

AGREEMENT REGARDING PROVISION OF PROFESSIONAL SERVICES

This Agreement Regarding Provision of Professional Services (the "Agreement") dated as of October 1, 2022, is between CWR Enterprises, LLC d/b/a Upsize Marketing Strategies, herein after referred to as Upsize Marketing Strategies ("Contractor"), a Foreign Limited Liability Company, and Routt County, Colorado ("County"), by and through its Board of County Commissioners ("Board").

Recitals

A. County has received a grant from the Colorado Department of Local Affairs (DOLA) for the Rural Economic Development Initiative (REDI Grant) to fund the Northwest Colorado Development Council (NWCDC) program for regional economic development (the "Project") effective August 19, 2021 through June 30, 2023;

B. Contractor submitted to the County a proposal for the Project in response to the County Request for Proposal for Project Management Professional Services and entered into an agreement ("Agreement One") with County effective January 1, 2022 through December 31, 2023;

C. Since entering into Agreement One, it has been discovered that the termination date does not meet the requirements of the REDI Grant Agreement, attached as Exhibit B and incorporated herein by reference;

D. Contractor has re-submitted a proposal for both Program Management and Administrative/Grant Management Professional Services and represented to County that it has the expertise and personnel necessary to properly complete the Project by the required date of June 30, 2023 as specified by the REDI Grant Agreement ;

E After considering the proposal submitted by consultant for the Project, the Board has decided to accept the proposal of Contractor for the Project subject to the execution of a contract between the Contractor and County acceptable to the Board; and

F. Contractor and County intend by this Agreement to set forth the scope of the work to be done by Contractor in connection with the Project and related terms and conditions to govern the relationship between Contractor and County in connection with the Project.

G. This Agreement Regarding Provision of Professional Services (PSA) is issued to entirely replace Agreement One.

Terms and Conditions

1. Scope of Project: Contractor shall perform the work described in the attached Exhibit A entitled "Project Management and Administrative Grant Management Statement of Work" which was submitted by Contractor as part of its proposal. Contractor shall perform the work for the Project in a skillful, professional and competent manner and in accordance with the standards of care, skill and diligence applicable to consultants in the field in which Contractor practices with respect to such work. This project requires strict adherence to the attached Exhibit B entitled "Rural Economic Development Initiative Summary of Grant Award Terms and Conditions".

2. Compensation and Payment: As consideration for the work to be performed by Contractor hereunder, County shall pay to Contractor an amount not to exceed a total of \$340,246.50. The compensation to be paid to Contractor shall be paid upon monthly submittal of invoices or as otherwise required by the State Grant Agreement.

During the Project, Contractor shall submit billings for its reimbursable costs and work performed in connection with the Project on a monthly basis no later than the 10th day of the month following the month in which the work billed was done.

Such billings shall be submitted to Commissioner Redmond for review and approval and shall segregate reimbursable costs from charges for professional services and, upon request, Contractor shall provide County with such other supporting information as County may request. County shall pay all properly submitted invoices within 30 days after receipt of each such invoice and any supporting information requested by County. All billings shall include the Contractor's taxpayer identification number or social security number.

County is subject to the provisions of Section 20 of Article X of the Colorado Constitution (also referred to as the "TABOR Amendment") which limits its ability to enter into multiple-fiscal year financial obligations. Therefore, any financial obligation of County under this Agreement beyond the current fiscal year (calendar year) is subject to and conditioned upon the due adoption of a budget for the year in which the obligation is due by the Board of County which budget provides for or appropriates funds for such obligation. The financial obligation of County under this Agreement shall be from year to year only and shall not constitute a multiple-fiscal year direct or indirect debt or other financial obligation or any obligation payable in any fiscal year beyond the fiscal year for which funds are appropriated for the payment thereof.

3. Time for Completion of Project: Contractor shall work diligently to complete the work described in Exhibit A by June 30, 2023 to include all required reporting, project close-out documentation and final payment up to and including same date or any other requirements specified pursuant to the State Grant Agreement. This project is not eligible for time for completion extension.

4. Personnel: Contractor understands that in retaining Contractor, County is relying primarily upon the expertise and personal abilities of Christine Rambo. This

Agreement is conditioned upon the continuing direct personal involvement of Christine Rambo in the Project. County understands that others may work on portions of the Project. However, those employees shall be under the direct supervision of Christine Rambo. In the event that Christine Rambo, for any reason, is unable to remain involved in the Project, or in the event that Christine Rambo ceases to be involved in the Project as planned, Contractor shall immediately advise County of such fact and County shall have the option to terminate this Agreement.

5. Insurance: Contractor shall be responsible for worker's compensation and all other benefits for Contractor and its employees working on the Project and such employees shall not, for any reason, be deemed the agents, servants or employees of County. **Neither the Contractor nor any employee of Contractor shall be entitled to unemployment insurance benefits through the County and the Contractor shall be obligated to pay any federal or state income taxes due with respect to any sum payable by County hereunder.** Contractor shall maintain commercial general liability insurance providing bodily injury and property damage coverage with a combined single limit of at least \$1,000,000 and a deductible of not more than \$1,000. Prior to commencement of work on the Project, Contractor shall cause County to be named as an additional insured and shall provide County with evidence, acceptable to County, that the insurance required hereby is in full force and effect. Contractor shall immediately provide County with written notice in the event any portion of the insurance coverage required by this Agreement is cancelled or if the insurer gives Contractor notice of its intent to cancel such insurance.

6. No Assignment: The parties to this Agreement recognize that the services to be provided pursuant to this Agreement are professional in nature and that in entering into this Agreement, County is relying upon the personal services and reputation of Christine Rambo. Therefore, Contractor may not assign its interest in this Agreement without the prior written consent of County, which may withhold such consent in its sole discretion. Except as so provided, this Agreement shall be binding on and inure to the benefit of the parties hereto, their respective successors and assigns, and shall not be deemed to be for the benefit of or enforceable by any third party.

7. Conflicts of Interest: Neither Contractor nor any of its employees shall, at any time during the term of this Agreement, do work for, nor shall they have any financial interest or other relationship with any entity or project which would constitute a conflict of interest or influence or otherwise jeopardize the professional judgment of Contractor in connection with the Project.

8. Confidentiality: Contractor acknowledges that it may receive confidential information from County in connection with the Project or, as part of the Project, develop such information. Contractor shall take all precautions necessary to maintain and protect the confidentiality of any such information and to ensure that it shall be used only for the purposes of the Project.

9. Ownership of Work: Subject to County's obligation to compensate Contractor, all work, reports, designs, drawings, renderings and other work product

produced by Contractor in connection with the Project shall belong to County and Contractor shall not use any part thereof for purposes other than the Project without the written consent of County.

10. Indemnification: Each party hereto shall indemnify the other party and hold and defend the other party and its officials, officers and employees harmless from all costs, claims and expenses arising from claims made by any person in connection with the acts or omissions of, or representations by, the indemnifying party if such cost, claim or expense is caused by, or is claimed to be caused by, the acts or omissions of the indemnifying party or its officials, officers or employees. This indemnification shall not apply to claims by third parties against the indemnified party to the extent that the indemnified party is liable to such third party for such claim without regard to the involvement of the indemnifying party. It shall be a condition to liability under this paragraph that the indemnified party promptly provide to the indemnifying party a copy of any summons, complaint or other notice of claim with respect to any claim for which the indemnified party may seek indemnification or defense hereunder. Within 10 days following the giving of such notice of claim by the indemnified party, the indemnifying party shall acknowledge receipt of such notice in writing to the indemnified party and, in such notice, accept the defense and obligation to indemnify the indemnified party hereunder. Following such acknowledgment, the indemnifying party shall take all actions reasonably necessary to protect the indemnified party from such claim and the indemnified party shall cooperate in such defense. In the event that the indemnifying party fails or refuses to give such acknowledgment of receipt and acceptance to the indemnified party within the 10 day period specified, the indemnified party may, but shall not be obligated, to assume its own defense and thereafter recover all costs of such defense from the indemnifying party.

Contractor further warrants and guarantees that it will proceed in a manner consistent with the State Grant Agreement as provided therein.

11. Termination: County may terminate this Agreement at any time during the Term of this Agreement upon 10 days' written notice to Contractor without cause; provided, however, that within 30 days following such termination Contractor shall render a final billing for work completed and expenses incurred to the date of termination which shall be paid by County in accordance with Paragraph 2 hereof. In the event that County fails to pay any billing by Contractor for Work hereunder when due, then upon 10 days' written notice to County of such delinquency and the failure of County to pay all amounts then due to Contractor within such 10 day period, Contractor may, at its election cease work hereunder and terminate this Agreement by giving a written notice to County advising of such election. Such written notice of Contractor's election to terminate this Agreement may, but need not, be included in the notice of delinquency required hereunder. In such case such notice of the election to terminate shall be stated in the conditional form that the Agreement shall be terminated if payment is not received within the 10 day period provided for payment of any delinquency.

12. Notices: Any notice required under this Agreement may be personally delivered or mailed in the United States mails, first class postage prepaid to the party to be served at the following addresses:

Contractor: CWR Enterprises LLC
d/b/a Upsize Marketing Strategies
1500 North 19th Street
Monroe, LA 71201
Attn: Christine Rambo

County: Routt County Board of Commissioners
Routt County Courthouse
522 Lincoln Avenue, Suite 30
Steamboat Springs, Colorado 80487

Notices personally served shall be deemed served on the date of delivery. Notices mailed shall be deemed served the next business day following the date of mailing if mailed in the State of Colorado otherwise on the date which is two business days following the date of mailing.

13. Attorney Fees: In the event either party to this Agreement brings suit to enforce or interpret any portion of this Agreement, the party substantially prevailing in such action shall be entitled to recover all costs incurred in such action, including without limitation reasonable attorney's fees.

14. Entire Agreement: This Agreement constitutes the entire agreement between the parties concerning the Project and may not be amended except by a written document executed by both parties hereto.

15. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and which together shall constitute a single instrument.

16. Choice of Laws and Venue: This Agreement shall be governed by and construed in accordance with the internal laws of the State of Colorado without reference to choice of laws rules. The parties agree that venue in any action to enforce or interpret this Agreement shall be in the District Court in the Fourteenth Judicial District for the State of Colorado.

CWR Enterprises LLC d/b/a
Upsize Marketing Strategies

By: _____

Printed Name: _____

Title: _____

Routt County, Colorado

By: _____

M. Elizabeth Melton, Chair
Board of County Commissioners

ATTEST:

Jenny Thomas
Routt County Clerk