

**TOWN OF JOHNSTOWN
PROFESSIONAL SERVICES AGREEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT (the “Agreement”) is made and entered into this 29th day of March 2023 (the “Effective Date”) by and between the Town of Johnstown, Colorado, a Colorado home-rule municipal corporation (the “Town”) and Tanco Engineering Inc., a Colorado Corporation (“Contractor”) (collectively, the “Parties”).

RECITALS

WHEREAS, the Town desires to engage the services of Contractor and Contractor desires to provide those services more fully described on Exhibit A, attached hereto and incorporated herein by reference (“Services”), for the Town; and

WHEREAS, the Parties wish to memorialize their contractual relationship.

AGREEMENT

NOW, THEREFORE, incorporating the foregoing Recitals herein which are hereby acknowledged as being true and correct, and in consideration of the mutual promises, agreements, undertakings and covenants, as set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby mutually agree as follows:

SECTION 1: PARTIES

1.01 Town. The Town is a home-rule municipal corporation located in Johnstown, Colorado.

1.02 Contractor. Contractor has the background, expertise and education to provide the Services. Contractor is a private, independent business entity who will exercise discretion and judgment of an independent contractor in the performance and exercise of its rights and obligations under this Agreement. Contractor shall use its own judgment and skills in determining the method, means and manner of performing this Agreement. Contractor shall be responsible for the proper performance of this Agreement in accordance with the terms hereof and any and all applicable federal, state, and municipal laws, regulations and orders.

SECTION 2: SERVICES, COMPENSATION AND TERM

2.01 Services. Contractor agrees to perform the Services for the Town.

2.02 Compensation. In consideration of Contractor’s performance of the Services contemplated herein, the Town agrees to pay Contractor the compensation set forth on Exhibit A. Contractor shall submit detailed invoices reflecting the portion of the Services completed to the date of the invoice. The Town shall provide payment for Services to Contractor within thirty (30) days of receipt of the invoice. In its discretion, the Town may withhold payment for

disputed portions of invoices on the condition that the Town provides written notice to Contractor of the dispute. Upon delivery of notice, the Town and Contractor shall promptly endeavor to resolve such dispute.

2.03 Expenses: Contractor shall not incur any expense or debt on behalf of the Town without the Town's prior written authorization.

2.04 Term. Unless otherwise terminated in accordance with Section 5, the term of this Agreement shall be from the Effective Date through May 12th, 2023 and shall not extend beyond that date absent the written approval of the Town.

SECTION 3: OPERATIONS

3.01 Contractor Status. Contractor avers that it has the background, expertise and education to provide the Services. Contractor shall be responsible for the proper performance of the Services in accordance with the terms hereof. Contractor shall obtain the necessary permits, if any, and maintain all required licenses, including but not limited to a Town business license.

3.02 Schedule. Unless otherwise set forth in Exhibit A, Contractor shall provide the Services in accordance with the timeline requested by the Town

SECTION 4: INSURANCE AND INDEMNITY PROVISIONS

4.01 Insurance.

A. Contractor understands and agrees that Contractor shall have no right of coverage under any existing or future Town comprehensive or personal injury liability insurance policies. As a material term of this Agreement, Contractor agrees to maintain and keep in force during the term of this Agreement one or more policies of insurance written by one or more responsible insurance carrier(s) authorized to do business in the State of Colorado in the following amounts:

1. Workers' compensation insurance as required by law;
2. Commercial general or business liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and TWO MILLION DOLLARS (\$2,000,000.00) general aggregate;
3. Automobile liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) for any one occurrence, with respect to each of Contractor's owned, hired or non-owned vehicles assigned to or used in performance of the Services. In the event that Contractor's insurance does not cover non-owned automobiles, the requirements of this paragraph shall be met by each employee of Contractor who utilizes an automobile in providing services to Town under this Agreement; and

4. Professional liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000.00) each claim and TWO MILLION DOLLARS (\$2,000,000.00) general aggregate.

B. Contractor shall procure and maintain the minimum insurance coverages listed herein. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Contractor pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. The Town shall have the right to request and receive a certified copy of any policy and any endorsement thereto. Except for workers compensation insurance, the Town shall be listed as an additional insured party on Contractor's insurance policies.

C. A certificate of insurance shall be completed by Contractor's insurance agent(s) as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect, and, upon request by the Town, shall be subject to review and approval by the Town. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The completed certificate of insurance shall be provided to the Town.

4.02 Damage and Indemnity. Contractor assumes full responsibility for any and all damages caused by Contractor's exercise of its activities, or failures to act, under this Agreement. Contractor agrees that it will at all times protect, defend, indemnify and hold harmless the Town, its elected officials, employees, agents, and their successors and assigns, from and against all liabilities, losses, claims, demands, actions and costs (including reasonable attorneys' fees), arising from or related to loss or damage to property or injury to or death to any persons arising from or resulting in any manner from the actions or failures to act of Contractor or any invitees, guests, agents, employees or subcontractors of Contractor, whether brought by any of such persons or any other person.

SECTION 5: TERMINATION

5.01 Termination. [The Town or Contractor] may terminate this Agreement, with or without cause, by providing thirty (30) days prior written notice to [Contractor/the other Party]. Notwithstanding the foregoing, if the Town terminates this Agreement for cause and determines that a notice period is not in the best interests of the Town, the Town may terminate this Agreement by providing written notice to Contractor effective immediately. Contractor may terminate this Agreement for cause.

SECTION 6: INDEPENDENT CONTRACTOR

6.01 Independent Contractor. Contractor understands and agrees that Contractor is an independent contractor and not an employee of the Town. The Town shall not provide benefits

of any kind to Contractor. The Town shall not be responsible for withholding any portion of Contractor's compensation for the payment of Federal Insurance Contributions Act (FICA) tax, workers' compensation, or other taxes or benefits. CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT COMPENSATION COVERAGE FROM THE TOWN. CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID PURSUANT TO THIS AGREEMENT. As long as there is not a conflict of interest with the Town, Contractor may engage in any other lawful business activities during the term of this Agreement.

SECTION 7: NOTICE

7.01 Notices. All notices required under this Agreement shall be in writing and shall be: 1) hand-delivered; 2) sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties herein set forth; or 3) sent by electronic mail ("email") return receipt or written acknowledgment requested and received. All notices by hand-delivery shall be effective upon receipt. All notices by mail shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. All notices by email shall be effective upon acknowledgment of receipt by the intended recipient. Either party, by notice to be given, may change the address to which future notices shall be sent.

TO THE TOWN:
Town of Johnstown
Attn: Ellen Hilbig
450 S. Parish Avenue
P.O. Box 609
Johnstown, CO 80534
Email: ehilbig@johnstownco.gov

TO CONTRACTOR:
Tanco Engineering Inc
Keegan Maloney
1400 Taurus Court
Loveland, CO 80537
970-776-4200
Email: KMaloney@tancoeng.com

SECTION 8: MISCELLANEOUS

8.01 Time. Time is of the essence of this Agreement and of each covenant hereof.

8.02 Non-Appropriation of Funds. Pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of the Town payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being budgeted, appropriated and otherwise made available. This Agreement shall be terminated effective January 1 of the first fiscal year for which funds are not budgeted and appropriated.

8.03 Laws and Regulations. In the conduct of the Services, Contractor shall comply with all applicable laws, rules and regulations, and the directives or instructions issued by the Town or its designated representatives.

8.04 Assignment; Third Party Rights. Contractor may not assign, delegate or subcontract any part of its rights, duties or obligations under this Agreement. The Parties do not intend to confer any benefit hereunder on any person or entity other than the Parties hereto.

8.05 Amendment. This Agreement may not be amended or modified except by a subsequent written instrument signed by the Parties. Course of performance, no matter how long, shall not constitute an amendment to this Agreement.

8.06 Severability. If any part, term or provision of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect, except that, in the event any state or federal governmental agency or court determines that the relationship between the Town and Contractor is one of employment rather than independent contractor, this Agreement shall become null and void in its entirety.

8.07 Waiver. No consent or waiver, express or implied, by the Town to or of any breach or default by Contractor in the performance by Contractor of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by the Town. Failure on the part of the Town to complain of any act or failure to act or to declare Contractor in default, irrespective of how long such failure continues, shall not constitute a waiver by the Town of its rights hereunder.

8.08 Governmental Immunity. The Parties agree that the Town is relying on, and does not waive or intend to waive by any provision of the Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as amended from time, or otherwise available to the Town, its elected officials, employees or agents.

8.09 Applicable Law and Venue. This Agreement shall be construed according to the laws of the State of Colorado. Venue for any claim, proceeding or action arising out of this Agreement shall be in Weld County, State of Colorado.

8.10 Mediation. In the event of any dispute arising under this Agreement, except in the case of an action for injunctive relief, the Parties shall submit the matter to mediation prior to commencing legal action and shall share equally in the cost of the mediation.

8.11 Costs and Attorney's Fees. If any judicial proceedings may hereafter be brought to enforce any of the provisions of this Agreement, the Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

8.12 Entire Agreement. The provisions of this Agreement represent the entire and integrated agreement between the Town and Contractor and supersede all prior negotiations, representations and agreements, whether written or oral.

8.13 Public Official Personal Liability. Nothing herein shall be construed as creating any personal liability on the part of any elected official, employee or agent of the Town.

8.14 No Presumption. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

8.15 Controlling Document. In the event of a conflict between the provisions in this Agreement and Exhibit A, the provisions in this Agreement shall control.

8.16 Headings. The headings in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

8.17 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument.

8.18 Right to Injunction. The Parties hereto acknowledge that the Services to be rendered by Contractor and the rights and privileges granted to the Town under the Agreement are of a special, unique, unusual and extraordinary character which gives them a peculiar value, the loss of which may not be reasonably or adequately compensated by damages in any action at law, and the breach by Contractor of any of the provisions of this Agreement may cause the Town irreparable injury and damage. Contractor agrees that the Town, in addition to other relief at law, shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement by Contractor.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

TOWN OF JOHNSTOWN, COLORADO



ATTEST:

By: Hannah Hill
Hannah Hill, Town Clerk

By: Matthew S. Lecere
Matthew S. Lecere, Mayor/Town Manager

TANCO ENGINEERING INC

By: Keegan Maloney
Name: Keegan Maloney
Title: Project Manager

STATE OF COLORADO)
) ss
COUNTY OF Laime

SUBSCRIBED AND SWORN to before me this 29 day of March, 2023, by Keegan Maloney as the VP of Tanco.

WITNESS my hand and official seal.

My commission expires: 1/4/27

Katie Flaherty
Notary Public



EXHIBIT A
SERVICES

TANCO

ENGINEERING, INC.

1400 TAURUS COURT, LOVELAND, CO 80537-3297 WWW.TANCOENG.COM TEL (970) 776-4200 FAX (970) 776-4300

February 16th, 2023

Maurice Pribble
Town of Johnstown
Johnstown, CO

Dear Mr. Pribble,

In response to your request, TANCO is pleased to submit this LUMP SUM price to your existing north tank (50' diameter x 52.5' tall) at your Johnstown, CO facility. Please reference this proposal in any resulting contract or purchase order.

Price

TANCO's Lump Sum price to provide all materials, fabrication, engineering, field labor, supervision, tools, supplies and equipment required to execute the scope of work for **\$344,000** and is broken out below.

Mechanical Repairs	\$75,000
New 30" Shell MW	\$7,000
Floor Repairs(Weld Build Up of 50 1-2" Diameter Pits)	\$5,000
Full Interior Blast and Recoat	\$217,000
Exterior Paint Repairs	\$22,000
Heat for Coatings if Needed	\$18,000

Scope of Work

- Remove existing remaining angle iron from underside of self-supported cone roof(Since this is a self-supported cone roof and 1/4" thick plate there is no structural members that need to be added to the underside of the roof, just need to remove what was there and corroded out for the new coating).
- Weld repairs on 14" nozzle on the floor
- External weld repair on shell coupling
- Two 12"x12" floor patches
- Two pits that need to be puddle welded just above the shell to corner weld
- Replace the cone roof hatch
- Replace PVC overtop fill line with CS pipe
- Full interior blast and recoat of the floor, shell and underside of cone roof.
- Exterior coating is in great shape, only a couple of little spots that need to be touched up from something that hit the tank(10'x10' area, new roof hatch that is getting added, and at the doorsheet).

Schedule

We estimate that completion of your tank work will take 5 weeks with a 7 person crew working a 6-10's schedule with one combination firewatch/holewatch. This duration includes all scopes of work.

See below the Clarifying Notes, Assumptions, and Exclusions form, as it is an integral part of our proposal.

Please feel free to contact me at (970) 776-4211 if you have any questions or need more information.

Regards,

Keegan Maloney
Vice President

TANCO'S CLARIFYING NOTES, ASSUMPTIONS AND EXCLUSIONS

1. This proposal is firm for acceptance for 30 days. **Note: Material Costs Subject to Escalation Due to Import Tarrif Implementation by the Government. Material Costs are Price in Effect at Time of Shipment from Material Vendor.**
2. The schedule in this proposal is based on our current workload and is contingent upon receipt of materials as committed to us. Our labor forces and equipment are subject to prior sale.
3. This proposal is based on one move in; one move out for all contractors and subs. Any additional mobilization or shutdown time due to customer will be billed as an extra.
4. Any period of delay due to causes beyond the reasonable control of TANCO will be added to the time for completion of this work.
5. In the event that our work should be stopped periodically for reasons beyond our control, our average cost to shutdown a crew is \$ 1,000 per hour. If we could work part of the day and/or could make up some hours by working late or on Saturday, these costs could be reduced or eliminated.
6. Local building permits or special licenses required for the construction of this tank shall be obtained by others. Costs to provide any extra information (beyond standard submittals) for permitting purposes would be added to our contract price. If "hot work" or other special site permits are required, they must be issued prior to the beginning of a day's work period to avoid delays.

Clarifications

1. We assume that access to the tank site and a suitable work area around the tank will be provided. We also assume that the site is in a well-drained area and that soil conditions will allow our trucks and equipment to move around the area under their own power. If required, the work and storage areas will be kept free of excessive dust, ice, mud, and/or water by others.
2. Purchaser shall provide clear and open space adjacent to the construction site adequate for receiving and storing materials and construction equipment. As a safety precaution, our field construction forces do not operate hoisting equipment or install rigging within 15 feet of live 220 volt electric power lines (larger clear distances are required for lines of higher voltage). If such are present at the time of construction, the cost of moving them or otherwise making them safe will be for the Purchaser's account.

3. The tank is to be cleaned, isolated, and gas freed by others. TANCO is to be notified of any conditions that may present a danger to our crew.
4. We have assumed that once the tank has been cleaned, gas-freed and isolated, any special confined/enclosed spaced requirements will be unnecessary. We would continue to monitor the air both inside and outside of the tank and provide a firewatch per the following clarifying note. Entry/hot work permits also will be obtained as needed and fire extinguishers will be on hand. However, our pricing does not include such items as fresh air gear, air educators, lifelines, special clothing or PPE, warning horns, explosion-proof lights or standby rescue crews.
5. Our proposal does not include a non-working safety watch, fire watch, hole watch, or confined space rescue.
6. Our proposal does not include seal welding of any underside laps of the umbrella roof, cone roof, or existing roof. We have not included any seal welding of roof rafters to roof plate.
7. Our proposal is based on using A36 steel from API Group II.
8. Our proposal is based on using 1/4" thick roof plate.
9. Pricing is based on reusing existing roof appurtenances.
10. Our price does not include post weld heat treatment or stress relieving procedures.
11. Coating pricing is based on disinfecting only areas where new coating has been applied for each repair option.
12. Our proposal is based on us being able to safely walk on the existing cone roof to perform our scope of work.
13. Our price does not include piping or valves beyond the exterior flanges on the tank nozzles. New gaskets and bolts have not been included.
14. We plan to use our current weld procedures and welder qualifications. TANCO's standard welding procedures call for all down flat welds to be single pass with E7024 rod. All welds on the tank shell will be made with E6010.
15. We have assumed that there are no special or toxic coatings or linings on the tank interior. We have not included any costs to deal with lead base paint.
16. We have assumed that the existing tank materials are weldable. Any cost to assure weldability would be added to our price.
17. Our proposal includes all required AWWA D100 required NDE.
18. TANCO's bid does not include a hydrotest.
19. We have relied on the drawings and specifications provided in developing our price. Any revisions or corrections to the information provided will be evaluated for impact to our quoted price and schedule.
20. Our price is based on receiving the entire project.
21. Taxes have not been included in our price. TANCO will collect taxes at the end of the job, if appropriate.
22. If coating is done in cold weather months heaters will need to be supplied for a cost of **\$21,000**.

23. Below are the clarifications, exclusions, and assumptions for the coating contractor:

NOTES:

Note 1: One (1) mobilization is included.

Note 2: Heat and dehumidification equipment is excluded.

Note 3: Spent abrasive disposal by CMCR, Inc.

Note 4: All external coatings to be brushed and rolled.

Note 5: Third-party inspection by others.

Thank you for the opportunity to submit this proposal. The above clarifications and comments are intended to communicate the basis of our proposal. TANCO will gladly negotiate changes to best suit your requirements. If there are any questions, or if we can be of further service, please contact us at your earliest convenience. We look forward to working with you in the near future.