

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into this 9th day of April, 2019 (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 HDR Engineering, Inc., an independent contractor with a place of business at 1670 Broadway, Suite 3400, Denver, Colorado 80202 ("Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires professional services for the design of the North Water Reclamation Facility expansion; 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 the Scope of Services is completed to the satisfaction of the Town, or 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 except as expressly set forth in Exhibits A and B.

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 (the "Work Product") 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. Any reuse of Work Product by the Town on other projects not contemplated under this Agreement shall be at the Town's sole risk, without liability to Contractor.

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 reasonable 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 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. 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, Town Mayor

ATTEST:

Jessica Koenig, Town Clerk

HDR ENGINEERING, INC.

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ____ day of _____, 2019, by _____ as _____ of HDR Engineering, Inc.

My commission expires:

(S E A L)

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 _____, 2019, by _____ as _____ of _____.

My commission expires:

(S E A L)

Notary Public

EXHIBIT A SCOPE OF SERVICES

Engineering services for the design and bidding of the North Water Reclamation Facility ("NWRf") Expansion Project improvements, including all of the following services:

Liquid Treatment System Expansion

1. Primary Screening and Grit Removal.
 - a. A second mechanical screen for mechanical redundancy
 - i. Designed to fit within the existing concrete channels and openings.
 - ii. To be included as a bid-alternate due to the low prioritization need relative to other needs identified.
 - b. New grit collection system for new Aeration Basin #3 and future Aeration Basin #4.
 - c. New grit pump.
 - d. New grit classifier, designed to fit within the existing space of the Headworks.
2. Influent Pumping.
 - a. Inspection, condition assessment, and design for necessary repairs (if any) to the Influent Wetwell.
 - b. New Influent Pump #4.
 - c. Influent pumping discharge header modifications, isolations, and metering.
3. Secondary Treatment
 - a. New Aeration Basin #3, to be constructed of concrete and using the Kruger Hybrid Biofilm Activated Sludge (Hybas) system employed at existing Basins #1 and #2.
 - b. 2 existing aeration basins expansions including 1 new Swing Zone, an Anoxic Zone, and a Reaeration Zone per basin.
 - c. Separation of RAS and Internal Recycle pumping systems.
 - d. Procurement package including specifications and drawings for the Kruger Hybas system, including a complete system for new Basin #2 and improvements to Basins #1 and #2. Scope is anticipated to include: media, screens, aeration grid assemblies, mixed liquor recycle pumps, submersible mixers, valving, instrumentation, PLC controls, and field instruments.
 - e. New aeration blower(s), designed to meet year 2028 demands and anticipated year 2038 demands, and utilize the existing 3 blowers to the extent possible to provide an operable system.
 - f. New aeration piping and isolation from Blower Room to new Aeration Basin #3.
 - g. Foam Suppression and Collection including: spray nozzles; modifications to existing basin walls; and foam collection boxes and downward acting gates in each basin.
 - h. Downward acting weir gates in all IFAS trains and upsize existing distribution pipe from grit chamber to correct short circuiting in IFAS Trains 1 and 2.
4. Secondary Clarification
 - a. Clarifier influent piping modifications.
 - b. Clarifier influent splitter box modifications.
 - c. Chemical addition for algae growth?

5. Tertiary Disc Filters and UV Disinfection.
 - a. Second disc filter.
 - b. Building and channel expansion to fit second disc filter.
 - c. New slide gate in UV channel to replace plywood

New Solids Treatment Process-

1. New Autothermal Thermophilic Aerobic Digestion (ATAD) system using Thermal Process Systems Inc. (TPS) patented ThermAer™ and SNDR™ reactors including:
 - a. 2 ThermAer reactors
 - b. 1 SNDR reactor
2. Procurement package including specifications and drawings for the ATAD system, motive pumps, blowers, foam control, in-basin piping and nozzles, heat exchanger, level sensors, ORP analyzers, temperature sensors, pH sensors, vacuum/pressure sensors and gauges, flow meters, valving, MCC, VFDs, control program, and odor control biofilter.
3. New concrete tanks, pump room, blower room, and electrical room.
4. New Thickener feed pumps.
5. New Thickening equipment selection and design.
6. New Dewatering equipment selection and design.
7. New dewatered cake Conveyance and Loading System.
8. Enclose lean-to for solids storage and place roll-off dumpster in lean-to.
9. New dewatered cake Drying Bed.
10. Inspection, condition assessment, and design for necessary repairs (if necessary) of existing WAS Holding, Lime, and Feed tanks.
11. Descaling or replacement of existing drain piping due to lime buildup.
12. Demolition of existing dewatering/stabilization equipment.

Facility-wide improvements

1. Repurposing the Town's existing 700 KW diesel generator at the abandoned South Water Reclamation Facility (SWRF) to the NWRF.
2. Improvement or replacement of the NWRF primary power transformer to supply additional electrical needs for the Project.
3. Maintenance Building electrical, water, drain, and communication utility support into and out of building.
4. Headworks carbon filters on exhaust louvers to atmosphere
5. Review existing equipment at SWRF for potential re-use options, repair needs, and implementation.
6. Communication conduit and wire for existing influent flow meter to plant SCADA
7. Non-Potable Water System pump improvements
8. Existing plant irrigation water tie-in to existing Reclaim Water distribution piping
9. Effluent flow metering to Boulder Creek
10. Existing polymer storage and transfer system improvements
11. Programming

Additional considerations:

1. The project will be delivered as Construction Manager at Risk (CMAR).
2. The duration of the design phase will be approximately 12 months, with an additional month for bidding and award.

3. Certifications for sustainability (*e.g.* LEED, ENVISION) will not be sought.
4. Contractor is not responsible for printing bid sets of drawings and specifications for prospective bidders.
5. The Town recognizes that the CMAR delivery process requires more extensive team collaboration than a traditional project because plans and specifications may not be 100% complete when construction begins.
6. Construction documents (plans and specifications) will be submitted to the Town and the CMAR (as available) for review at the 30%, 60% and 90% completion levels for GMP development. It is anticipated that the CMAR will develop the GMP primarily from the 90% documents.
7. Value engineering past the 90% design level will be considered as out of scope.
8. Construction cost estimates will be prepared by the CMAR for the milestone deliverables.
9. Contractor shall utilize 2D CAD for existing buildings and existing structure modifications. Revit for Building Information Modeling (BIM) will be used for the new ATAD building. Models will be distributed to the design team in NavisWorks Freedom format. Contractor shall provide training on the use of NavisWorks Freedom software to view the models.
10. Digital photography is acceptable for clarifying demolition activities.
11. A workshop will be conducted for each contract document submission to review the design.
12. The contract specifications will be set up as CSI Master Format 2004 (6-digit, 50 divisions).
13. No 3D scanning of existing buildings will be performed.
14. Maintenance Building including foundation, structural, interior electrical, interior mechanical design by others. Maintenance Building utility support begins at building exterior. Electrical panel will be included, as will site planning, locating of the Maintenance Building, and coordination with the building's designer to develop a plan meeting the Town's needs.

Task 1 – Project Management

Task 1.1 – Project Management Plan and Schedule

Task 1.2 – Monthly Status Reports

Task 1.3 – Project Approach and Resource Review (PARR)

Task 1.4 – Quality Control

Task 1.5 – Project SharePoint Site

Task 1.6 – Design Workshops

Deliverables

Project Management Plan and schedule

Monthly status reports

Workshop agendas, presentation materials, and meeting minutes

Task 2 – Data Collection

Task 2.1 – Topographic Survey

Task 2.2 – Geotechnical Evaluations

Task 2.3 – Utility Locates

Deliverables

Site Survey

Utility Locates

Geotechnical Report

Task 3 – Preliminary Design and Permitting

Task 3.1 – Preliminary Design

Task 3.2 – CDPHE Site Application and Design Review

Task 3.3 – Discharge Permit Modification and Rerating

Task 3.4 – Town Building Permit

Task 3.5 – Town and CDPHE Stormwater Management Permit

Task 3.6 – Town Site Plan

Task 3.7 – Grant Funding

Deliverables

Draft Preliminary Design Report

Final Preliminary Design Report

Preliminary Design Drawing Set

CDPHE Site Application and Design Review package

CDPHE PELs for discharge permit modification

Discharge Permit Application

Building Permit Application

Stormwater Management Plan and Permit Applications

Town Site Plan Application

Task 4 – Prepare Construction Plans and Specifications

Task 4.1 – 30% Design

Task 4.2 – 60% Design

Task 4.3 – 90% Design

Task 4.4 – Value Engineering and Issued for Bid Contract Documents

Deliverables

30% Preliminary Drawings and Specification List

60% Drawings and Specifications (PDF Format plus 4 half-sized sets of drawings)

90% Drawings and Specifications (PDF Format plus 4 half-sized sets of drawings and specifications)

Bid Drawings and Specifications (PDF Format)

Meeting agendas, minutes, and presentations

Task 5 – Coordination with CMAR

Task 5.1 – CMAR Selection

Task 5.2 – Value Engineering

Task 5.3 – Constructability Reviews

Task 5.4 – MOPO

Task 5.5 – Pre-selection of Equipment

Task 5.6 – Review of CMAR Deliverables

Task 5.7 – CMAR Meetings

Task 5.8 – GMP Development with CMAR

Deliverables

Written response to VE proposals from the CMAR

Written response to constructability review comments from the CMAR

Conceptual maintenance of plant operations plan

Documents associated with pre-selected equipment

Review comments for all CMAR deliverables

**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:

Project Role	Billing Rate
Project Manager	\$225.00
QA/QC (Process, Structural, Electrical)	\$250.00
QA/QC (Architectural, Mechanical, Civil)	\$250.00
Project Principal	\$250.00
Project Assistant	\$100.00
Project Accountant	\$110.00
Administrative Support	\$90.00
Liquid Stream Lead	\$250.00
Solids Stream Lead	\$225.00
Solids Stream Engineer	\$110.00
Liquid Stream Engineer	\$130.00
Process CAD/BIM Lead	\$180.00
Structural Lead	\$215.00
Structural Engineer	\$105.00
Structural CAD/BIM	\$130.00
Electrical Lead	\$250.00
Electrical Engineer	\$170.00
Lighting Engineer	\$125.00
I&C Lead	\$250.00
I&C Engineer	\$125.00
EI&C CAD	\$110.00
Architect	\$160.00
CAD/BIM	\$110.00
Site/Civil	\$150.00
Site/Civil CAD	\$125.00
Building Mechanical	\$155.00
Mechanical CAD/BIM	\$110.00

Subcontractors may be used for the following services, at the following costs, not billed at an hourly rate, but billed at the following flat rates, which rates include a 5% markup:

Topographical Surveyor	\$10,500.00
Geotechnical Investigations	\$21,000.00
Subcontract - Utility Locates Potholing Services*	\$7,875.00

The maximum amount of compensation due to Contractor under this Agreement shall be **\$2,256,105**. If Contractor completes the Scope of Services for a lesser amount, Contractor shall only be paid the lesser amount, not the maximum amount.