



# CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Parks and Recreation	Diesel Post - Parks and Recreation Director	11/5/24

## ITEM

Consent agenda

Professional Service Contract with EnB Janitorial for cleaning services at the SteamPlant and Scout Hut

## BACKGROUND

EnB Janitorial has been cleaning the SteamPlant and Scout Hut for 3 years. We recently adjusted their scope to include the entryways and the facilities.

## FISCAL NOTE

This additional service costs an additional \$140 per month for a total fee of \$990 per month for weekly Janitorial services at the SteamPlant and Scout Hut.

## STAFF RECOMMENDATION

To approve entering into a contract with EnB Janitorial for cleaning services at the SteamPlant and Scout Hut.

## SUGGESTED MOTION

A Councilperson should move to approve the consent agenda.



## Salida Professional Service Agreement For Steamplant Event Center and Scout Hut Bathrooms and Kitchen Weekly Cleaning

**THIS PROFESSIONAL SERVICES AGREEMENT** ("Agreement") dated as of November 11, 2024, is entered into by and between **EnB Janitorial, an LLC of the State of Colorado**, whose business address is ("**Contractor**") and the City of Salida, Colorado, a **statutory municipality of the State of Colorado** ("**City**" and, together with the Contractor, "**Parties**").

### RECITALS AND REPRESENTATIONS

**WHEREAS**, the City desires to have performed certain professional services as described in this Agreement; and

**WHEREAS**, the Contractor represents that the Contractor has the skill, ability, and expertise to perform the services described in this Agreement and within the deadlines provided by the Agreement; and

**WHEREAS**, the City desires to engage the Contractor to provide the services described in this Agreement subject to the terms and conditions of the Agreement.

**NOW, THEREFORE**, in consideration of the benefits and obligations of this Agreement, the Parties mutually agree as follows:

### 1. SERVICES AND CONTRACTOR PERFORMANCE

**1.1. Services and Work Product.** As directed by and under the supervision of the City Administrator for the City of Salida, the Contractor shall provide the City with the services described in **Exhibit A**, **attached hereto and incorporated herein ("Services")**. For purposes of this Agreement, "**Work Product**" shall consist of deliverables and/or product to be created, provided, or otherwise tendered to the City as described in the Services.

**1.2. Changes to Services.** At any time, the City may request a change or changes in the Services. Any changes that are mutually agreed upon between the City and the Contractor shall be made in writing and upon execution by both Parties shall become an amendment to the Services described in this Agreement. To be effective, any written change must be signed by the Contractor and by the Salida City Council ("**City Council**").

**1.3. Independent Contractor.** The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee, or other relationship with the City other than as a contracting party and independent contractor. The City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA);



workers' compensation; disability, injury, or health; professional liability insurance, errors, and omissions insurance; or retirement account contributions.

**1.4. Standard of Performance.** In performing the Services, the Contractor shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing in the State of Colorado. Contractor represents to the City that the Contractor is, and its employees performing such Services are, properly licensed and/or registered within the State of Colorado for the performance of the Services (if licensure and/or registration is required by applicable law) and that the Contractor and employees possess the skills, knowledge, and abilities to competently, timely, and professionally perform the Services in accordance with this Agreement.

**1.5. Patent Indemnification.** Contractor shall indemnify, defend and hold City harmless from any and all claims, demands, and causes of action (including reasonable attorneys' fees and costs of suit) for actual or asserted infringement or actual or asserted appropriation or use by City of trade secrets, proprietary information, know-how, copyright rights, or patented inventions included in any design or specification furnished by Contractor or arising from the use or sale of materials, equipment, methods, processes, designs, and information, furnished by Contractor in connection with the Services. Contractor shall include the foregoing indemnification provision as a term of each agreement utilized by it in the performance of its work which shall extend expressly from the vendor or subcontractor to City.

**1.6. Safety.** When and to the extent that Contractor or any of its employees, agents, or subcontractors are working under the terms of this Agreement, Contractor will comply, and cause all its employees, agents, and subcontractors to comply, with applicable safety rules and security requirements.

**1.7. Qualified Personnel.** Contractor will make available all qualified Contractors, drafters, technical and clerical personnel necessary to fulfill its obligations under this Agreement. Prior to commencement of work, Contractor will provide City with the names of all Contractor personnel and their then current hourly rates, if applicable, whose services are to be employed in performance of the Services. Removal or re-assignment of personnel by Contractor will only be done with prior written approval of City.

**1.8. Removal of Personnel by City.** City may, in its discretion, require Contractor to dismiss from performance of the Services any personnel of Contractor or any subcontractor for any reason, effective upon written notice from City of such dismissal. City will not be required to pay salary, or any other costs associated with dismissed personnel effective upon Contractor's receipt of notice to dismiss from City.

**1.9. Representations and Warranties.** Contractor represents and warrants that the Services will be performed in a manner consistent with other reasonable professionals providing similar services under similar circumstances. Contractor will complete the Services in accordance with the Agreement and applicable United States laws, regulations, ordinances, and codes in existence at the time the Agreement is executed.

**1.10. Maintenance of and Access to Records.** Contractor will maintain detailed records of all matters relating to the Services during the term of the Agreement and for a period after its cancellation or termination of not less than five (5) years. City will have the right to copy and audit during regular business



hours all records of any kind which in any way related to the Services, whether created before, during, or after the termination of this Agreement. Access to such records will be provided to City at no cost.

**1.11. Colorado Open Records Act.** The parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, et seq., C.R.S. In the event of the filing of a lawsuit to compel such disclosure, the City shall inform the Contractor and will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same

**1.12. Disclosure of Adverse Information.** Contractor will promptly disclose to City any and all information which Contractor may learn, or which may have a material adverse impact on the Services or the Work Product or City's ability to utilize the Work Product in the manner and for the purpose for which the Work Product is intended.

## **2. COMPENSATION**

**2.1. Commencement of and Compensation for Services.** Following execution of this Agreement by the City, the Contractor shall be authorized to commence performance of the Services as described in **Exhibit A** subject to the requirements and limitations on compensation as provided by this **Section 2.0 COMPENSATION** and its Sub-Sections.

**A. For Lump sum Task Orders.** The CONTRACTOR shall perform Services as a Task Order described in **Exhibit B** and shall invoice the CITY for work performed based on percent complete the specific task.

**B. For Time and Materials Task Orders.** The CONTRACTOR shall perform the Services and shall invoice the CITY for work performed based on the rates described in **Exhibit B.**

**C. Reimbursable Expenses.** The following shall be considered "Reimbursable Expenses" for purposes of this Agreement and may be billed to the City without administrative mark-up but which must be accounted for by the Contractor and proof of payment shall be provided by the Contractor with the Contractor's monthly invoices:

- Vehicle Mileage (billed at not more than the prevailing per-mile charge permitted by the Internal Revenue Service as a deductible business expense)
- Printing and Photocopying Related to the Services
- Charges incidental to securing needed information (e.g., charges imposed to obtain recorded documents)
- Postage and Delivery Services
- Lodging and Meals (only with prior written approval of the City as to dates and maximum amount permitted)



- D. Non-reimbursable Costs, Charges, Fees, or Other Expenses.** Any fee, cost, charge, penalty, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost and shall be borne by the Contractor and shall not be billed or invoiced to the City and shall not be paid by the City.
- E. Increases in Compensation or Reimbursable Expenses.** Any increases or modification of compensation or Reimbursable Expenses shall be subject to the approval of the City and shall be made only by written amendment of this Agreement executed by both Parties.

**2.2. Payment Processing.** The Contractor shall submit invoices and requests for payment in a form acceptable to the City. Invoices shall not be submitted more often than once each month unless otherwise approved by this Agreement or in writing by the City. Unless otherwise directed or accepted by the City, all invoices shall contain sufficient information to account for all Contractor time (or other appropriate measure(s) of work effort) and all authorized Reimbursable Expenses for the Services during the stated period of the invoice. Following receipt of a Contractor's invoice, the City shall promptly review the Contractor's invoice.

**2.3. City Dispute of Invoice or Invoiced Item(s).** The City may dispute any Contractor time, Reimbursable Expense, and/or compensation requested by the Contractor described in any invoice and may request additional information from the Contractor substantiating any and all compensation sought by the Contractor before accepting the invoice. When additional information is requested by the City, the City shall advise the Contractor in writing, identifying the specific item(s) that are in dispute and giving specific reasons for any request for information. The City shall pay the Contractor within forty-five (45) days of the receipt of an invoice for any undisputed charges or, if the City disputes an item or invoice and additional information is requested, within thirty (30) days of acceptance of the item or invoice by the City following receipt of the information requested and resolution of the dispute. To the extent possible, undisputed charges within the same invoice as disputed charges shall be timely paid in accordance with this Agreement. Payment by the City shall be deemed made and completed upon hand delivery to the Contractor or designee of the Contractor or upon deposit of such payment or notice in the U.S. Mail, postage prepaid, addressed to the Contractor.

### **3. CONTRACTOR'S GENERAL RESPONSIBILITIES**

**3.1.** The Contractor shall become fully acquainted with the available information related to the Services. The Contractor is obligated to affirmatively request from the City such information that the Contractor, based on the Contractor's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services.

**3.2.** The Contractor shall perform the Services in accordance with this Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement.

**3.3.** The Contractor shall provide all the Services in a timely and professional manner.



3.4. The Contractor shall promptly comply with any written City request from the City or any of the City's duly authorized representatives to reasonably access and review any books, documents, papers, and records of the Contractor that are pertinent to the Contractor's performance under this Agreement for the purpose of the City performing an audit, examination, or other review of the Services.

3.5. The Contractor shall comply with all applicable federal, state, and local laws, ordinances, regulations, and resolutions.

3.6. The Contractor shall be responsible at the Contractor's expense for obtaining, and maintaining in a valid and effective status, all licenses and permits necessary to perform the Services unless specifically stated otherwise in this Agreement.

#### 4. TERM AND TERMINATION

4.1. **Term.** The provision of services under this Agreement shall commence on November 10, 2024 (the "**Effective Date**") and will terminate on December 31, 2024 (cumulatively, the "**Term**"); provided, however, under no circumstances will the Term exceed the end of the current City Fiscal year (January 1 – December 31). The Contractor understands and agrees that the City has no obligation to extend this Agreement's Term or contract for the provision of any future services, and makes no warranties or representations otherwise. Notwithstanding the foregoing; the Parties may mutually agree in writing to the monthly extension of this Agreement for up to twelve (12) consecutive calendar months if such extension is approved by the City Council and the Contractor and such extension do not alter or amend any of the terms or provisions of this Agreement.

4.2. **Continuing Services Required.** The Contractor shall perform the Services in accordance with this Agreement commencing on the Effective Date until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the City Council.

4.3. **City Unilateral Termination.** This Agreement may be terminated by the City for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. In the event of the City's exercise of the right of unilateral termination as provided by this paragraph:

- A. Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after receipt of a notice of termination; and
- B. All finished or unfinished documents, data, studies, and reports prepared by the Contractor pursuant to this Agreement shall be delivered by the Contractor to the City and shall become the property of the City, subject to the ownership restrictions in **Section 6.0** of this Agreement; and
- C. The Contractor shall submit to the City a final accounting and final invoice of charges for all outstanding and unpaid Services and Reimbursable Expenses performed prior to the Contractor's receipt of notice of termination and for any services authorized to be performed by the notice of termination as provided by **Sub-Section 4.3(A)** above. Such final accounting and final invoice shall be delivered to the City within thirty (30) days of the date of termination; thereafter, no other





invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the City.

**4.4. Termination for Non-Performance.** Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party which notice shall specify the non-performance, provide both a demand to cure the non-performance and reasonable time to cure the non-performance and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purposes of this **Sub-Section 4.4**, “reasonable time” shall be not less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and authorized Reimbursable Expenses. Such final accounting and final invoice shall be delivered to the City within fifteen (15) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the City. Provided that notice of non-performance is provided in accordance with this **Sub-Section 4.4**, nothing in this **Sub-Section 4.4** shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

**4.5. Unilateral Suspension of Services.** The City may suspend the Contractor's performance of the Services at the City's discretion and for any reason by delivery of written notice of suspension to the Contractor which notice shall state a specific date of suspension. Upon receipt of such notice of suspension, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); (2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement or (3) as required by law.

**4.6. Reinstatement of Services Following City's Unilateral Suspension.** The City may at its discretion direct the Contractor to continue performance of the Services following suspension. If such direction by the City is made within thirty (30) days of the date of suspension, the Contractor shall recommence performance of the Services in accordance with this Agreement. If such direction to recommence suspended Services is made more than thirty-one (31) days following the date of suspension, the Contractor may elect to: (1) provide written notice to the City that such suspension is considered a unilateral termination of this Agreement pursuant to **Sub-Section 4.3**; or (2) recommence performance in accordance with this Agreement; or (3) if suspension exceeded sixty (60) consecutive days, request from the City an equitable adjustment in compensation or a reasonable re-start fee and, if such request is rejected by the City, to provide written notice to the City that such suspension and rejection of additional compensation is considered a unilateral termination of this Agreement pursuant to **Sub-Section 4.3**. Nothing in this Agreement shall preclude the Parties from executing a written amendment or agreement to suspend the Services upon terms and conditions mutually acceptable to the Parties for any period of time.

**4.7. Delivery of Notice of Termination.** Any notice of termination permitted by this **Section 4.0 TERM AND TERMINATION** and its subsections shall be addressed to the persons identified in **Section 9.17** herein and at the addresses provided therein or such other address as either party may notify the other of



and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

## 5. INSURANCE

**5.1. Insurance Generally.** The Contractor shall obtain and shall continuously maintain during the Term of this Agreement insurance of the kind and in the minimum amounts specified in this **Sub-Section 5.1**. The Required Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All Required Insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.

The Contractor shall secure and maintain the following ("**Required Insurance**"):

- A. Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance, if any, shall be endorsed to include the City as a Certificate Holder.
- B. Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) Dollars for each occurrence and of Two Million Dollars (\$2,000,000.00) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees, and agents as additional insured parties.
- C. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury of not less than of One Hundred Thousand Dollars (\$100,000.00) each person and each accident and for property damage of not less than Fifty Thousand Dollars (\$50,000.00) each accident with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees, and agents as additional insured parties.
- D. Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000.00) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.





**5.2. Additional Requirements for All Policies.** In addition to specific requirements imposed on insurance by this **Section 5.0 INSURANCE** and its subsections, insurance shall conform to all of the following:

- A. For Required Insurance and any other insurance carried by Contractor ("**Contractor Insurance**"), all policies of insurance shall be primary insurance, and any insurance carried by the City, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor; provided, however, that the City shall not be obligated to obtain or maintain any insurance whatsoever for any claim, damage, or purpose arising from or related to this Agreement and the Services. The Contractor shall not be an insured party for any City-obtained insurance policy or coverage.
- B. For both Required Insurance and Contractor Insurance, the Contractor shall be solely responsible for any deductible losses.
- C. For Required Insurance, no policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.
- D. For Required Insurance, every policy of insurance shall provide that the City will receive notice no less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.

**5.3. Failure to Obtain or Maintain Insurance.** The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this **Section 5.0 INSURANCE** and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Contractor to the City immediately upon demand by the City, or at the City's sole discretion, the City may offset the cost of the premiums against any monies due to the Contractor from the City pursuant to this Agreement.

**5.4. Insurance Certificates.** Prior to commencement of the Services, the Contractor shall submit to the City applicable certificates of insurance for all Required Insurance. Insurance limits, terms of insurance, insured parties, and other information sufficient to demonstrate conformance with this **Section 5.0 INSURANCE** and its subsections shall be indicated on each certificate of insurance. Certificates of insurance shall reference the "Project Name" as identified on the first page of this Agreement. The City may request, and the Contractor shall provide within three (3) business days of such request a current certified copy of any policy of Required Insurance and any endorsement of such policy. The City may, at its election, withhold payment for Services until the requested insurance policies are received and found to be in accordance with the Agreement.



## 6. OWNERSHIP OF DOCUMENTS

**6.1. Work Product is Property of City.** Upon complete payment for services rendered, the Work Product, as defined in **Sub-Section 1.1**, shall be deemed work made for hire and made in the course of Services performed under this Agreement and will be the exclusive property of the City. City will have unlimited right to make, have made, use, reconstruct, repair, modify, reproduce, publish, distribute and sell the Work Product, in whole or in part, or combine the Work Product with other matter, or not use the Work Product at all, as it sees fit. Any reuse of the Work Product produced under this Agreement for any purpose not directly related to this Agreement will be at the sole risk of City.

**6.2. Obligations of Contractor's Personnel and Subcontractors.** Contractor warrants it has enforceable written agreements with all of its personnel and subcontractors to be involved in performing the Services that:

- A. assign to Contractor ownership of all patents, copyrights, and other proprietary rights created in the course of their employment or engagement; and
- B. obligate such personnel or subcontractors, as the case may be, upon terms and conditions no less restrictive than are contained in this **Section 6.0 OWNERSHIP OF DOCUMENTS**, not to use or disclose any proprietary rights or information learned or acquired during the course of such employment or engagement including, without limitation, any Work Product, all Contractor property and any other information pursuant to this **Section 6.0 OWNERSHIP OF DOCUMENTS**.

**6.3. Assignment of Proprietary Rights.** To the extent that any title to any Work Product may not, by operation of law, vest in City, or such Work Product may not be considered to be work made for hire, Contractor hereby irrevocably transfers and assigns to City in perpetuity all worldwide right, title and interest in and to the patent rights, copyrights, trade secrets, and other proprietary rights in and ownership of, the Work Product.

**6.4. City Furnished Information.** Title to all materials and all documentation furnished by the City to Contractor will remain in the City. Contractor will deliver to the City any all Work Products and property, including copies thereof on whatever media rendered, upon the first to occur of:

- A. the City's written request; or
- B. completion of the Services under this Agreement; or
- C. termination of this Agreement.

**6.5.** The Contractor waives any right to prevent its name from being used in connection with the Services.

**6.6.** Notwithstanding the foregoing, the Contractor shall retain all rights, titles, and interests, including but not limited to all ownership and intellectual property rights, in all inventions, improvements, discoveries, methodologies, models, formats, software, algorithms, processes, procedures, designs, specifications,



findings, and other intellectual properties developed, gathered, compiled or produced by the Contractor prior to or independently of any of its services under this Agreement (“Background IP”), including such Background IP that the Contractor may employ in the performance of this Agreement, or may incorporate into any part of the Work Product. The Contractor grants the City an irrevocable, non-exclusive, transferable, royalty-free license in perpetuity to use, disclose, and derive from such Background IP, but only as an inseparable part of the Work Product. Third-party content that may be used or incorporated in the Work Product shall not become the property of the City. The Contractor shall secure all licenses necessary to any third-party content incorporated into the Contractor’s Work Product for the City to utilize the Contractor’s services and the Work Product for their intended purposes.

## **7. CONFLICT OF INTEREST**

The Contractor shall refrain from providing services to other persons, firms, or entities that would create a conflict of interest for the Contractor with regard to providing the Services pursuant to this Agreement. The Contractor shall not offer or provide anything of benefit to any City official or employee that would place the official or employee in a position of violating the public trust as provided by C.R.S. §24-18-109, as amended, the Salida City Code of Ethics, as amended or the City’s ethical principles.

## **8. REMEDIES**

In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the City may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities, or inactions by the Contractor. The remedial actions include:

**8.1.** Suspend the Contractor’s performance pending necessary corrective action as specified by the City without the Contractor’s entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or

**8.2.** Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or

**8.3.** Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the City; and/or

**8.4.** Terminate this Agreement in accordance with this Agreement.

The foregoing remedies are cumulative and the City, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.



## 9. MISCELLANEOUS PROVISIONS

**9.1. No Waiver of Rights.** A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. The City's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the City except in writing signed by the City Council or by a person expressly authorized to sign such waiver by resolution of the City Council of the City of Salida, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.

**9.2. No Waiver of Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

**9.3. Affirmative Action.** Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**9.4. Americans with Disabilities Act.** Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of The Americans with Disabilities Act.

**9.5. Binding Effect.** The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this **Section 9.5** shall not authorize assignment.

**9.6. No Third-Party Beneficiaries.** Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant, or sub-contractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

**9.7. Article X, Section 20/TABOR.** The Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations



of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City, and other applicable laws. Upon the failure to appropriate such funds, this Agreement shall be terminated.

**9.8. Governing Law, Venue, and Enforcement.** This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Chaffee County, Colorado, and the parties consent and agree to the jurisdiction of such courts. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. The Parties agree the rule providing ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.

**9.9. Survival of Terms and Conditions.** The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

**9.10. Assignment and Release.** All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by Contractor without the express written consent of the City Council. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by resolution or motion of the City Council. No assignment shall release the Applicant from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.

**9.11. Paragraph Captions.** The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

**9.12. Integration and Amendment.** This Agreement represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this must be in writing and be signed by both the City and the Contractor.

**9.13. Severability.** Invalidity of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

**9.14. Incorporation of Exhibits.** Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the



event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.

**9.15. Non-Liability of City for Indirect or Consequential Damages or Lost Profits.** Parties agree that the City shall not be liable for indirect or consequential damages, including lost profits that result from the City's declaration that the Contractor is in default of the Agreement, so long as the City acts in good faith.

**9.16. Indemnity.** To the fullest extent permitted by law, Contractor shall indemnify and defend the City, its members, affiliates, officers, directors, partners, employees, and agents (collectively referred to as the "City" for the purposes of this **Section 9.16**) from and against all claims, damages, losses, and expenses, including but not limited to reasonable attorney's fees (collectively referred to "Losses"), arising out of the performance of the Services, provided that (a) any such claim, damage, loss or expense is caused by any negligent act or omission of (i) Contractor, (ii) anyone directly or indirectly employed by Contractor or (iii) anyone for whose acts Contractor may be liable; and (b) such indemnification shall not apply to the extent that such Losses are caused by the negligence of the City or other party indemnified hereunder. If Contractor is providing architectural, engineering, or surveying services; design; construction; alteration; repair; or maintenance of any building, structure, highway, bridge, viaduct, water, sewer, or gas distribution system, or other works dealing with construction, or any moving, demolition, or excavation connected with such construction, the extent of Contractor's obligation to indemnify and defend the City is enforceable only to the extent and for an amount represented by the degree or percentage of negligence or fault attributable to the Contractor or the Contractor's agents, representatives, subcontractors, or suppliers. If the Contractor is a person or entity providing architectural, engineering, surveying, or other design services, then the extent of Contractor's obligation to indemnify and defend the City may be determined only after the Contractor's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the Contractor and City. The indemnification in this **Section 9.16** shall be construed to comply with C.R.S. § 13-50.5-102(8) et. seq.

**9.17. Notices.** Unless otherwise specifically required by a provision of this Agreement any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail and properly addressed to the intended recipient. Written notice may also be provided by electronic mail which shall be deemed delivered when receipt is acknowledged by reply of the recipient.

**If to the City:**

City of Salida  
Christy Doon, City Administrator  
448 E. First Street, Suite 112  
Salida, CO 81201  
[christy.doon@cityofsalida.com](mailto:christy.doon@cityofsalida.com)

**If to the Contractor:**

EnB Janitorial LLC  
Ethan Gallegos, Owner  
310 Crestone Ave, Apt #2  
Salida, CO 81201  
[enbian@gmail.com](mailto:enbian@gmail.com)





With Copy to:

City Attorney

Nina P. Williams

Wilson Williams Fellman Dittman

1314 Main Street, Suite 101

Louisville, CO 80027

[nina@wwfdlaw.com](mailto:nina@wwfdlaw.com)

Diesel Post

448 E. First Street, Suite 112

Salida, CO 81201

[diesel.post@cityofsalida.com](mailto:diesel.post@cityofsalida.com)

## 10. AUTHORITY

The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of City of Salida and the Contractor and bind their respective entities.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK-SIGNATURE PAGE FOLLOWS]**



THIS AGREEMENT is executed and made effective as provided above.

CITY OF SALIDA

CONTRACTOR

By: \_\_\_\_\_

By: EnB Janitorial LLC

Name: Christy Doon

Name: Ethan Gallegos

Title: City Administrator

Title: Owner

APPROVED AS TO FORM:

\_\_\_\_\_  
Nina P. Williams, City Attorney



## EXHIBIT A

### ("Services")

**Frequency:** Once per week anytime between Sunday-Monday.

**EnB Janitorial LLC agrees to complete the Janitorial work as follows:**

#### **Steam Plant Bathrooms Tasks:**

- Deep clean all 6 bathrooms
- Clean/sanitize all sinks
- Polish all chrome
- Clean all glass
- Sanitize all light switches, door handles
- Sanitize all toilets/urinals
- Clean all stall partitions including dusting on top of partitions
- Dust any horizontal surface
- Polish any stainless steel
- Refill all paper products and soap
- Dump all trash
- Dust mop/sweep floors
- Wet mop floors

#### **Steam Plant Kitchen Tasks:**

- Deep Clean kitchen
- Polish all stainless-steel fixtures
- Clean/sanitize stove tops
- Clean/sanitize ovens
- Dump all trash
- Dust mop/sweep floors
- Wet mop floors

#### **Steam Plant & Entryways Tasks:**

- Vacuum/sweep all entryway floors & rugs
- Wet mop all entryway hard floors
- Dust entryway surfaces, clean cobwebs in entryways
- Disinfect door handles and push bars
- Clean entryway glass



### **Scout Hut Bathrooms Tasks:**

- Deep clean all 3 bathrooms
- Clean/sanitize all sinks
- Polish all chrome
- Clean all glass
- Sanitize all light switches, door handles
- Sanitize all toilets/urinals
- Clean all stall partitions including dusting on top of partitions
- Dust any horizontal surface
- Polish any stainless steel
- Refill all paper products and soap
- Dump all trash
- Dust mop/sweep floors
- Wet mop floors

### **Scout Hut Kitchen Tasks:**

- Deep Clean kitchen
- Polish all stainless-steel fixtures
- Clean/sanitize stove tops
- Clean/sanitize ovens
- Dump all trash
- Dust mop/sweep floors
- Wet mop floors

### **Scout Hut Entryways Tasks (3)**

- Vacuum/sweep all entryway floors & rugs
- Wet mop all entryway hard floors
- Dust entryway surfaces, clean cobwebs in entryways
- Disinfect door handles and push bars
- Clean entryway glass

### **Supplies/Equipment**

EnB Janitorial LLC agrees to provide all cleaning agents and equipment including but not limited to disinfectants, rags, dusters, mops, vacuums, etc.

Customer agrees to provide all paper products including but not limited to: Toilet paper, paper towels, trash can liners, soap, etc.

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## EXHIBIT B

### ("Rates")

#### Compensation

Complete scope of work detailed below \$990.00 per month, to be paid by the 1st of each month before cleaning commences, with an option of renewal by each party at the end of each contract year.

This contract shall renew automatically annually. A new price may be negotiated at any time by either party. Each party reserves the right to terminate the contract if specifications are not met by either party.

**Customer shall be considered delinquent after one full month from start date of service of no pay to EnB Janitorial LLC or Ethan and Briana Gallegos owners and operators of EnB Janitorial LLC. A late charge of \$50.00 per month until paid, collection fees (payable by customer) or cancellation of service may result if delinquency persists.**

**If customer requests a change of service, a new price may be negotiated.**

**If Customer decides to cancel job at any point during a job, EnB Janitorial LLC is not required to give a full refund. EnB Janitorial LLC reserves the right to determine the amount of refund if any. EnB Janitorial LLC holds a 30-day refund**