

**TOWN OF JOHNSTOWN
PROFESSIONAL SERVICES AGREEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT (the “Agreement”) is made and entered into this ___ day of September, 2022 (the “Effective Date”) by and between the Town of Johnstown, Colorado, a Colorado home-rule municipal corporation (the “Town”) and Civil Resources, LLC, a Colorado limited liability company (“Contractor”) (collectively, the “Parties”).

WHEREAS, the Town desires to engage the services of Contractor and Contractor wishes 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.

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 are 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, TERM AND COMPENSATION

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

2.02 Term. Unless otherwise terminated in accordance with Section 5, the term of this Agreement shall be from the Effective Date through December 31, 2023, and shall not extend beyond that date absent the written approval of the Town.

2.03 Duties and Compensation. The Contractor’s duties and compensation shall be as set forth on Exhibit A. In the event of a conflict between the provisions in this Agreement and

Exhibit A, the provisions in this Agreement shall control. Payment for Services shall be provided to Contractor within thirty (30) days of Contractor providing a detailed invoice to the Town.

2.04 Background Check. The Town may, in its sole discretion, conduct a background check of Contractor. Contractor agrees to execute any forms necessary to facilitate the background check.

SECTION 3: OPERATIONS

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

3.02 Federal, State, and Municipal Laws and Regulations. Contractor agrees to abide by all applicable federal, state, and municipal laws and regulations and rules.

SECTION 4: INSURANCE AND INDEMNITY PROVISIONS

4.01 Insurance. Contractor shall maintain and keep in force during the term of this Agreement one or more policies of liability insurance written by one or more responsible insurance carrier(s) authorized to do business in the State of Colorado, which will include protecting and indemnifying the Town in the following amounts:

- a) Comprehensive General Liability - \$1,000,000 combined aggregate
- b) Workers Compensation – as required by law

Contractor shall furnish to the Town appropriate certificates of coverage for such insurance. The Town shall be included as an additional insured on the contractor's liability policy. The insurance may not be canceled without at least fifteen (15) days' advance written notice to the Town. Any required deductible or co-insurance amount shall be paid by the Contractor.

4.02 Damage and Indemnity. Contractor assumes full responsibility for any and all damages caused by Contractor's exercise of its activities under this Agreement. Contractor agrees that it will at all times protect, defend and indemnify and hold harmless the Town, its officers, agents, employees, tenants and their successors and assigns from and against all liabilities, losses, claims, demands, actions and court costs (including reasonable attorneys' fees), arising from or related to loss or damage to property or injury to or death to any persons resulting in any manner from the actions or failure 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 arising from Contractor's activities as authorized by this Agreement. Notwithstanding the foregoing, Contractor shall not be liable for the negligent acts or omissions of the Town and shall only be liable to the extent the liabilities, losses, claims, demands, actions and court costs (including reasonable attorneys' fees) arise from or relate to loss or damage to property or injury to or death to any persons from the actions or failure to act of Contractor or any invitees, guests, agents, employees or subcontractors of Contractor.

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 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.

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, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered, sent via email delivery (on the condition that the intended recipient acknowledges receipt of the email) or mailed postage prepaid, certified mail, return receipt requested as follows:

TO THE TOWN:
Town of Johnstown
Attn: Town Clerk
450 S. Parish Avenue
Johnstown, CO 80534
Email: hhill@johnstownco.gov

TO CONTRACTOR:
Civil Resources, LLC
Attn: Brad L. Hagen
Address: 8308 Colorado Blvd., Suite 200
Firestone, CO 80504
Email: brad@civilresources.com

The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

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 appropriated, budgeted, and otherwise made available. This Agreement shall be terminated effective January 1 of the first fiscal year for which funds are not appropriated.

8.03 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.

8.04 Amendment. This Agreement may not be amended or modified except by a subsequent written instrument signed by both Parties.

8.05 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 authoritatively 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.

8.06 Waiver. No consent or waiver, express or implied, by a Party to or of any breach or default by the other Party in the performance by the other Party 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 non-defaulting Party. Failure on the part of any Party to complain of any act or failure to act or to declare any other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder.

8.07 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., 10 C.R.S., as from time to time amended, or otherwise available to the Town, its officers, or its employees.

8.08 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.

8.09 Mediation. In the event of any dispute arising under this Agreement, the Parties shall submit the matter to mediation prior to commencing legal action and shall equally share the cost of the mediation.

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

8.11 Entire Agreement. The provisions of this Agreement represent the entire and integrated agreement between the Town and the Contractor and supersede all prior negotiations,

representations and agreements, whether written or oral.

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

8.13 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.

8.14 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.

[Remainder of page intentionally left blank.]

EXHIBIT A
SERVICES

SECTION IV: PROPOSED SCOPE & FEES

SCOPE OF WORK / PROPOSED FEES Civil Resources proposes the following fee structure.

Task 1: Conceptual Planning Phase

Phase 1a: Project Initiation

- Base Map (publicly avail. Lidar data, 811 utility, sfc. features) \$ 43,000
- Existing 16" Pipeline (Title Research/Exhibit)
- Visual Assessment of Existing System & Intakes

Phase 1b: Design & Permitting

- Pipeline \$ 28,000
 - Provide Plan & Profiles - Alternative Routes
 - Major crossings (bores of roads, RR, ditches & wetlands)
 - Detailed Hydraulic Analysis to Size Pipes
 - Alternative Route Evaluation - Tech Memo & Exhibits
 - 1041 Documentation (Weld & Larimer / Municipal) - Draft
- Pump Station - Conceptual Design \$ 25,000
 - Ex. Pump Station & Intake Review/Evaluation—Tech Memo
 - New Pump Evaluation—Tech Memo
 - Pump Station Floor Plan—Concept
 - Operations & Controls Plan—Tech Memo & Diagrams
- Opinion of Construction Cost - Alternative Comparison \$ 3,000

Task 1 Total Estimated Fee: \$ 99,000

Task 2: Design Phase

Phase 2a: Field Work

- Detailed Survey of Alignment & Pump Station Site \$ 95,000
- Private Utility Locates \$ 14,000
- SUE: Potholing (100 utility crossings @\$1,200 ea) \$ 120,000
- Geotechnical Investigation / Lab Testing \$ 48,000

Phase 2b: Final Design & Permitting

- Pump Station & Intake Pipe \$ 140,000
 - Hydraulic Design & Pump System
 - Mechanical / Electrical (subconsultant)
 - SCADA / Telemetry design (subconsultant)
 - Structural Design (vault, foundation)
 - Technical Specifications

SECTION IV: PROPOSED SCOPE & FEES

- Pipeline & Appurtenances \$ 132,000
 - USACE Nation Wide Permit Request / USFWS Submittal
 - 1041 Documentation (Weld & Larimer / Municipal) - Final
 - Pressure / Air Relief Facilities
 - Corrosivity Evaluation & Protection Design
 - Easement Legals (20 legal descr. Assumed @\$550 ea)
 - Directional Bore & Ditch Co. Design (s)
 - Permitting/Coordination for Crossings
 - Technical Specifications

- Opinion of Construction Cost - Final Design \$ 4,000

Task 2 Total Estimated Fee: \$ 553,000

TOTAL PROJECT (TASK 1/2) ESTIMATED FEE: \$652,000

Notes:

1. Civil Resources proposes to employ a pre-engineered building for the pump station facility. Any architectural costs or custom building will be require additional cost. The design will be coordinated with Johnstown and will include access to pull and remove pumps, house the SCADA/telemetry and climate control features.
2. Cathodic protection design fees are limited to crossings with casing pipe. If more extensive cathodic design is necessary due to especially reactive soils and/or selected pipe material is steel or DIP, additional fees may be required.
3. Civil Resources is able to offer these design services on an estimated not-to exceed basis or lump sum if the Johnstown prefers.
4. Refer to attached fee schedule for our hourly rates.
5. The survey cost includes a maximum of twenty (20) legals for easements. Additional legals will be \$600 each.
6. Civil Resources has extensive experience in design of dams and associated appurtenances and will provide additional scope of work and cost if modifications to the existing outlet or a new outlet is required that require State Engineer's Office approval.
7. Civil Resources is a local company with employees who live near the project making us more efficient and cost effective in providing Construction Services including:
 - Respond to Contractor RFI's, Prepare Bid Package, Review Bids
 - Contract Administration and Construction Documentation
8. Traffic control, permit application fees from public entities, utility owners and ditch companies are specifically excluded. Civil Resources will pay the fees and receive direct reimbursement with monthly invoicing.