contractor understands that it and its employees and servants are not entitled to workers' compensation benefits from the County. The Contractor further understands that it is solely obligated for the payment of federal and state income tax on any moneys earned pursuant to this Agreement.**

6. **NONDISCRIMINATION:**

6.1. **The Contractor shall not discriminate against any employee or qualified applicant for employment because of age, race, color, religion, marital status, disability, sex, or national origin. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices provided by the local public agency setting forth the provisions of this nondiscrimination clause. Adams County is an equal opportunity employer.**

6.1.1. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

7. **INDEMNIFICATION:** The Contractor agrees to indemnify and hold harmless the County, its officers, agents, and employees for, from, and against any and all claims, suits, expenses, damages, or other liabilities, including reasonable attorney fees and court costs, arising out of damage or injury to persons, entities, or property, caused or sustained by any person(s) as a result of the Contractor's performance or failure to perform pursuant to the terms of this Agreement or as a result of any subcontractors' performance or failure to perform pursuant to the terms of this Agreement.

8. **INSURANCE:** The Contractor agrees to maintain insurance of the following types and amounts:

8.1. **Commercial General Liability Insurance:** to include products liability, completed operations, contractual, broad form property damage and personal injury.

8.1.1. Each Occurrence: \$1,000,000

8.1.2. General Aggregate: \$2,000,000

8.2. **Comprehensive Automobile Liability Insurance:** to include all motor vehicles owned, hired, leased, or borrowed.

8.2.1. Bodily Injury/Property Damage: \$1,000,000 (each accident)

8.2.2. Personal Injury Protection: Per Colorado Statutes

- 8.3. Workers' Compensation Insurance: Per Colorado Statutes
- 8.4. Professional Liability Insurance: to include coverage for damages or claims for damages arising out of the rendering, or failure to render, any professional services, as applicable.
- 8.4.1. Each Occurrence: \$1,000,000
- 8.4.2. This insurance requirement applies only to the Contractors who are performing services under this Agreement as professionals licensed under the laws of the State of Colorado, such as physicians, lawyers, engineers, nurses, mental health providers, and any other licensed professionals.
- 8.5. Adams County as "Additional Insured": The Contractor's commercial general liability, comprehensive automobile liability, and professional liability insurance policies and/or certificates of insurance shall be issued to include Adams County as an "additional insured" and shall include the following provisions:
- 8.5.1. Underwriters shall have no right of recovery or subrogation against the County, it being the intent of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses resulting from the actions or negligence of the Contractor.
- 8.5.2. The insurance companies issuing the policy or policies shall have no recourse against the County for payment of any premiums due or for any assessments under any form of any policy.
- 8.5.3. Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of the Contractor.
- 8.6. Licensed Insurers: All insurers of the Contractor must be licensed or approved to do business in the State of Colorado. Upon failure of the Contractor to furnish, deliver and/or maintain such insurance as provided herein, this Agreement, at the election of the County, may be immediately declared suspended, discontinued, or terminated. Failure of the Contractor in obtaining and/or maintaining any required insurance shall not relieve the Contractor from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with the obligations of the Contractor concerning indemnification.
- 8.7. Endorsement: Each insurance policy herein required shall be endorsed to state that coverage shall not be suspended, voided, or canceled without thirty (30) days prior written notice by certified mail, return receipt requested, to the County.
- 8.8. Proof of Insurance: At any time during the term of this Agreement, the County may require the Contractor to provide proof of the insurance coverage or policies required under this Agreement.

9. WARRANTY:

- 9.1. The Contractor warrants and guarantees to the County that all work, equipment, and materials furnished under the Agreement are free from defects in workmanship and materials for a period of one year after final acceptance by the County. The Contractor further warrants and guarantees that the plans and specifications incorporated herein are free of fault and defect sufficient for Contractor to warrant the finished product after completion date. Should the Contractor fail to proceed promptly in accordance with

this guarantee, the County may have such work performed at the expense of the Contractor. This section does not relieve the Contractor from liability for defects that become known after one year.

10. TERMINATION:

- 10.1. For Cause: If, through any cause, the Contractor fails to fulfill its obligations under this Agreement in a timely and proper manner, or if the Contractor violates any of the covenants, conditions, or stipulations of this Agreement, the County shall thereupon have the right to immediately terminate this Agreement, upon giving written notice to the Contractor of such termination and specifying the effective date thereof.
- 10.2. For Convenience: The County may terminate this Agreement at any time by giving written notice as specified herein to the other party, which notice shall be given at least thirty (30) days prior to the effective date of the termination. If this Agreement is terminated by the County, the Contractor will be paid an amount that bears the same ratio to the total compensation as the services actually performed bear to the total services the Contractor was to perform under this Agreement, less payments previously made to the Contractor under this Agreement.

11. MUTUAL UNDERSTANDINGS:

- 11.1. Jurisdiction and Venue: The laws of the State of Colorado shall govern as to the interpretation, validity, and effect of this Agreement. The parties agree that jurisdiction and venue for any disputes arising under this Agreement shall be with Adams County, Colorado.
- 11.2. Compliance with Laws: During the performance of this Agreement, the Contractor agrees to strictly adhere to all applicable federal, state, and local laws, rules and regulations, including all licensing and permit requirements. The parties hereto aver that they are familiar with § 18-8-301, et seq., C.R.S. (Bribery and Corrupt Influences), as amended, and § 18-8-401, et seq., C.R.S. (Abuse of Public Office), as amended, and that no violation of such provisions are present. The Contractor warrants that it is in compliance with the residency requirements in §§ 8-17.5-101, et seq., C.R.S. Without limiting the generality of the foregoing, the Contractor expressly agrees to comply with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- 11.3. OSHA: The Contractor shall comply with the requirements of the Occupational Safety and Health Act (OSHA) and shall review and comply with the County's safety regulations while on any County property. Failure to comply with any applicable federal, state or local law, rule, or regulation shall give the County the right to terminate this agreement for cause.
- 11.4. Record Retention: The Contractor shall maintain records and documentation of the services provided under this Agreement, including fiscal records, and shall retain the records for a period of three (3) years from the date this Agreement is terminated. Said records and documents shall be subject at all reasonable times to inspection, review, or audit by authorized Federal, State, or County personnel.

- 11.5. Assignability: Neither this Agreement, nor any rights hereunder, in whole or in part,

shall be assignable or otherwise transferable by the Contractor without the prior written consent of the County.

- 11.6. Waiver: Waiver of strict performance or the breach of any provision of this Agreement shall not be deemed a waiver, nor shall it prejudice the waiving party's right to require strict performance of the same provision, or any other provision in the future, unless such waiver has rendered future performance commercially impossible.
- 11.7. Force Majeure: Neither party shall be liable for any delay or failure to perform its obligations hereunder to the extent that such delay or failure is caused by a force or event beyond the control of such party including, without limitation, war, embargoes, strikes, governmental restrictions, riots, fires, floods, earthquakes, or other acts of God.
- 11.8. Notice: Any notices given under this Agreement are deemed to have been received and to be effective: 1) Three (3) days after the same shall have been mailed by certified mail, return receipt requested; 2) Immediately upon hand delivery; or 3) Immediately upon receipt of confirmation that an E-mail was received. For the purposes of this Agreement, any and all notices shall be addressed to the contacts listed below:

Department: Adams County Transportation Department
Contact: Russ Nelson, Stormwater Engineer
Address: 4430 South Adams County Parkway
City, State, Zip: Brighton, CO 80601
Phone: 720.523.6966
E-mail: rnelson@adcogov.org

Department: Adams County Purchasing
Contact: Liz Estrada
Address: 4430 South Adams County Parkway
City, State, Zip: Brighton, Colorado 80601
Phone: 720.523.6052
E-mail: lestrada@adcogov.org

Department: Adams County Attorney's Office
Address: 4430 South Adams County Parkway
City, State, Zip: Brighton, Colorado 80601
Phone: 720.523.6116

Contractor: Merrick & Company
Contact: Brian J. Poling, P.E.
Address: 5970 Greenwood Plaza Blvd.
City, State, Zip: Greenwood Village, CO 80111
Phone: 303-751-0741
E-mail:

- 11.9. Integration of Understanding: This Agreement contains the entire understanding of the parties hereto and neither it, nor the rights and obligations hereunder, may be changed, modified, or waived except by an instrument in writing that is signed by the parties hereto.

- 11.10. Severability: If any provision of this Agreement is determined to be unenforceable or

invalid for any reason, the remainder of this Agreement shall remain in effect, unless otherwise terminated in accordance with the terms contained herein.

- 11.11. **Authorization:** Each party represents and warrants that it has the power and ability to enter into this Agreement, to grant the rights granted herein, and to perform the duties and obligations herein described.
- 11.12. **Confidentiality:** All documentation related to this Agreement will become the property of Adams County. All documentation maintained or kept by Adams County shall be subject to the Colorado Open Records Act, C.R.S. 24-72-201 *et seq.* ("CORA"). The County does not guarantee the confidentiality of any records.

12. CHANGE ORDERS OR EXTENSIONS:

- 12.1. **Change Orders:** The County may, from time to time, require changes in the scope of the services of the Contractor to be performed herein including, but not limited to, additional instructions, additional work, and the omission of work previously ordered. The Contractor shall be compensated for all authorized changes in services, pursuant to the applicable provision in the Invitation to Bid, or, if no provision exists, pursuant to the terms of the Change Order.
- 12.2. **Extensions:** The County may, upon mutual written agreement by the parties, extend the time of completion of services to be performed by the Contractor.

13. COMPLIANCE WITH C.R.S. § 8-17.5-101, ET. SEQ. AS AMENDED 5/13/08: Pursuant to Colorado Revised Statute (C.R.S.), § 8-17.5-101, *et seq.*, as amended May 13, 2008, the Contractor shall meet the following requirements prior to signing this Agreement (public contract for service) and for the duration thereof:

- 13.1. The Contractor shall certify participation in the E-Verify Program (the electronic employment verification program that is authorized in 8 U.S.C. § 1324a and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program) or the Department Program (the employment verification program established by the Colorado Department of Labor and Employment pursuant to C.R.S. § 8-17.5-102(5)) on the attached certification.
- 13.2. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- 13.3. The Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- 13.4. At the time of signing this public contract for services, the Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services through participation in either the E-Verify Program or the Department Program.
- 13.5. The Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.



Merrick & Company
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Greenwood Village, CO 80111
Tel: 303-751-0741
Fax: 303-751-2581
www.merrick.com

March 31, 2015
Merrick Ref#:6511494003

Mr. Russell T. Nelson, P.E.
Adams County
Transportation Department – Engineering
4430 South Adams County Parkway
1st floor, suite W2000B
Brighton, Colorado 80601

CLAY COMMUNITY TRAIL (60th to CLEAR CREEK) – POST-DESIGN SERVICES

Dear Russ:

Merrick & Company is pleased to present this proposal for Post-Design Services for the Clay Community Trail (60th to Clear Creek) project. This proposal is specifically to provide limited as-needed support to Adams County staff during construction, to provide post-construction record drawings, and to prepare the Letter of Map Revision request for the Clear Creek floodplain.

1. Limited As-Needed Construction Support: Merrick will provide this support only when directed by Adams County staff. Anticipated services include:
 - Attend construction and field meetings and the punchlist inspection
 - Respond to Contractor Requests for Information
 - Review Contractor material submittals and shop drawings
 - Prepare design modifications resulting from differing field conditions
2. Post Construction Services:
 - Record drawings will be prepared based on the Contractor's redlines, Contractor's as-constructed survey, and documented design changes. The Summary of Approximate Quantities will be updated based on the final quantities provided by Adams County. Individual quantity tabulations will not be updated. The Record Drawings will be provided to Adams County in .pdf and ACAD Civil 3D formats.
 - Review Final Right-of-Way plans prepared by Contractor.
 - Provide post construction environmental monitoring and reporting per the attached PKM Design Group proposal.

ATTACHMENT A

ADAMS COUNTY - CLAY COMMUNITY TRAIL
MERRICK & COMPANY FEE SCHEDULE

Construction Services (based on 34 week construction duration) - Services to be provided on an as-needed basis as requested by Adams County staff.

3/31/2015

	Project Manager		Proj. Engineer		Design Engineer		Sr. Struct. Engineer		Struct. Engineer		Lead Surveyor		Direct Costs	Subs (Cost+10%)	TOTAL
	Manager	Engineer	Engineer	Engineer	Engineer	Engineer	Engineer	Engineer	Surveyor	Clerical	Costs				
1 Construction Services															
Construction and Field Meetings (assume 6)			18										\$168		\$2,418
Shop Drawings	2	12	12	8	20					2					\$5,700
RFI's	2	12	12												\$1,830
Post Design Plan Modifications (assume 1)	2	4	8												\$1,550
Punchlist Inspection (assume 1)		4	4										\$28		\$528
2 Post-Construction Services															
As-Constructed Drawings	2	8	36										\$50		\$4,620
Review Final ROW Plans		1							4				\$50		\$575
Welland and SB40 Post-Construction Monitoring (See attached PKM proposal)														\$3,649	\$3,649
3 Letter of Map Revision Request															
Review As-Constructed Survey		1	4							2					\$635
Prepare LOMR request	2	4	16							2			\$50		\$2,470
TOTAL	10	64	64	8	20	4	6	6	4	6	6	6	\$346	\$3,649	\$23,375

Post Construction Wetland and SB 40 Monitoring: Scope Hours and Cost Estimate
Clay Street Community Trail Project
 Prepared by PKM Design Group, Inc. for Merrick & Company

19-Aug-14

1.0 POST CONSTRUCTION REPORT AND DOCUMENTATION

1. Conduct field assessment of completed work, establish photo points for yearly monitoring and submit report with photographs of completed project to
Subtotal for Task 1.0

<u>Resource</u>	<u>Hours</u>	<u>Hrly Rate</u>	<u>Subtotal</u>
C.Schrader	16	\$100.00	\$1,600.00
SUBTOTAL =			\$1,600.00

2.0 MONITOR TEMPORARILY IMPACTED WETLANDS AND SB 40 MITIGATION AREAS YEARLY UNTIL SUCCESS STANDARDS ARE MET

1. Conduct field survey and document mitigation success to determine whether 80% wetland/shrub cover standards and 90% tree success standards have been met on-site. Includes photographs from established photo points, preparation and submittal of report to USACE and CPW and analysis of causes of failure with recommendations for improvements if necessary.
Subtotal for Task 2.0 (One year estimate)

<u>Resource</u>	<u>Hours</u>	<u>Hrly Rate</u>	<u>Subtotal</u>
C.Schrader	16	\$100.00	\$1,600.00
SUBTOTAL =			\$1,600.00

SUBTOTAL PKM LABOR COSTS = \$3,200.00

Other Direct Costs:

Mileage @ \$.50/mile
 B&W Copies (8-1/2x11) @ .10/each
 B&W Copies (11x17) @ .20/each
 Color Photograph Copies (8-1/2x11) @ 1.00/each
 Miscellaneous supplies (at cost)
Total Other Direct Costs:

<u>Units</u>	<u>Unit Price</u>	<u>Subtotal</u>
150	\$0.50	\$75.00
50	\$0.10	\$5.00
50	\$0.15	\$7.50
10	\$1.00	\$10.00
1	\$20.00	<u>\$20.00</u>
		\$117.50

TOTAL PKM SERVICES = \$3,317.50