



## CONTRACT

### **MOUNTAINLAND ASSOCIATION OF GOVERNMENTS PLANNING / ENGINEERING SERVICES**

SELECTION METHOD: REQUEST FOR PROPOSALS  
FEE TYPE: FIXED FEE

Project Title:  
Work Discipline: Planning and Engineering

1. **CONTRACTING PARTIES:** This contract is between the:

MOUNTAINLAND ASSOCIATION OF GOVERNMENTS,  
586 East 800 N  
Orem, UT 84057  
Referred to as **MAG**

and,

Referred to as **CONSULTANT**.

Legal Status of CONSULTANT: For-Profit

Fed ID No:

2. **CONSULTANT SERVICES:** CONSULTANT agrees to perform the consulting services described in Attachment C, Scope of Services. CONSULTANT shall not be compensated for any work performed in addition to that set forth in Attachment C unless the parties specifically so agree in writing. All information, data, reports, records and maps with respect to the project which are available to MAG and which MAG deems reasonably necessary for the performance of work set forth in Attachment C, shall be furnished to CONSULTANT without charge by MAG.

3. **PROJECT/CONTRACT PERIOD:** The project/contract will terminate (date), unless otherwise extended or canceled in accordance with the terms and conditions of this contract.

4. **CONTRACT COSTS:** The CONSULTANT will be paid a maximum of \$xxxxxxx for costs authorized by this Contract as further described in Attachment C.

5. **ATTACHMENTS INCLUDED AS PART OF THIS CONTRACT:**

**Attachment A** -- Certification of CONSULTANT / MAG

**Attachment B** -- Standard Terms and Conditions

**Attachment C** -- Services Provided by the CONSULTANT

The parties below hereto agree to abide by all the provisions of this contract. IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.



For: CONSULTANT

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Name and Title

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Signature

For: MAG

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Jim Price, Project Manager

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Shawn Eliot, Transportation Director

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LaNiece Davenport, Planning and Policy Director

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Michelle Carroll, Executive Director



**Attachment A -- Certification of CONSULTANT / MAG**

**CERTIFICATION OF CONSULTANT**

I hereby certify that I, \_\_\_\_\_, am a duly authorized representative of Horrocks Engineers, and that neither I nor the above CONSULTANT I hereby represent has:

(a) employed or retained for commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this contract,

(b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or

(c) paid, or agreed to pay to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract; except as hereby expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Utah Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation in connection with this contract, involving participation of Federal-aid Funds, and is subject to applicable State and Federal laws, both criminal and civil.

CONSULTANT Signature/Title: \_\_\_\_\_

**CERTIFICATION OF MAG**

I hereby certify that I am a duly authorized representative of MAG, and that the above CONSULTANT or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to:

(a) employ or retain, or agree to employ or retain, any firm or person, or

(b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as hereby expressly stated (if any):

I acknowledge that this certificate is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Michelle Carroll, Executive Director

## **Attachment B -- Standard Terms and Conditions**

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in Sections 27-12-21, 107 and 108; and 63-56 U.C.A. 1953, as amended, and the Utah State Procurement Regulations, which authorizes MAG to make purchases in accordance with said laws and regulations.
2. **CONTRACT JURISDICTION AND COMPLIANCE WITH LAWS:** The provisions of this contract shall be governed by the laws of the State of Utah. Also, the CONSULTANT and those engaged by the CONSULTANT shall comply with all Federal, State and local laws, regulations and other legally binding requirements that pertain to the services provided under this contract. Proof of the CONSULTANT'S compliance with licensing requirements shall be furnished to MAG upon request.
3. **COMPLIANCE WITH THE JOHN S. MCCAIN NATIONAL DEFENSE AUTHORIZATION ACT:** The CONSULTANT certifies conformance and continued conformance with Public Law 115-232, § 889 and 2 C.F.R. § 200.216.
4. **RECORDS ADMINISTRATION:** The CONSULTANT shall maintain all books, papers, documents, accounting records and other evidence to support costs billed for under this contract. These records shall be retained by the CONSULTANT for a period of at least four (4) years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later. These records shall be made available at all reasonable times during the four year period for audit and inspection by MAG and other authorized State and Federal auditors. The CONSULTANT'S records supporting the cost proposal shall also be retained and made available for review by authorized Federal or State staff. Copies of requested records shall be furnished to MAG upon request.
5. **CONFLICT OF INTEREST:** The CONSULTANT certifies that none of its officers or employees are officers or employees of the State of Utah unless disclosure has been made in accordance with Section 67-16-8, U.C.A. 1953, as amended. The CONSULTANT further warrants that it has no financial or other interest in the outcome of the work performed under the contract. Examples of this situation would be a CONSULTANT who owns land, options to buy land, or some business enterprise that would be financially enhanced or diminished by any project alternatives.
6. **EMPLOYMENT OF MAG EMPLOYEES:** The CONSULTANT agrees not to engage in any way the services on this contract of any present or former MAG employee who was involved as a decision maker in the selection or approval processes or who negotiated and/or approved billings or contract modification for this contract.
7. **CONSULTANT, AN INDEPENDENT CONTRACTOR:** The CONSULTANT shall be an independent contractor, and as such, shall have no authority, express or implied to bind MAG to any agreement, settlement, liability, or understanding whatsoever; and agrees not to perform any acts as agent for MAG, except as specifically authorized and set forth herein. Persons employed by MAG and acting under the direction of MAG shall not be deemed to be employees or agents of the CONSULTANT. Compensation provided to the CONSULTANT herein shall be the total compensation payable hereunder by MAG.



8. CONSULTANT agrees to employ, at own expense, all personnel necessary to perform the services required by this Agreement and in no event shall such personnel be the employees of MAG. All of the services required hereunder shall be performed by CONSULTANT and all personnel engaged therein shall be fully qualified under applicable federal, state, and local law and accepted professional standards to undertake the work performed by them. CONSULTANT assumes full and sole responsibility for the proper payment of all compensation and expenses of such personnel.
9. INDEMNITY - LIABILITY: CONSULTANT agrees to hold harmless and indemnify MAG, its officers, employees and agents (indemnities) from and against all claims, suits and cost, including attorneys' fees for injury or damage of any kind, arising out of CONSULTANT'S negligent acts, errors or omissions in the performance of this contract, and from and against all claims, suits and cost including attorney's fees for injury or damage of any kind, arising out of indemnities failure to inspect, discover, correct or otherwise address any defect, dangerous condition or other condition created by or resulting from CONSULTANT'S negligent acts, errors or omissions in the performance of this contract. Neither MAG nor the CONSULTANT shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.
10. The CONSULTANT is an independent contractor contracted with MAG. Any periodic plan and specification review or construction inspection performed by MAG arising out of the performance of the contract, does not relieve the CONSULTANT of its duty in the performance of the contract, or ensure compliance with acceptable standards.
11. SEPARABILITY: The declaration by any court, or other binding legal source, that any provision of this contract is illegal and void and shall not affect the legality and enforceability of any other provision of this contract, unless said provisions are mutually dependent.
12. INSURANCE: Services to be provided by the CONSULTANT under this contract are required to be covered by insurance. The CONSULTANT shall furnish MAG a Certificate of Insurance applying to this contract for each type of insurance required, to be approved by MAG, before the CONSULTANT begins work under this contract. The CONSULTANT'S insurer must be authorized to do business in Utah and must meet the specified A.M. Best rating of A-Class VIII or better at the time this contract is executed. The following insurance shall be maintained in force until all activities which are required by this contract or as changed by contract modification are completed and accepted by MAG:
  - (a) General Liability insurance shall have a limit of not less than \$1,000,000 per occurrence and not less than \$2,000,000 aggregate and having an A.M. Best rating of A-class VIII or better. The limit if different for this contract will be as designated in Attachment C to this contract. If this coverage is written on a claims-made basis, the Certificate of Insurance shall so indicate. The CONSULTANT represents that as long as commercially available the insurance shall remain in effect such that claims reported up to three (3) years beyond the date of substantial completion of this contract are covered.
  - (b) Architect and/or Engineers Professional Liability (errors and omissions) insurance having an A.M. Best rating of A-class VIII or better, is required at the coverage amount of \$1,000,000. If this coverage is written on a claims-made basis, the Certificate of

Insurance shall so indicate. The CONSULTANT represents that as long as commercially available the insurance shall remain in effect such that claims reported up to three (3) years beyond the date of substantial completion of this contract are covered (on construction contracts or modifications for construction management the insurance, shall remain in effect for one (1) year after completion of the project).

(c) Valuable Papers & Records Coverage and/or Electronic Data Processing (Data and Media) Coverage for the physical loss or destruction of the work product including drawings, plans, specifications and electronic data and media. Such insurance shall be of a sufficient limit to protect the CONSULTANT, its sub-CONSULTANTS and MAG from the loss of said information.

(d) Comprehensive Automobile Liability Insurance shall have a combined single limit of not less than \$1,000,000 each occurrence.

(e) The CONSULTANT shall provide evidence that his employees and sub-CONSULTANT employees are covered by Workers Compensation. If they are covered by Workers Compensation Fund of Utah, then the A.M. Best rating is not required in this area.

(f) If for any reason, an alteration, cancellation or material change occurs in coverage during the course of the contract, such change shall not become effective until 30 days after MAG has received written notice and has approved such a change.

13. **PROGRESS:** The CONSULTANT shall begin the work required by this contract within one week following official notification by MAG to proceed. The CONSULTANT shall prosecute the work diligently and to the satisfaction of MAG. If Federal Funds are used on this contract the work will be subject to periodic review by the Federal Highway Administration. The CONSULTANT will prepare monthly progress reports following the format established by MAG in sufficient detail to document the progress of the work and support the monthly claim for payment. Payments will not be made without a supporting progress report. Progress conferences will be held periodically. The CONSULTANT will prepare and present written information and studies to MAG so it may evaluate the features and progress of the work. Either party may request a conference; to be held at the office of either, or at a place designated by MAG. The conferences shall also include inspection of the CONSULTANT'S services and work products when requested by MAG. The CONSULTANT will be required to perform such additional work as may be necessary to correct errors in the work required under the contract without undue delays and without additional cost to MAG. If at any time the CONSULTANT determines the contract work cannot be completed within the specified time or budget, MAG shall be immediately notified in writing. MAG may, at its sole discretion, extend the contract by written modification. MAG may terminate this contract in accordance with termination provisions of this contract including failure of the CONSULTANT to make satisfactory progress of the contract work. Should MAG desire to suspend the work, but not terminate the contract, this will be done by verbal notification followed by written confirmation from MAG. The work may be reinstated upon 30 days advance written notice from MAG. Unless extended or terminated in writing, this contract will terminate on the expiration date, or at the end of the specified calendar days.
14. **REVIEW AND INSPECTION OF WORK:** It is expressly understood and agreed that authorized representatives of MAG and, when Federal Funds are used, the Federal Highway Administration shall have the right to review and inspect the work in process, and the CONSULTANT'S facilities, at any time during normal business hours or by appointment.

15. **COMPENSATION.** MAG shall pay CONSULTANT an amount not to exceed the sum of \$xxxxxx as consideration for the services as set forth in Exhibit C. The fee shall include overhead and incidental expenses, for which no additional compensation shall be allowed. In order to effect timely payment to CONSULTANT, CONSULTANT shall submit invoices to MAG on or before the first (1st) day of each month. The invoices shall describe in reasonable detail the services rendered, fees charged and expenses incurred by CONSULTANT during the previous month. Payment of said monthly invoices may be considered past due after forty-five (45) days of receipt by MAG. Delays in meetings, deliverables, and other timely services which have not been approved by MAG staff shall constitute delays in work for which monthly payments may be delayed at the discretion of MAG staff. In addition, final payment of \$xxxxx may be delayed until the completion of this study to the satisfaction of MAG.
16. **NON DISCRIMINATION PROVISIONS:** The CONSULTANT agrees to abide by the provisions of the Utah Anti-discrimination Act, Title 34 Chapter 35 U.C.A. 1953, as amended, and Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibits discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive order 11375 and as supplemented in Department of Labor Regulations (41CFR Part 60), which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap. The CONSULTANT agrees to abide by Utah's Executive Order, dated June 30, 1989, which prohibits sexual harassment in the work place. Sections 49 CFR 21 through Appendix H and 23 CFR 710.405(b) are applicable by reference in all contracts and subcontracts financed in whole or in part with Federal-aid highway funds. The CONSULTANT further agrees to furnish reports to MAG upon request for the purpose of determining compliance with these statutes identified in this section. The CONSULTANT shall comply with the Americans with Disabilities Act (ADA).
17. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS:** The CONSULTANT agrees to abide by the requirements of 49 CFR Part 29. By signing this contract the CONSULTANT certifies that to the best of their knowledge and belief that it or its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - (b) Have not within a three-year period preceding this proposal been convicted of or had civil judgment against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offenses enumerated in subparagraph 13(b) of this certification; and

- (d) Have not within a three-year period preceding this contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.
18. Where the CONSULTANT is unable to certify to any of the statements in this certification, the CONSULTANT shall attach an explanation to this contract. Exceptions will not necessarily result in denial of award, but will be considered in determining CONSULTANT'S responsibility. Any exceptions noted shall identify to whom it applies, the initiating agency, and dates of the action. Providing false information may result in criminal prosecution or administrative sanctions.
19. 18. CERTIFICATION OF COMPLIANCE ON LOBBYING RESTRICTIONS: The CONSULTANT agrees to conform with the lobbying restrictions established by Section 319 of Public Law 101-121 (Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990) for contracts exceeding \$100,000 in Federal Funds. The CONSULTANT certifies, by signing this contract, to the best of their knowledge and belief, that:
- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - (c) All information, data, reports, records and maps with respect to the Project which are available to MAG and which MAG deems reasonably necessary for the performance of work set forth in Exhibit A, shall be furnished to CONSULTANT without charge by MAG.
20. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
21. The CONSULTANT also agrees by signing this contract that they shall require that the language of this certification be included in all lower tier subcontracts, and that all such sub-recipient shall certify and disclose accordingly.
22. OWNERSHIP OF DOCUMENTS: All tracings, plans, manuscripts, specifications, data, maps, etc., prepared or obtained by the CONSULTANT, as a result of working on this contract, shall be delivered to and become the property of MAG. All documents and data



pertaining to work required by this contract shall be the property of MAG and shall be delivered to MAG within 10 working days after termination of the contract, regardless of the reason for termination; and without restriction or limitation on their further use. Costs of all the above items shall be considered as included in the basic contract compensation for the work.

23. The CONSULTANT shall not be responsible for another party's application of information contained in the contract documents to other projects, or for uses other than that for which the information was intended. Should patentable discoveries or inventions result from work required by this contract, all rights to them shall be the sole property of the CONSULTANT. Except, the CONSULTANT agrees to grant to the United States Government and the State of Utah a nonexclusive, nontransferable, paid up, license to use the discovery or invention. The CONSULTANT is permitted to copyright reports and other contract products provided that MAG and the Federal Highway Administration have a royalty free, nonexclusive, irrevocable right to reproduce, publish, or otherwise use and authorize others to use for governmental purposes.
24. **ASSIGNMENT AND SUBCONTRACTING:** The CONSULTANT shall not subcontract any of the work required by this contract, or assign monies to be paid to the CONSULTANT hereunder, without the prior written approval of MAG. All allowed subcontracting costs are included in the PROPOSED BUDGET portion of Attachment C. The amount billed to MAG for subcontractor costs shall be the same amount the CONSULTANT pays subcontractor for services required by this contract. All payments made by the CONSULTANT to the subcontractor for services required by this contract shall be subject to audit by MAG. All subcontracts must include all the same terms and conditions and provisions included in this contract. However, the prime CONSULTANT is responsible for ensuring that all work performed by sub-CONSULTANTS is insured under their insurance policy, or they require that the sub-CONSULTANTS meet the insurance provisions required under this contract.
25. **KEY PERSONNEL/STAFFING PLAN:** Any change in personnel from that specifically identified in Attachment C of this contract, must be submitted to MAG Project Manager in writing and is subject to prior approval by MAG. Invoices submitted for payment with unauthorized personnel will not be paid.
26. **DISPUTES:** Claims for services, materials, or damages not clearly authorized by the contract, or not ordered by MAG by prior written authorization, will not be paid. The CONSULTANT shall notify MAG in writing, and wait for written approval, before it begins work not previously authorized. If such notification and approval is not given or the claim is not properly documented, the CONSULTANT shall not be paid the extra compensation. Proper documentation alone shall not prove the validity of the claim. The parties agree to use arbitration or mediation after exhausting applicable administrative reviews to resolve disputes arising out of this contract where the sole relief sought is monetary damages \$100,000 or less, exclusive of interest and costs.
27. **CLAIMS - DELAYS AND EXTENSIONS:** The CONSULTANT agrees to proceed with the work previously authorized by the contract, or in writing, continually and diligently, and will make no charges or claims for extra compensation for delays or hindrances within its control during the progress of this contract. MAG may allow an extension of time for the contract, for a reasonable period as agreed by the parties, should a delay or hindrance



occur. MAG shall not waive any of its rights under the contract by permitting the CONSULTANT to proceed with the contract after the established completion date.

28. **CONSULTANT'S ENDORSEMENT ON PLANS, ETC.:** The CONSULTANT (if a firm, the responsible principal) is required to endorse and affix its seal to plans, reports, and engineering data furnished to MAG under this contract.
29. **CONTRACT MODIFICATIONS:** This contract may be amended, modified, or supplemented, as it is mutually agreed to by the parties by written contract modification, executed by the parties hereto and attached to the original signed contract.
30. **Claims for services furnished by CONSULTANT, which are not specifically authorized by this contract or by appropriate modification, shall not be paid by MAG. When a contract modification has been agreed to by the parties no claim for the extra work done or material furnished shall be made by the CONSULTANT until the written modification has been fully executed. Any verbal agreements not confirmed in writing are non-binding.**
31. **TERMINATION:** This contract may be terminated as follows:
  - (a) Mutual agreement of the parties; in writing and signed by the parties.
  - (b) By either party for failure of the other party to fulfill its obligations, as set forth with the provisions of this contract and in particular with Attachment C, "Services Provided by the CONSULTANT" or Section 31, "Duties of MAG". Reasonable allowances will be made for circumstances beyond the control of the CONSULTANT and MAG. Written notice of intent to terminate is required and shall specify the reasons supporting termination.
  - (c) Upon satisfactory completion of required contract services.
  - (d) On termination of this contract all accounts and payments will be processed in accordance with contract terms. Upon determining the final amount due the CONSULTANT, or to be reimbursed by the CONSULTANT, in the manner stated above, the final payment will be processed in order to close out the contract.
32. **COST PRINCIPLES:** Regardless of the funding source, the costs allowable for reimbursement will be governed by the Federal Acquisition Regulations, Title 48, Part 31, as modified by Utah State law, administrative rules, and regulations on contract provisions.
33. **GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT:** Pursuant to the Government Records Access and Management Act, Title 63, Chapter 2, Utah Code Annotated, the CONSULTANT understands that if it believes that any records it submits to MAG should be considered confidential for business purposes under Utah Code Ann. § 63-2-308, it must attach written notice of that opinion to the record when it first submits it. The CONSULTANT understands that MAG will not treat any such record as confidential under Section 63-2-308 absent such written notification. Additionally, the CONSULTANT agrees that neither MAG nor any of their agents or employees are responsible for disclosure of any record that the CONSULTANT considers confidential if either the State Records Committee or a court orders it released.

**34. WORK ACCEPTANCE:**

- (a) All work performed under this contract shall be performed in accordance with Standards, Specifications, Manuals of Instruction, Policies and Procedures established by MAG. All work shall be subject to the approval of MAG through its designated representatives. When the work is federally funded, MAG will coordinate with the Federal Highway Administration (FHWA) to obtain concurrence in the work.
  
- (b) CONSULTANT agrees to submit written reports electronically in the format to be specified and mutually agreed upon and as hard copy. The final report shall be a minimum of 10 printed copies, have an emphasis on visualization, and be printed by the CONSULTANT. An electronic copy of the final report in .pdf format on a CD or USB Drive shall be produced by the CONSULTANT. Distribution of the final report shall be the responsibility of MAG.

**35. GENERAL CONTROL AND INSPECTIONS:** The CONSULTANT shall be represented at progress review meetings as may be scheduled by MAG. The CONSULTANT shall accompany MAG personnel and other representatives on field inspections and at conferences as may be required.

**36. DUTIES OF MAG:**

- (a) **Guarantee Access:** MAG shall guarantee access to and make all provisions for the CONSULTANT to enter upon all lands, both public and private which in the judgment of the parties hereto are necessary to carry out such work as may be required.
  
- (b) **Prompt Consideration:** MAG shall give prompt consideration to all reports, plans, proposals and other documents presented by the CONSULTANT.
  
- (c) **Documents:** MAG shall furnish Standards, Specifications, Manuals of Instruction, Policies and Procedures, and other available information, including any material previously prepared for this work.



## **ATTACHMENT C – SCOPE OF WORK AND BUDGET**

### **SCOPE OF WORK**

#### **EXECUTIVE SUMMARY**

Description of Services and Timeline of Project Completion