

Agreement for Professional Services (Hourly)

This Agreement for Professional Services (the "Agreement") is made and entered into this ____ day of _____, 2022 (the "Effective Date"), by and between the Town of Erie, , a Colorado municipal corporation with an address of 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516 (the "Town"), and J-U-B Engineers, Inc., an independent contractor with a principal place of business at 4745 Boardwalk Drive #D-200, Fort Collins, Colorado 80525 ("Contractor") (each a "Party" and collectively the "Parties").

Whereas, the Town requires professional services; and

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

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

I. Scope of Services

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

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

II. Term and Termination

A. This Agreement shall commence on the Effective Date and shall continue for 12 months unless sooner terminated as provided herein.

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

III. Compensation

In consideration for the work performed by Contractor under the Scope of Services, the Town shall pay Contractor as set forth in **Exhibit B**, attached hereto and incorporated herein by this reference.

IV. Professional Responsibility

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

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

C. Because the Town has hired Contractor for its professional expertise, Contractor agrees not to employ subcontractors to perform any work except as expressly set forth in the Scope of Services.

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

V. Ownership

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all

work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor; provided that Contractor shall have no liability for any work that has been modified by the Town.

VI. Independent Contractor

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

VII. Insurance

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

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

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

excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

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

VIII. Indemnification

A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor; provided that Contractor's liability shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

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

IX. Workers Without Authorization

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

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

shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

C. *Verification.*

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

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

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

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

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

X. **Miscellaneous**

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

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

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

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

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

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

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

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

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

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

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

L. *Force Majeure.* No Party shall be in breach of this Agreement if such Party's failure to perform any of the duties under this Agreement is due to Force Majeure, which shall be defined as the inability to undertake or perform any of the duties under this

Agreement due to acts of God, floods, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government or pandemics.

In Witness Whereof, the Parties have executed this Agreement as of the Effective Date.

Town of Erie, Colorado

Jennifer Carroll, Town Mayor

Attest:

Heidi Leatherwood, Town Clerk

Contractor

By: *[Signature]*
Jeff Temple, Area Manager

State of Colorado)
County of Lasimer) ss.

The foregoing instrument was subscribed, sworn to and acknowledged before me this 30th day of December, 2022, by Jeff Temple as Area Manager of J-U-B, Engineers, Inc.. 21

My commission expires: 3-26-2024

(Seal)



[Signature]
Notary Public

No Employee Affidavit

[To be completed only if Contractor 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 Erie (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 Contractor's citizenship/lawful presence and identity.*

Or

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

Contractor 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 Contractor participates in the Department of Labor Lawful Presence Verification Program]

I, _____, as a public contractor under contract with the Town of Erie (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 _____, 2022, by _____ as _____ of _____.

My commission expires:

(Seal)

Notary Public

Exhibit A Scope of Services

Contractor's Duties and Deliverables

During the term of this Agreement, Contractor shall perform the following duties, as directed by the Town and shall deliver the following items to the Town, during the timeframes established by the Town:

J-U-B – J-U-B Engineers, Inc.

CMI – Construction Management and Inspection

1. Plans and specification review/setup project files
 - a. Scope of Services:
 - i. CMI team members will review plans and specifications, right of way contracts and environmental commitments. The team members will develop a documentation needs list based upon the project pay items and documentation requirements.
 - b. Deliverables:
 - i. Documentation needs list
2. Pre-Construction Meeting & Coordination
 - a. Scope of Services:
 - i. CMI team members will begin coordinating with Erie Staff on establishing roles, responsibilities and expectations. J-U-B will initiate a meeting with the awarded contractor prior to the Pre-Construction Meeting. This is the first step towards a collaborative project culture. The purpose is to informally meet the team members and discuss expectations, project concerns and jointly establish project goals.
 - ii. J-U-B will coordinate and notify by email all interested parties regarding attendance to a pre-construction conference. This will occur prior to contractor mobilization on the project. The interested parties will include Town of Erie, the Contractor, Subcontractors, utility companies and affected agencies. J-U-B will conduct the Pre-Construction Meeting and prepare and distribute meeting minutes to all attendees.
 - b. Deliverables:
 - i. Pre-Construction Meeting Agenda & Minutes
3. Coordination/Weekly Meetings
 - a. Scope of Services:
 - i. J-U-B will schedule and conduct a weekly project coordination meeting with Town of Erie and the Contractor to discuss the project schedule and resolve

- project related issues. 28 meetings are anticipated for this project. J-U-B will address concerns that arise from the Contractor, stakeholders and affected agencies during construction.
- ii. J-U-B will coordinate with all stakeholders, affected agencies and third party utilities.
- b. Deliverables:
 - i. Meeting Agenda & Minutes (28 each)
4. Negotiate, Prepare and Process Change Orders
- a. Scope of Services:
 - i. J-U-B will prepare and justify change orders, provide negotiation meetings for change orders and keep complete and accurate documentation using Erie's change order forms. J-U-B will obtain Erie Project Manager's approval prior to processing all change orders. Our hours are based on 2 change orders being required.
 - b. Deliverables:
 - i. Change Orders (2 each)
5. Review and Approve Contractor Submittals
- a. Scope of Services:
 - i. J-U-B will review any submittals and shop drawings from the Contractor and verify compliance with specifications. J-U-B will review the Contractor's Critical Path Method (CPM) baseline and monthly updated schedules. This work plan is based upon a 200 calendar day construction timeline. Therefore, it is anticipated 7 schedules will be reviewed. J-U-B will review and track requests for information (RFI's) submitted by the contractor.
 - b. Deliverables:
 - i. Review of submittals and RFI's
6. Project Documentation
- a. Scope of Services:
 - i. J-U-B will provide current electronic and hard copy documentation in a format that is agreeable to Town of Erie that will be submitted at the end of the project. J-U-B will review project documentation before processing the monthly partial pay estimates to verify documentation requirements are being fulfilled. We will provide a red lined as-built plan set upon project completion. J-U-B will prepare the project files for closeout.
 - b. Deliverables:
 - i. Project Documentation
 - ii. Red lined as-built plan set
7. Project Accounting
- a. Scope of Services:
 - i. J-U-B will document pay quantities and perform a quality

check of the entries and verify the calculations. J-U-B will prepare monthly partial estimates in a format acceptable to the Town of Erie. J-U-B will provide estimates to the Contractor for review and approval. J-U-B will then submit the estimates to the Town of Erie for processing (once per month). 7 partial estimates are anticipated for this project. Payment will be made in accordance with the contract documents and specifications. J-U-B will prepare the final estimate at the end of project in a format acceptable by the Town of Erie. J-U-B will provide the estimate to the Contractor for review and approval. Following Contractor approval, J-U-B will submit the estimate to the Town of Erie.

- b. Deliverables:
 - i. Partial Pay Estimates (7 each)
 - ii. Final Pay Estimate
- 8. Observe Construction (140 Working Days)
 - i. Scope of Services:
 - i. J-U-B will actively observe the Contractor's work with regard to the plans and specifications. J-U-B will provide sufficient observation and documentation to confirm that the Contractor is constructing the project per the contract requirements. J-U-B anticipates the Contractor will be working eight-hour days, five days a week for 28 weeks. The total amount of observation hours is an estimate based upon this assumption. The construction observer will make periodic checks of plan lines and grades. They will measure quantities and review with the Contractor. J-U-B will monitor the Contractor's traffic control and safety effort. The observer will review the Contractor's compliance to the project SWMP and notify them of any non-compliant issues.
- 9. Field Documentation
 - a. Scope of Services:
 - i. The construction observer will complete a daily report to document construction activities and field issues. J-U-B will collect and assemble weigh tickets and concrete tickets.
 - b. Deliverables:
 - i. Construction Observation Daily Reports (140 each)
- 10. Final Inspection and Follow-up
 - a. Scope of Services:
 - i. J-U-B will coordinate and conduct a final inspection with Town of Erie, the Contractor and affected agencies. J-U-B will prepare minutes and a punch list and distribute to attendees. J-U-B will periodically observe the

Contractor's effort to complete the punch list items to verify their completion. A 20-hour observation effort is estimated for this part of the task.

b. Deliverables:

i. Punch List

11. Material Testing (Terracon)

a. Scope of Services

- i. Terracon will perform the quality acceptance testing on materials and reporting for the project. Due to the unknowns of the contractor's construction phasing, Terracon has made assumptions to the amount of testing needs. Their attached subconsultant work plan states these assumptions.

b. Deliverables:

- i. Material Testing Reports

**Exhibit B
Compensation**

Contractor shall be paid on an hourly basis for the time spent by Contractor's employees performing the work described in the Scope of Services. Contractor shall provide itemized invoices detailing the work performed, and shall bill in increments of not less than 15 minutes. Such invoices shall be submitted to the Town on a monthly basis.

The hourly rates for Contractor's employees are as follows:

Construction Manager	\$210/hr
Senior Construction Observer	\$120/hr
Design Project Manager	\$230/hr
Design Engineer	\$160/hr
Document Specialist	\$120/hr
Administration	\$ 85/hr

The following Sub Consultant will be performing Material Testing

Terracon, Sub-Consultant	\$27,500
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The total annual compensation under this Agreement shall not exceed \$240,000.