

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this 26th day of September, 2018 (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 until 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.

B. 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. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

C. 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.

D. Because the Town has hired Contractor for its professional expertise, Contractor agrees not to employ subcontractors to perform any work under the Scope of Services.

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. Use or reuse of Contractor's work for any purpose other than intended by this Agreement shall be at Town's sole risk.

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 act, 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. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence 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. ILLEGAL ALIENS

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 an illegal alien who will perform work under this Agreement and that Contractor 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. Contractor 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 Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien 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 an illegal alien 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 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 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 an illegal alien 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 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 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.

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

TOWN OF ERIE, COLORADO

Jennifer Carroll, Mayor

ATTEST:

Jessica Koenig, Deputy Town Clerk

CONTRACTOR

By:

[Handwritten Signature]

STATE OF COLORADO)
) ss.
COUNTY OF Larimer)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 17th day of September, 2018, by Jeff Temple as Area Manager of J-U-B Engineers, Inc.

My commission expires:

(S E A L)

Jena O'Callaghan
Notary Public



DEPARTMENT PROGRAM AFFIDAVIT

[To be completed only if Contractor participates in the Department of Labor Lawful Presence Verification Program]

I, Jeff Temple, 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]
Signature

9/17/18
Date

STATE OF COLORADO)
) ss.
COUNTY OF Las Animas)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 17th day of September, 2018, by Jeff Temple as Area Manager of J-U-B Engineers, Inc.

My commission expires:

(S E A L)



[Signature]
Notary Public

EXHIBIT A SCOPE OF SERVICES

Contractor's Duties

During the term of this Agreement, Contractor shall perform the following duties, as directed by the Town:

- Communicate regularly with Town staff regarding project issues via telephone, electronic mail, and post mail.
- Attend meetings as needed. All meetings shall be presented and/or facilitated by the Consultant.
- Perform site surveys for preparation of construction plans, right-of-way acquisition and annexation maps.
- Prepare up to three concept designs including right-of-way requirements, with pros and cons, and a cost estimate for each, and a recommendation for the preferred design. One of the designs will include a 4-lane arterial section each direction. Each of the concept designs must taper back to the existing two lane road section.
- Review the Draft Traffic Signal Warrant Study for the intersection to confirm the recommendation for a traffic signal.
- Prepare a preliminary design for the concept plan selected by the Town. Prepare an updated cost estimate.
- Prepare a future plan for the traffic signal with the 4-lane arterial section for all four legs.
- Obtain geotechnical information and prepare a report for pavement design.
- Obtain pothole information for all underground utilities. Assume 10 utility pothole locations will be required.
- Prepare a drainage report that addresses storm water and water quality requirements.
- Evaluate environmental impacts and if necessary prepare documentation necessary for a Corps of Engineer permit.
- Prepare up to 10 legal descriptions for right-of-way, and attached temporary construction easements. The Town will prepare the right-of-way deed and temporary easement documents, and will handle the purchase negotiations with the property owners.
- Prepare annexation documents for the additional right-of-way.
- Prepare final design and a written response to all preliminary design review comments. Prepare an updated cost estimate based on the final design.
- Update the plans and legal descriptions, if necessary, based on any revisions resulting from review comments of final design.
- After final design approval, prepare a complete set of bid documents. The set of bid documents shall include the following as a minimum:
 - Construction plans
 - Construction specifications
 - Review and edit of Town's Standard Contract Documents

- Itemized quantities for bid documents
- Measurement and payment description for each bid item
- Documentation necessary for the Contractor to obtain all permits required for construction
- Geotechnical report prepared for the design as reference only in the contract documents
- Final cost estimate
- Bid assistance shall include the following as a minimum:
 - Attend pre-bid meeting, and take notes on questions and answers during the meeting
 - Address all questions during bidding phase and prepare all addendums
 - Review all bids, and prepare recommendation for award

EXHIBIT B
COMPENSATION

Contractor shall be paid on an hourly basis for the time spent by Contractor's employees performing the work described in **Exhibit A**, 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 and the out-of-pocket expenses are based on the fee proposal submitted with the Request for Proposal which is included in this Exhibit B.



Erie Parkway & WCR 7 Intersection Improvements		Project Cost								
Task Number	Task Description	Project Executive (\$/HR)	Project Manager (\$/HR)	Design Engineer (\$/HR)	Clerical (\$/HR)	JUB FEE	Subconsult. King FTH Terracon AEC Diversified	Expenses	Task Total	Total
		\$180	\$135	\$95.00	\$70					
Project Setup										
1	Project Startup and Management	8	24		16	\$5,800			\$5,800	
2	Kick-Off Meeting w/Town		6	6		\$1,380	\$510		\$1,890	
3	Progress Reports/Coordination/Meetings		6	8		\$1,570			\$1,570	
4	Data Gathering and Site Visit		4	8		\$1,300			\$1,300	
5	Topographic Survey & R.O.W. Documents									
6	Topographic Survey, Processing & Management		4	8		\$1,300	\$11,053		\$12,353	
7	Private Utility Locates					\$0	\$1,010		\$1,010	
8	Locate Potholes (\$979 for 10) (NOT INCLUDED)					\$0			\$0	
9	Locate Test Bores (\$979) (NOT INCLUDED)					\$0			\$0	
10	Base Mapping (ROW, Aliquot Lines, Property Lines, Easements)					\$0	\$4,880		\$4,880	
11	Title Commitments (8 Parcels @ \$500 each) (NOT INCLUDED)					\$0			\$0	
12	Property Descriptions and exhibit drawings (10 Per RFP)					\$0	\$5,000		\$5,000	
13	Annexation Plats (Assuming 4)					\$0	\$3,200		\$3,200	
14	Traffic Warrant Study Review					\$0	\$1,040		\$1,040	
15	Geotechnical Investigation, Testing & Reporting		4	4		\$920	\$9,850		\$10,770	
16	Totals	8	48	34	16	\$12,270				\$48,813
Conceptual Design & Alternative Analysis										
17	Alternative 1 Conceptual Design					\$0			\$0	
18	Conceptual Layout		2	12		\$1,410			\$1,410	
19	ROW Requirements		1	3		\$420			\$420	
20	Pros/Cons		1	2		\$325			\$325	
21	Cost Estimate		1	4		\$515			\$515	
22	Alternative 2 Conceptual Design					\$0			\$0	
23	Conceptual Layout		2	8		\$1,030			\$1,030	
24	ROW Requirements		1	3		\$420			\$420	
25	Pros/Cons		1	2		\$325			\$325	
26	Cost Estimate		1	4		\$515			\$515	
27	Alternative 3 Conceptual Design					\$0			\$0	
28	Conceptual Layout		2	8		\$1,030			\$1,030	
29	ROW Requirements		1	3		\$420			\$420	
30	Pros/Cons		1	2		\$325			\$325	
31	Cost Estimate		1	4		\$515			\$515	
32	QA/QC of Alternatives	2	4			\$900			\$900	
33	Concept Design Meeting		4	6		\$1,110	\$510		\$1,620	
34	Totals	2	23	61		\$9,260				\$9,770
Preliminary Design (50%)										
35	Prepare Preliminary Plans					\$0			\$0	
36	General Sheets		1	12		\$1,275			\$1,275	
37	Geometric Sheets		1	8		\$895			\$895	
38	Removal Sheets		1	8		\$895			\$895	
39	Plan & Profile Sheets		1	16		\$1,655			\$1,655	
40	Grading & Drainage Sheets		2	24		\$2,550			\$2,550	
41	SWMP Sheets		4	16		\$2,060			\$2,060	
42	Traffic Sheets (Signing/Striping, Signals, Detour)		4	16		\$2,060	\$3,190		\$5,250	
43	Details		1	8		\$895			\$895	
44	Cross Sections		4	16		\$2,060			\$2,060	
45	Auxiliary lane Analysis & Design					\$0	\$2,540		\$2,540	
46	Preliminary Drainage Design with Drainage Report		8	32		\$4,120			\$4,120	
47	Environmental - Site Visit, Delineation, Habitat Assessment		2			\$270	\$1,260		\$1,530	
48	Quantities & Opinion of Probable Construction Cost		4	6		\$1,110			\$1,110	
49	QA/QC and 50% Submittal	6	2			\$1,350			\$1,350	
50	Attend Preliminary Design Meeting		4	6		\$1,110	\$510		\$1,620	
51	Totals	6	39	168		\$22,305				\$29,805
Final Design Plans (95%)										
52	Address 50% Review Comments		4	4		\$920			\$920	
53	Utility Potholes					\$0			\$0	
54	10 Potholes		4	4		\$920	\$2,100		\$3,020	
55	Mobilization (2 days)					\$0	\$600		\$600	
56	Traffic Control (2 days)					\$0	\$2,800		\$2,800	
57	Traffic Control Plan (5 Sheets)					\$0	\$275		\$275	
58	Permit Coordination					\$0	\$240		\$240	
59	Permanent Restoration of Pothole (\$150/Hole) (NOT INCLUDED)					\$0			\$0	
60	Prepare Final Plans					\$0			\$0	
61	General Sheets		1	6		\$705			\$705	
62	Geometric Sheets		1	6		\$705			\$705	
63	Removal Sheets		1	6		\$705			\$705	
64	Plan & Profile Sheets		1	12		\$1,275			\$1,275	
65	Grading & Drainage Sheets		2	12		\$1,410			\$1,410	
66	SWMP Sheets		2	12		\$1,410			\$1,410	
67	Traffic Sheets (Signing/Striping, Signals, Detour)		2	12		\$1,410	\$3,190		\$4,600	
68	Details		1	6		\$705			\$705	
69	Cross Sections		4	12		\$1,680			\$1,680	
70	Progress Meeting (~ 70% Design Meeting)		4	6		\$1,110			\$1,110	
71	Final Drainage Report and Calculations		4	20		\$2,440			\$2,440	
72	Environmental - USACE Permitting, Historic Docs (if Needed)		4			\$540	\$4,246		\$4,786	
73	Revise Quantities & Opinion of Probable Constr. Cost		4	4		\$920			\$920	
74	Technical Specifications	4	8			\$1,800			\$1,800	
75	QA/QC and 95% Submittal	6	2			\$1,350			\$1,350	
76	Attend Final Design Meeting		4	6		\$1,110	\$510		\$1,620	
77	Totals	10	53	128		\$21,115				\$35,076
Bid Phase (100%)										
78	Address 95% Review Comments		4	2		\$730			\$730	
79	Final Plan Revisions		1	2		\$325			\$325	
80	Final Quantities & Opinion of Probable Const. Cost		2	2		\$460			\$460	
81	Final Technical Specification & Bid Form		6			\$810			\$810	
82	QA/QC & Final Submittal (Bid Set)	4	4			\$1,260			\$1,260	
83	Bid Assistance		8			\$1,080	\$990		\$2,070	
84	Attend Pre-Bid Conference		4			\$540			\$540	
85	Totals	4	29	6		\$5,205				\$6,195
Construction Phase										
86	Construction Management Negotiated Near Final Design					\$0			\$0	
Design Total		30	192	397	16	\$70,155.00	\$59,504.00			\$129,659