

## **Agreement For Services**

THIS AGREEMENT FOR SERVICES (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 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 **Timken Motor & Crane Services, LLC d/b/a Wazee Electric**, an independent contractor with a principal place of business at **4850 Moline Street, Denver, Colorado 80239** ("Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires services; and

WHEREAS, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required 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 and known as: **Installation of two new VFD Units (P19-275)**.

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 Contractor completes the Scope of Services 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 completion of the Scope of Services by Contractor, the Town shall pay Contractor an amount not to exceed \$38,000 which amount includes Contractor's Quote of \$35,954 and a contingency of \$2,046. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the Town for such fees, costs and expenses. Contractor may submit periodic invoices, which shall be paid by the Town within 30 days of receipt.

#### **IV. 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 licenses in good standing, required by law.

B. The work performed by Contractor shall be in accordance with generally accepted practices and the level of competency presently maintained by other practicing contractors 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.

#### **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.

#### **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.

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

C. 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. Indemnification. 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 to the extent such injury, loss, or damage is caused 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.

B. Exclusion of Certain Damages. In no event shall Contractor be liable for any type of special or penal damages, nor for any lost profits or downtime, or for any removal or reinstallation (except if included in the original scope of work), whether such damages arise out of or result of breach of contract, warranty, tort (including negligence), strict liability or otherwise.

C. Limitation of Liability. Except for third party claims covered by the above indemnity, Contractor's liability to the Town on any claim or cause of action of any kind in contract, tort or otherwise, for any losses, costs, damages, expense, statutory violation, fine or penalty, loss of use, nonperformance, exercise of cover or any breach or fault by Contractor whatsoever, shall be limited to the greater of the purchase price paid by the Town for the portion of the products or services allocable to the part, component, or work out of which the claim arose, or applicable insurance proceeds.

## **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 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 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 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.

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

**TOWN OF ERIE, COLORADO**

\_\_\_\_\_  
Jennifer Carroll, Mayor

ATTEST:

\_\_\_\_\_  
Jessica Koenig, Town Clerk

**TIMKEN MOTOR & CRANE SERVICES,  
LLC D/B/A WAZEE ELECTRIC**

By: \_\_\_\_\_  
Stephen Andrews, General Manager

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

## 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**

### Contractor's Duties

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

Contractor shall install two new VFD units and integrate into bypass soft-starters.

1. Part: ACS880-07-156A-5+C129+G328+G329 (Qty-2)  
Description: 125HP ABB VFD
  - Travel to/from jobsite.
  - Demo existing soft starters.
  - Furnish and Install 2ea 480v 125hp ABB ACS880 Cabinet Drives
  - Install conduit power and control.
  - Reconfigure control wiring.
  - Program VFD
  - Perform ABB Authorized Start Up of VFD (extends factory warranty by one additional year per drive)
  - Perform operational checkout and testing of VFD.
2. Part: Install and Commission (Qty-2)  
Description: Electrical/Control Service
3. Part: Electrical Materials (Qty-2)  
Description: Electrical Materials necessary to install VFD system

Contractor shall provide the following warranties:

- A. **WARRANTY PERIOD.** All sales, repair, inspection, test, rental service, modification or maintenance sold or serviced by Contractor is warranted to be free from defects of material and workmanship and to conform to any applicable drawings, specifications, or written documents approved by Contractor for a period of time as detailed below, or if different, such other period as included in Contractor's quote:

1. Reconditioned components : as agreed by third parties
2. Reconditioned or standard motor rewind: one year in service or 18 months from date of shipment, whichever occurs first
3. New Product Sales: one year in service or 18 months from date of shipment, whichever occurs first

The above warranties shall be based on such equipment operating with competent supervision under normal load, usage and conditions. Contractor's warranty excludes issues that arise from incorrect operation or improper maintenance, or external influences.

- B. **REPAIR, MODIFICATION, REBUILD.** If within the period specified above, Contractor receives from the Town written notice of any alleged defect or non-conformity and if the services provided are found by Contractor not to be in conformity with this warranty (the Town having provided the Contractor reasonable opportunity to perform any appropriate test thereon) the Contractor will, at its option, correct such nonconformity or supply a replacement thereof. This warranty shall only apply to parts repaired or replaced by the Contractor. No separate warranty shall apply to repaired apparatus as a whole or to parts not repaired or replaced by the Contractor. Contractor shall have the right to require the Town to deliver any apparatus covered by this warranty to a designated service center and the Town shall pay both in-bound and out-bound transportation charges, with Contractor accepting only the direct and actual cost of apparatus repair or replacement as provided above.
- C. **EQUIPMENT, COMPONENT AND PARTS WARRANTY.** If any of the equipment or component parts provided by the Contractor shall prove defective in material or workmanship within the warranty period, the Town shall immediately thereupon notify the Contractor in writing of such defect. Where the defect is found by Contractor to be covered hereunder, the Contractor shall, at its option, modify, repair, supply a replacement part or refund the purchase price of said item. The Contractor shall have the option to have the part returned to it, F.O.B. its factory, or to make such adjustment at the point of installation. The Contractor may invoice the Town for all travel and labor involved. The Contractor shall accept no responsibility if such item has been improperly operated or maintained or if the Town has permitted any unauthorized modifications, adjustments and/or repairs to the part. Parts not manufactured by the Contractor shall be covered by the warranty of the manufacturer or supplier thereof.
- D. **INSPECTION, TEST, MAINTENANCE, CALIBRATION, CONSULTATION.** Contractor warrants that these services will be provided in accordance with accepted industry practice. If any service fails to meet the forgoing warranty, Contractor shall duplicate the service to the same extent and on the same conditions as the original service rendered.
- E. **REMANUFACTURED EQUIPMENT/COMPONENTS.** All equipment components remanufactured by Contractor will be warranted for a period of one year from date of shipment. Repair of electronic boards will be warranted for a period of six months from date of shipment.
- F. **EXCLUSIVE WARRANTY.** These warranties are in lieu of and exclude all other express, implied, or statutory warranties, including without limitation any implied warranty of merchantability or fitness for a particular purpose. Contractor does not warrant the design of any equipment, material, components or service of others.