

Agreement for Professional Services

This Agreement for Professional Services (the "Agreement") is made and entered into this ____ day of _____, 2021 (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 Kennedy/Jenks Consultants, Inc., an independent contractor with a principal place of business at 165 South Union Boulevard, Suite 570, Lakewood, Colorado 80228, ("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: **Boulder Creek Streambank Stabilization Improvements (P21-288) Project**.

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 \$165,487, which amount includes a base cost of \$154,868 and a contingency not to exceed \$10,619 as approved by the Town. The contingency funds will be paid only with the Town's prior approval, if Contractor demonstrates to the Town's satisfaction that the additional costs are reasonable. 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 under this Agreement, except as expressly set forth in the Scope of Services.

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

standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, in effect now or anytime hereafter.

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 the Work Product without providing notice to or receiving consent from Contractor; provided that Contractor shall have no liability for any work that has been modified by the Town.

VI. Independent Contractor

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

VII. Insurance

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

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

3. Professional liability insurance with minimum limits of \$1,000,000 each claim and \$2,000,000 general aggregate.

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 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 omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor; provided that Contractor's liability 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. Workers Without Authorization

A. *Certification.* By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement and that

Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

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

C. *Verification.*

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

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

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

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

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

Department Program, Contractor shall sign the "Department Program Affidavit" attached hereto.

X. Miscellaneous

A. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Weld 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 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 of the duties under this Agreement is due to Force Majeure, which shall be defined as the inability to undertake or perform any of the duties under this Agreement due to acts of God, floods, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government or pandemics.

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

Town of Erie, Colorado

Jennifer Carroll, Mayor

Attest:

Heidi Leatherwood, Town Clerk

Contractor

By: _____

Emily Hudak

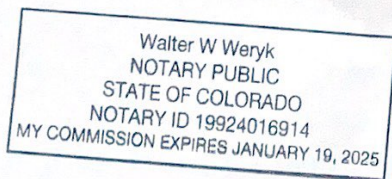
State of Colorado)
County of Jefferson) ss.

The foregoing instrument was subscribed, sworn to and acknowledged before me this 20 day of October, 2021, by Emily Hudak as Principal of Kennedy/Jenks Consultants, Inc.

My commission expires: 1-19-2025

(Seal)

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

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:

1. Communicate regularly with Town staff regarding project issues via telephone, and electronic mail.
2. Attend meetings as needed. All meetings shall be presented or facilitated by Contractor.
3. Contractor shall provide services through the following sub-consultants:
 - a. Deere & Ault, for floodway modeling, construction plans, cost estimates, preparation of a Floodplain Development Permit application, preparation and submission of a Conditional Letter of Map Revision application, and preparation and submission of a Letter of Map Revision based on as-built conditions.
 - b. Pinyon Environmental, Inc. for environmental and Federal permitting services.

Task Descriptions:

Task 1: Preliminary Work

- a. Contractor shall review the effective and preliminary FEMA HEC-RAS models for the Boulder Creek floodplain from Weld County, and model cross-section geometry and terrain data, if available, that was used for developing the cross-sections will be compared.
- b. Contractor shall Participate in two virtual meetings with Weld County and the Colorado Water Conservation Board (CWCB) to provide a project overview and to discuss the model and map revision process.
- c. Contractor shall coordinate regarding data needs and on federal permitting requirements. This may include AutoCAD drawing files of topographical survey, existing utility locations, well/equipment pad designs, as-built well alignment (if different from design), and exploratory boring locations along with the respective boring logs and test data related to the Erie Wellfield and Conveyance Design Project.
- d.

Task 2: Design and Floodplain Permitting

- a. Contractor shall perform floodway modeling of the proposed improvements in both the effective and preliminary HEC-RAS models with the goal of developing a grading design that will satisfy the no-rise criterion for at least one of the two regulatory models (effective or preliminary), or other criteria as determined through discussions with Weld County and the CWCB.
- b. Contractor shall develop a construction plan set for the proposed bank stabilization which is estimated to be approximately four sheets and a cover

page. Simplified technical specifications will be written directly in the plans. A full technical specification document will not be prepared. Due to time constraints, forego a phased design (30%, 60%, etc.) Contractor shall move straight to final design. One final design review by the Town is provided in the fee and schedule. Contractor shall provide a preliminary Engineer's Opinion of Probable Construction Costs (EOPCC) and update the EOPCC as final design is complete.

- c. Contractor shall prepare and submit a Floodplain Development Permit (FDP) application to Weld County.
- d. Contractor shall prepare and submit a Conditional Letter of Map Revision (CLOMR) application and supporting documentation to the CWCB.

Task 3: Engineering Services During Construction

- a. Contractor shall organize and attend a pre-bid meeting at the Project site, develop a measurement and payment specification and bid schedule, assist with special conditions development, provide support for up to 3 addenda, review contractor bids (up to 4 bids), tabulate and present the bids and bid evaluation and recommendation for contract award during a meeting with to the Town.
- b. Contractor shall oversee construction of the streambank improvements, review submittals and prepare weekly construction reports.

Task 4: Post-Construction Services

- a. Contractor shall review as-built survey data of the streambank repairs (to be provided by Town), verify that it conforms to the plans, and compose an as-built FDP follow-up letter to Weld County.
- b. Contractor shall prepare and submit to CWCB an application for a Letter of Map Revision (LOMR) based on the as-built conditions

Task 5: Section 404 Permit Application

- a. Contractor shall calculate potential impacts to waters of the U.S. including linear feet of impacted riverbank and cubic yards of fill material proposed for placement below the ordinary high water mark.
- b. Contractor shall prepare and submit a Section 404 Nationwide Permit pre-construction notification (PCN) that describes existing conditions, summarizes impacts to waters of the U.S., describes proposed mitigation measures, and summarizes conditions pertaining to federally listed species and cultural resources. Contractor assumes that the project will qualify for a Nationwide 13 - Bank Stabilization permit and that a Regional General Permit or Individual Permit will not be required.
- c. Contractor shall update the Endangered Species Act memorandum and National Historic Preservation Act memorandum that was previously prepared for the Erie Wellfield and Conveyance Design Project.
- d. Contractor shall address questions from the USACE and other agencies.

Task 6: Project Management

- a. Contractor shall provide management associated with proper scheduling review, budget control, invoice preparation, and coordination with the Town's project teams.
- b. Contractor shall schedule and conduct the project kick-off meeting which is anticipated to be held within one week from receipt of a notice to proceed.

Contractor's Deliverables

In performance of the duties described above, Contractor shall deliver the following items to the Town, during the timeframes established by the Town:

- Meeting minutes and documentation of decisions or directives made by the Town
- Documentation of contacts/coordination made by Contractor and contact information
- Issues Identification, Action and Resolution Logs
- Deliverables shall conform to the Town User Guide for Digital Record Drawing Submittal Requirements

In accordance with the above scope of services, Contractor shall provide the following deliverables:

- Construction Plans
- EOPCC (Preliminary and Final)
- Floodplain Development Permit Application
- CLOMR
- LOMR
- PCN with Updated Endangered Species Act and National Historic Preservation Act memoranda

Contractor's Schedule

Contractor shall complete the scope of work within 333 days from the Town's issuance of a Notice to Proceed.