

AGREEMENT FOR FUNDING CONTRIBUTION

THIS AGREEMENT FOR FUNDING CONTRIBUTION (the "Agreement") is made and entered into this 6 day of October, 2020 (the "Effective Date"), by and between the Town of Vail, 75 South Frontage Road, Vail, CO 81657, a Colorado home rule municipal corporation (the "Town"), and Vail Valley Foundation, an independent contractor with a principal place of business at 90 W Benchmark Rd #300, Avon, CO 81620, ("Recipient") (each a "Party" and collectively the "Parties").

WHEREAS, the Town encourages and supports community events, because such events promote the public health, safety and welfare;

WHEREAS, Recipient is producing events in the Town on or about December 1 – January 15;

WHEREAS, the Town Council has agreed to provide funding to Recipient to assist in the Magic of Lights (the "Event");

WHEREAS, the Event has been designated by the Town as a Town Council funded Event; and

WHEREAS, in exchange for Town funding, Recipient is willing to comply with the terms and conditions set forth in this Agreement.

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

I. RECIPIENT'S DUTIES

A. Recipient shall plan, organize, promote and carry out the Event as described in Event Description set forth in **Exhibit A**, attached hereto and incorporated herein by this reference.

B. At least 30 days prior to the start of the Event, Recipient shall complete and submit all permits that may be required for the Event by use of the Town special event permits website: www.vailpermits.com. All such applications shall be submitted under the name of Recipient.

C. Recipient shall comply with all applicable regulations pertaining to the production of special events in the Town, including without limitation: the special event permit application; ; the Town Logo Standards, Vail Mountain Brand and Logo Guidelines, found at <http://bit.ly/2hnGZ8f>; and the Town's marketing checklist, attached hereto as **Exhibit B** and incorporated herein by this reference.

D. If required by the CSE Recipient shall allow the Town to perform market research and attendee surveys during or after the Event by an independent, third-party

economic impact research firm hired by the Town. Further, Recipient shall share attendee contact information with the research firm, or send a web survey link provided by said firm to its participant/ticket sales database as directed by the Town. The Town shall share survey data and analysis with Recipient for its use and inclusion in the post-event report.

E. Recipient shall schedule and complete a post-event report and meeting with the CSE within 60 days following the close of the Event. Recipient shall include in its report any non-confidential data from the Event it deems relevant to the Town's review and assessment of the Event. The Town will provide a PowerPoint template for Recipient's use in preparing the report, and the finished PowerPoint shall be submitted to the Town a minimum of 7 days prior to the date scheduled for the post-event meeting.

F. Following the event, Recipient agrees to e-mail Event attendees and, in such e-mail, provide a link and invitation to connect with the Town's marketing website.

G. Prior to the final payment being issued, recipient shall provide the Town Finance Director with actual results from the event including all sources of revenue and event expenditures according to the form attached hereto as **Exhibit D**. Supporting records may be requested by the town.

H. The Town shall be entitled to complimentary advertising, photography, and other exposure as part of any of the promotional or informational material Recipient causes to be prepared for the Event.

I. Recipient shall ensure that all lodging marketing and lodging inquiries relating to the Event are directed to properties within the Town whenever reasonably possible.

J. The Town may download video or photographs of the Event for promotional or editorial purposes (the "Event Media") at no charge, as follows:

1. As part of Recipient's post-event report, Recipient shall provide the Town with a link for the download location for the Event Media.

2. Recipient hereby transfers, sells, and assigns to the Town all of its right, title, and interest in the Event Media. The Town may, with respect to all or any portion of the Event Media, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change the Event Media without providing notice to or receiving consent from Recipient.

K. The Town shall be entitled to receive title sponsor recognition for its support of the event.

L. If applicable, any additional sponsor benefits required to be provided by Recipient to the Town pursuant to this Agreement shall be set forth in **Exhibit C**, attached hereto and incorporated herein by this reference.

II. TERM AND TERMINATION

A. This Agreement shall commence on the Effective Date, and shall continue until Recipient completes the Event and all responsibilities imposed by this Agreement unless sooner terminated as provided herein.

B. Either Party may terminate this Agreement upon 30 days advance written notice. If Recipient terminates this Agreement prior to Recipient's completion of the Event, Recipient shall refund all portions of the Total Contribution already paid. If the Town terminates this Agreement due to Recipient's breach of this Agreement, the Town is not obligated to make any additional payments and may seek repayment by Recipient of any portion of the Total Contribution already paid.

III. CONTRIBUTION

A. If Recipient satisfies the conditions of this Agreement, the Town will pay Recipient \$250,000 (the "Total Contribution") in two payments, as set forth below.

1. Payment One: 66%% of the Total Contribution (\$165,000), payable upon: Recipient executing this Agreement with a completed and signed marketing checklist, and Recipient's completion and submittal of the Sponsor Benefits, and submittal of an operating plan to the Event Review Committee, and Recipient's invoice number one.

3. Payment Two: 34% of the Total Contribution (\$85,000), following the presentation of a post-event report in compliance with this Agreement and following approval by the CSE affirming that all requested information has been provided and that Recipient and the Event have met all conditions for funding and has submitted invoice number two. Payment two may be reduced or eliminated by the CSE if Recipient's post-event report does not include all required information or if Recipient has failed to meet all conditions of this Agreement.

B. Recipient expressly acknowledges that the Total Contribution may be reduced if Recipient fails to produce satisfactory evidence that Recipient has fully complied with all conditions of this Agreement and all other applicable conditions of the permit. Recipient further acknowledges that the Total Contribution may be reduced by the Town as compensation for any outstanding debt Recipient owes the Town including without limitation unpaid contracts for service or unpaid taxes.

IV. RESPONSIBILITY

A. Recipient hereby warrants that it is qualified to assume the responsibilities to carry out the Event and has all requisite corporate authority and licenses in good standing, required by law. The Event shall comply with all applicable laws, ordinances, rules and regulations.

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

C. Recipient may employ subcontractors to plan, organize, promote or carry out all or portions of the Event, provided that Recipient shall ensure that all such subcontractors comply with the terms and conditions of this Agreement.

V. INDEPENDENT CONTRACTOR

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

VI. INSURANCE

A. Recipient 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 of or related to the Event. At a minimum, Recipient 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 \$2,000,000 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.

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 Recipient. Recipient shall be solely responsible for any deductible losses under any policy.

C. Recipient 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.

VII. INDEMNIFICATION

Recipient 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 the Event or 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 Recipient, any subcontractor of Recipient, or any officer, employee, representative, or agent of Recipient, or which arise out of a worker's compensation claim of any employee of Recipient or of any employee of any subcontractor of Recipient.

VIII. ILLEGAL ALIENS

A. Certification. By entering into this Agreement, Recipient hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Recipient will participate in either the E-Verify Program administered by the United States 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. Recipient shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Recipient that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. If Recipient has employees, Recipient 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. Recipient 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 Recipient obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Recipient shall: notify the subcontractor and the Town within 3 days that Recipient has actual knowledge that the subcontractor is employing or contracting with an illegal alien 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 illegal alien who is performing work under this Agreement; except that Recipient 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 an illegal alien who is performing work under this Agreement.

D. Duty to Comply with Investigations. Recipient 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 Recipient is complying with the terms of this Agreement.

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

IX. FORCE MAJEURE; WEATHER

A. If performance or completion of the Event is rendered impossible by an act or regulation of any public authority, an act of God, strike, civil tumult, war, pandemic or other health related epidemic, or interruptions of transportation services, or any other proven cause beyond Recipient's control other than inclement weather, it is understood and agreed to by Recipient and the Town that there shall be no claim for damages by either Party and all monies advanced to Recipient will be returned to the Town.

B. The Town shall determine in its sole discretion if the Event should be cancelled due to inclement weather. If the Event is cancelled prior to its commencement due to inclement weather and Recipient is present and able to perform, or if the Event

begins and is subsequently cancelled by the Town due solely to inclement weather, Recipient shall be deemed to have complied with this Agreement.

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 United States 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 hereto, 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.

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

TOWN OF VAIL, COLORADO

Scott Robson, Town Manager

ATTEST:

Tammy Nagel, Town Clerk

RECIPIENT

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ____ day of _____, 2020, by _____ as _____ of _____.

My commission expires:

(S E A L)

Notary Public

EXHIBIT A EVENT DESCRIPTION

A roughly ½ mile family friendly, winter lighting walkthrough experience offering guests a socially distanced activity to complement their winter experience in Vail. The lighting display will include up to 500,000 lights on 2d and 3d winter themed structures placed throughout Ford Park. The themes are proposed to be generally agnostic as the program will run through the holidays, until approximately Martin Luther King day. Tickets would be approx.. \$15/adult and \$5 per child. The full walkthrough would take approx. 20-30 minutes. Additional programming such as fire pits, smore stations, warming areas, etc. are proposed by the Vail Valley Foundation for the immediate area of the Magic of Lights Walk.

EXHIBIT B MARKETING CHECKLIST

Recipient agrees to the placement of the Town logo as directed on marketing and promotional materials it produces or causes to be produced for the Event as appropriate to the Town's level of sponsorship. Recipient shall complete the checklist and upload here: <https://webportalapp.com/sp/home/2020events>.

Recipient also agrees to the following provisions:

- Town approval is required for incorporation of marketing of program into existing town events including including Revely and Vail Holidays
- Town approval is required for all Event marketing materials for publication regardless of medium.
- Town approval is required for any proofs that include the Town or Vail Mountain logo.
- Items requiring Town approval must be submitted to the Town a minimum of 14 days prior to publication.
- The Town may reduce its Total Contribution for marketing items that Recipient fails to submit properly and in a timely manner.
- Recipient shall use the Town logo and shall make Town social media mentions and hashtags wherever reasonably possible. In doing so, Recipient shall comply with the Town's exact usage guidelines.

**EXHIBIT C
SPONSOR BENEFITS FORM**

The following additional benefits are due to the Town of Vail in consideration of the event funding:

- Town of Vail will be listed in all applicable materials as the Title Sponsor of the event. Title sponsorship will remain for the subsequent 2 years of the event, regardless of sponsorship level in subsequent years.
- **As title sponsor, Town of Vail will retain marketing direction for the event for a three-year period. Magic of Lights may be promoted as an event element of another Town of Vail initiative (ie. Revely Vail, Discover Vail)**
- Town of Vail will receive logo placement on all marketing materials and digital assets. Logo choice will be made by the Town of Vail. Town of Vail, Discover Vail and or Revely Vail may be used.
- Town of Vail will receive access for all employees to attend 1 night of Magic of Lights programming. Approximately 350 employees and their families.
- VVF intends to continue this activation for at least 2 subsequent years. The funding for years 2 and 3 will not exceed \$50,000 per year.
- Magic of Lights and VVF will need approval from the Town of Vail to host any other lighting events within 200 miles of Vail, CO until after 1/1/2024.

Exhibit D Program Budget

Event/Program Budget for MAGIC OF LIGHTS VAIL

> Expenses

		Estimated	Actual
Total Expenses		\$624,500.00	\$0.00

Site/Location/Operations	Estimated	Actual	
Permit	\$1,000.00		
Insurance	\$2,000.00		
Sound/AV - FM Broadcaster, Speakers, Ar	\$2,500.00		
Construction or Equipment - Telehandler/l	\$9,000.00		
Trash/Composting	\$10,000.00		
Utilities	\$3,000.00		
Labor - Project Manager & contract labor	\$20,000.00		
Mountainside Production Power/Support	\$5,000.00		
Labor - Set up	\$45,000.00		
Labor - Breakdown	\$16,000.00		
Snow Removal	\$2,000.00		
Banners - Printing &	\$1,500.00		
Signage	\$5,000.00		
LED Light Purchase & consumables	\$400,000.00		
Port-a-Potties	\$5,000.00		
Lodging & Transpo	\$5,000.00		
IT & Ticketing	\$5,000.00		
Additional Activation (s'mores pits, etc...)	\$10,000.00		
Ticketing Service Fee	\$32,500.00		
Miscellaneous & Damage Contingency	\$10,000.00		
Charitable Contribution	\$5,000.00		
Total	\$594,500.00	\$0.00	

Food & Beverage	Estimated	Actual	
Social food + Beverage		\$0.00	
Non-social food + Beverage		\$0.00	
<insert Other>		\$0.00	
<insert Other>		\$0.00	
Total		\$0.00	\$0.00

Program/Lodging	Estimated	Actual	
Entertainment		\$0.00	
Speakers		\$0.00	
Travel		\$0.00	
Hotel		\$0.00	
<insert Other>		\$0.00	
<insert Other>		\$0.00	
<insert Other>		\$0.00	
<insert Other>		\$0.00	
Total		\$0.00	\$0.00

Prizes	Estimated	Actual	
Prizes		\$0.00	
Cash Purse		\$0.00	
Total		\$0.00	\$0.00

Marketing	Estimate	Actual	
MARKETING TOTAL BUDGET	\$30,000.00		
Advertising - Radio	\$0.00		
Advertising - Print	\$0.00		
Advertising - Social Media	\$0.00		
Public Relations	\$0.00		
Sales Team Expenses	\$0.00		
Media TV, Production & Distribution	\$0.00		
Graphic Design	\$0.00		
Website	\$0.00		
Collateral Materials	\$0.00		
Printing	\$0.00		
<insert Other>	\$0.00		
Total	\$30,000.00	\$0.00	

Event/Program Budget for MAGIC OF LIGHTS VAIL

> Income

	Estimated	Actual
Total Income	\$651,250.00	\$0.00

Tickets/Admissions

Estimated	Actual	Estimated	Actual
15000		Adults @ \$15.00	\$225,000.00
12500		Children 3 - 12 @ \$5.00	\$62,500.00
5000		Locals @ \$10.00	\$50,000.00
32500		Service Fee @ \$1.50	\$48,750.00
		\$386,250.00	\$0.00

Programs/Advertising - N/A

Estimated	Actual	Estimated	Actual
0		Covers @ \$0.00	\$0.00
0		Half-pages @ \$0.00	\$0.00
0		Quarter-pages @ \$0.00	\$0.00
0		<Insert Other> @ \$0.00	\$0.00
0		<Insert Other> @ \$0.00	\$0.00
0		<Insert Other> @ \$0.00	\$0.00
		\$0.00	\$0.00

Exhibitors/vendors =- N/A

Estimated	Actual	Estimated	Actual
0		Large booths @ \$0.00	\$0.00
0		Med. booths @ \$0.00	\$0.00
		Small booths @ \$0.00	\$0.00
0		<Insert Other> @ \$0.00	\$0.00
		<Insert Other> @ \$0.00	\$0.00
0		<Insert Other> @ \$0.00	\$0.00
		\$0.00	\$0.00

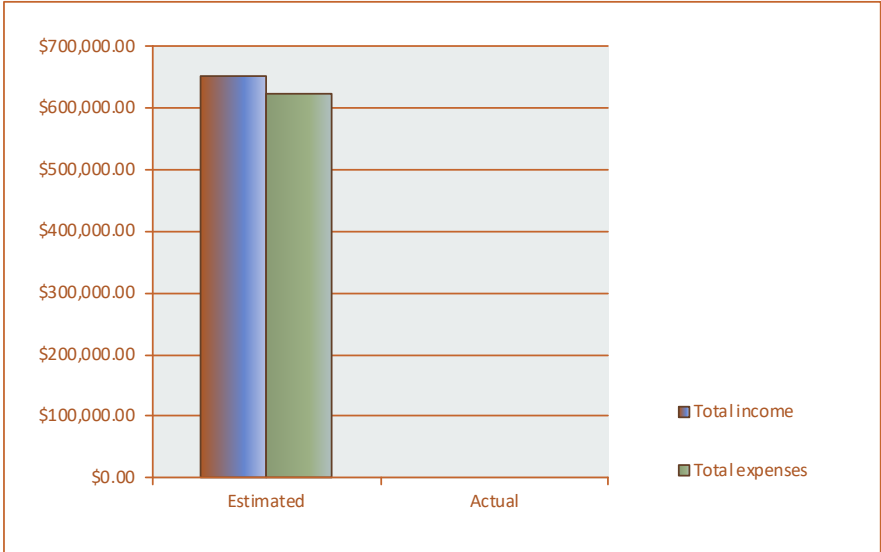
Revenue from other items

Estimated	Actual	Estimated	Actual
3		Cash Sponsorships @ \$5,000.00	\$15,000.00
0		In Kind Sponsorships @ \$0.00	\$0.00
0		Donations @ \$0.00	\$0.00
1		CSE Funding @ \$250,000.00	\$250,000.00
0		Grants @ \$0.00	\$0.00
		\$265,000.00	\$0.00

Event/Program Budget for MAGIC OF LIGHTS VAIL

> Profit - Loss Summary

	Estimated	Actual
Total income	\$651,250.00	\$0.00
Total expenses	\$624,500.00	\$0.00
Total profit (or loss)	\$26,750.00	\$0.00



NO EMPLOYEE AFFIDAVIT
[To be completed only if Recipient has no employees]

1. Check and complete one:

I, _____, am a sole proprietor doing business as _____ . I do not currently employ any individuals. Should I employ any employees during the term of my Agreement with the Town of Vail (the "Town"), I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

I, _____, am the sole owner/member/shareholder of _____, a _____ [specify type of entity – *i.e.*, corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the Town, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

2. Check one.

I am a United States citizen or legal permanent resident.

The Town must verify this statement by reviewing one of the following items:

- *A valid Colorado driver's license or a Colorado identification card;*
- *A United States military card or a military dependent's identification card;*
- *A United States Coast Guard Merchant Mariner card;*
- *A Native American tribal document;*
- *In the case of a resident of another state, the driver's license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card; or*
- *Any other documents or combination of documents listed in the Town's "Acceptable Documents for Lawful Presence Verification" chart that prove both Recipient's citizenship/lawful presence and identity.*

OR

I am otherwise lawfully present in the United States pursuant to federal law.

Recipient must verify this statement through the federal Systematic Alien Verification of Entitlement ("SAVE") program, and provide such verification to the Town.

Signature

Date

DEPARTMENT PROGRAM AFFIDAVIT
[To be completed only if Recipient participates in the
Department of Labor Lawful Presence Verification Program]

I, _____, as a public contractor under contract with the Town of Vail (the "Town"), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are newly hired for employment to perform work under this public contract for services ("Agreement") with the Town within 20 days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a, which verify the employment eligibility and identity of newly hired employees who perform work under this Agreement; and

3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Agreement.

Signature

Date

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ____ day of _____, 2020, by _____ as _____ of _____.

My commission expires:

(S E A L)

Notary Public