

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into this 28<sup>th</sup> day of January, 2020 (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 Jacobs Engineering Group Inc., an independent contractor with a principal place of business at 9191 South Jamaica Street, Englewood, Colorado 80112 ("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, and known as: FIRM Review for Boulder Creek (P19-606).

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 \$100,000. 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. 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. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

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.

#### **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. 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 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 limits of \$1,000,000 each claim and \$2,000,000 general aggregate.

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. 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 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 or 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 obligation under this Agreement is due to Force Majeure, which shall be defined as the inability to undertake or perform any obligation under this Agreement due to acts of God,



## 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

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

3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Agreement.

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Notary Public



## **Exhibit A Scope of Services**

### **Phase 1: Data Collection and Review**

During Phase 1, data related to the underlying information supporting the Colorado Hazard Mapping Program (CHAMP) Boulder Creek 2D HEC-RAS model will be collected and reviewed. This will include, but will not be limited to the hydraulics, topography, quality review documentation, and floodway analysis. Specifically, Contractor shall complete detailed evaluation and analysis of the following:

- Hydraulic model
- Terrain model compared against LiDAR data
- Floodway boundaries
- Preliminary floodplain mapping
- Floodplain boundary standard data and other quality review information that can be obtained

Following the initial data collection and document and model review, Contractor shall summarize the results of our review and discuss them with the Town. These discussions will focus on our findings of our review of the background data, its validity and application, potential errors that have been identified, and alternate floodway encroachment strategies that could improve the accuracy and mapping of the floodplain and floodway maps to support the Town's needs.

The results of the data review will be summarized in a meeting with the Town as well as in a memorandum. The memorandum will establish the recommended path forward.

### **Phase 1 Deliverables**

- Phase 1 data review memorandum

### **Phase 1 Assumptions**

- Remaining information not provided to date will be provided by the CHAMP team
- Review of the Boulder Creek hydrology is assumed to not be required

### **Phase 2: Area Wide and Water Reclamation Facility (WRF) Survey**

Phase 2 will contract with Keystone Aerial Surveys, Inc. (Keystone) to obtain aerial LiDAR coverage of the entire area impacted by the proposed floodplain/floodway that the Town identified in the 2015 Comprehensive Plan. In general, the area to be captured is the area adjacent to Boulder Creek approximately one mile wide from U.S. 287 on the west to a point approximately 1.5 miles north of highway 52.

Contractor shall coordinate with Keystone to capture greater than 8 Points Per Meter fixed wing LiDAR within the project area. The LiDAR will be collected at an elevation of approximately 3,000' above ground and will be delivered to Contractor as calibrated .las files. Contractor shall

then utilize field survey data and automated processes within Terrascan software to classify bare earth and generate a DTM surface model. Other features such as vegetation, water, impervious surfaces and buildings will not be classified or provided in deliverables. Coordination of the flight with local air traffic control is the responsibility of Keystone and will only be authorized if the ground is free from standing water, snow, wildfires or other environmental hazards that could obscure the ground.

Upon completion of the DTM, Contractor shall compare the new data with the USGS 2013 LiDAR DTM and develop an Isopleth Map depicting the differences in surface elevations between the two models within the project area for review.

LiDAR accuracy assumptions include the following:

- Relative accuracy of DTM @ 95% RMSE
- Horizontal = 10 cm (0.32 ft)
- Vertical = 10 cm (0.32 ft)

Contractor shall also acquire 6" aerial imagery from DRCOG of the project area to aid in bare earth classification and project planning.

Additionally, it is anticipated that a ground survey of the water reclamation facility (WRF) will be required. Contractor shall collect topographic survey on an approximately 120-acre tract of land. No subsurface or visible surface utility features will be collected as part of this survey. Additionally, while the edge of water will be identified, no hydrographic/bathymetric data will be collected. A boundary survey is also not included in this proposal. Contractor shall establish horizontal and vertical control from the best nearby evidence available. Elevations will be collected using the NAVD88 Datum.

The ground survey will also include an as-built survey of the new bridge at Mineral Road / Highway 52, as will be required with the new model and mapping.

## **Phase 2 Deliverables**

- AutoCAD or Microstation DTM surface model, DEM and contours
- The Aerial Photography will be mosaicked and delivered as a single compressed .ecw file
- Isopleth Map in .jpg format
- PLS stamped report documenting the review and checking process for the aerial LiDAR
- Modified terrain using surveyed data captured in Phase 2
- PLS stamped PDF Survey of the WRF site
- PLS stamped as-built drawing for the new Mineral Road / Highway 52 bridge
- 2017 (or later) ACAD files of the WRF survey will be provided

## **Phase 2 Assumptions**

- Right of Entry (ROE) will not be required to access site
- Survey Control exists and will not need to be re-established
- Capture of the topographic information will not be significantly delayed by inclement weather including excessive snowfall

### **Phase 3: Additional Detailed Survey and Miscellaneous Support.**

Phase 3 includes 65 man-hours to address unanticipated tasks and slight changes in the scope. These funds will be held in reserve and charged against only after consultation with and approval of the Town.

### **Phase 3 Deliverables**

- To be determined on an as needed basis

Phase 3 Assumptions:

Additional survey services may be needed to incorporate topographic and planimetric data for additional properties of interest to the Town

### **Phase 4: Appeal Development and Submittal**

In Phase 4, the information reviewed in Phase 1 shall be modified to correct for any significant errors, omissions, and potential alterations in modeling in accordance with best practices within the industry such that the Town can produce an appeal as appropriate to minimize the floodway width. The topographic information obtained in Phase 2 will be used to inform and improve the revised 2D HEC-RAS model. The goal of the appeal is to reduce the floodway and Base Flood Elevation impacts of Boulder Creek from Highway 287 to approximately 1.5 miles downstream (northeast) of County Line Road.

Contractor shall provide a modified copy of the CHAMP 2D HEC-RAS model that provides justification for and revises the floodway boundaries in the area of concern.

### **Phase 4 Deliverables**

- Modified terrain using surveyed data
- Appeals package
  - o Modified 2D HEC-RAS model
  - o New or modified Base Flood Elevations (BFE), base flood depths, floodplains/floodways, Special Flood Hazard Areas (SFHA), and/or zone designations associated with the preliminary Physical Map Revision (PMR) products. These will be delivered in the form of a geodatabase that includes modified feature classes and datasets of the above- mentioned information
  - o Explanation for the superiority of the alternative methodology/model
  - o All analysis and mapping will use the same datum as the preliminary data

### **Phase 4 Assumptions**

The following assumptions are made for Phase 4:

1. It is assumed that there will be only one appeal submittal and one round of comments being addressed for the appeal submittal.
2. It is assumed that information related to developing the appeal submittal includes models,

maps, reports and GIS data that will be provided to Contractor by the Town and the CHAMP team.

## **Project Schedule**

Delivery of the appeals package may depend upon the CHAMP team's schedule and transmittal of needed data. It is assumed that the CHAMP appeals process begins in mid-March and appeals packages are due by mid-June. The anticipated schedule is as follows:

- Notice to Proceed: 1/29/20
- Data Review Complete: 3/16/20
- Topography Data Complete: 3/16/20
- Topography Comparison Complete: 3/20/20
- Modeling Complete: 4/3/20
- Town Coordination and Draft Appeals Package to Town: 5/8/20
- Final Appeals Package to Town for Submittal to CHAMP: 5/29/20