

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
CITY OF PUEBLO
AND
BOHANNAN-HUSTON, INC.**

THIS AGREEMENT is made and entered this ____ day of February, 2021, by and between Pueblo, a Municipal Corporation (hereinafter referred to as "City" and/or "Client") and Bohannan-Huston, Inc., a New Mexico Corporation authorized to do business in the State of Colorado, (hereinafter referred to as "Consultant") for Consultant to render professional services for Client with respect to Bid 21-074 Surveying Services for Sanitary Sewer Projects and City-Wide Surveying Projects and related ancillary services, hereinafter referred to as the "Project." In consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

SECTION 1. GENERAL AND SCOPE OF SERVICES

(a) Consultant shall satisfactorily perform the professional surveying and related services which may be requested and approved by Client, including the following category of service:

(i) Topographic and improvement surveys as well as construction staking with respect to sanitary sewer projects including but not limited to projects for the removal and replacement of sanitary sewer mains. Survey work to include ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels (the assigned manhole number shown in plan set), sanitary sewer pipes with pipe type and diameter, control points for future staking, setting hubs for construction, providing cut sheets for the contractor, etc. In the field, the survey boundary shall cover a width of 30 feet along the sewer line, 15 feet on each side of the pipe axis. In the residential areas, the survey boundary shall be from property/fence lines to property/fence lines. In areas where a manhole is located at the start or end of the survey boundary, the survey shall cover the area extended 30 feet in the direction of sewer pipe axis before or after the manhole ("Sanitary Sewer Survey Project").

(b) Request for services shall be initiated and documented by a written work order agreement ("Work Order" with sample attached as Schedule 3) signed by the Wastewater Director of Client and approved by the Director of Finance and Director of Purchasing. The Work Order shall set forth the work to be performed, the time for completion and the compensation, including maximum compensation, for performance of such work. Said compensation shall be approved as provided in Section 3 of this Agreement. The work to be performed under any Work Order shall be included in the "Basic Services" and "Project" as such terms are used in this Agreement and shall be subject to all terms and conditions of this Agreement. All such services shall include all usual and customary professional costs for this type of service as indicated in the Scope of Service in Section 2 of the Request for Proposal (RFP). Consultant acknowledges that the selection of Consultant by Client was pursuant to an RFP. All of the requirements of that RFP are incorporated herein by reference. If the work to be performed is a fiber repair project, it shall include and comply with the Scope of Services set forth in Section 1(a) above unless specific exceptions are provided for in the Work Order.

(c) To the extent Consultant performs any of the Project work through subconsultants or subcontractors, if previously requested and approved by the Client in each individual Work Order, Consultant shall be and remain as fully responsible for the full performance and quality of services performed by such subconsultants or subcontractors as it is for services performed directly by Consultant or Consultant's employees.

(d) To the extent Consultant requires access to private property to perform its services hereunder, Consultant shall be required to make arrangements to obtain such access. However, in the event Client has already secured access for Consultant to any such property through a right of entry agreement, access agreement, letter of consent or other instrument, Consultant shall fully comply with and be subject to the terms and conditions set forth therein. A copy of any such instrument will be provided to Consultant upon request.

(e) No minimum amount of work is guaranteed under this Agreement. Client reserves the right to engage and/or contract with other parties to perform services which otherwise might be requested under this Agreement. Consultant specifically acknowledges that any Change Order may be awarded to other parties under similar agreements as this Agreement.

SECTION 2. CONSULTANT'S RESPONSIBILITIES

- (a) Consultant shall be responsible for the professional quality, technical accuracy and timely completion of Consultant's work, including that performed by Consultant's subconsultants and subcontractors, and including drawings, reports and other services, irrespective of Client's approval of or acquiescence in same.
- (b) Consultant shall be responsible, in accordance with applicable law, to Client for all loss or damage to Client caused by Consultant's negligent act or omission; except that Consultant hereby irrevocably waives and excuses Client and Client's attorneys from compliance with any requirement to obtain a certificate of review as a condition precedent to commencement of an action, including any such requirements set forth in Section 13-20-602, C.R.S. or similar statute, whether now existing or hereafter enacted.
- (c) Consultant shall be completely responsible for the safety of Consultant's employees in the execution of work under this Agreement and shall provide all necessary safety and protective equipment for said employees.
- (d) Consultant acknowledges that time is of the essence with respect to the completion of its services under this Agreement. Consultant shall accomplish its work within the period of time set forth in the Work Order. Except to the extent the parties agree to time extensions for delays beyond the control of Consultant, Consultant shall adhere to the schedule set forth in the Work Order and perform its work in a timely manner so as not to delay Client's timetable for achievement of interim tasks and final completion of any related or dependent work.
- (e) Before undertaking any work which Consultant considers beyond or in addition to the scope of the Work Order, Consultant shall advise Client in writing that (i) Consultant considers the work beyond the scope of the Work Order, (ii) the reasons that Consultant believes the out of scope or additional work should be performed, and (iii) a reasonable estimate of the cost of such work. Consultant shall not proceed with any out of scope or additional work until authorized in writing by Client. Client shall negotiate with the Consultant prior to authorizing any additional work; negotiated compensation shall be based upon the fee schedule set forth in Schedule 2 attached hereto and incorporated herein.
- (f) Consultant shall designate a representative who shall have authority to approve and accept Work Orders on behalf of Consultant and prepare bid amounts under Section 3 of this Agreement.

SECTION 3. FEES FOR SERVICES/PAYMENT

- (a) When requested by Client, Consultant shall prepare without charge to Client a bid amount for any proposed Work Order ("Work Order Compensation") which shall be based upon the fee schedule set forth in Schedule 2 and shall itemize compensation amounts and include the maximum compensation amount necessary for completion and performance of all work set forth in the Work Order. Should Client have any dispute, question, required clarification or other issue with respect to the Work Order Compensation, Consultant shall meet and confer in good faith with Client to resolve such issue. No Work Order shall be signed and issued by the Wastewater Director of Client unless and until Client approves the Work Order Compensation.
- (b) Consultant shall submit periodic, but not more frequently than monthly, applications for payment for actual professional services rendered. Applications for payment shall be separately submitted for each Work Order and shall never aggregate to more than the maximum amount set forth in the Work Order. Applications for payment shall be submitted based upon the fee schedule set forth in Schedule 2 and the approved Work Order Compensation and shall contain appropriate documentation that such services have been performed and such expenses incurred. As applicable, subcontractor invoices shall be required in any payment application, and no markups for such invoiced subcontracting services shall be allowed. Thereafter, Client shall pay Consultant for the amount of the application within 45 days of the date such application is received.
- (c) No separate or additional payment shall be made for profit, overhead, local telephone expenses, lodging, routine photocopying, computer time, secretarial or clerical time.
- (d) No compensation shall be paid to Consultant for services required and expenditures incurred in correcting Consultant's mistakes or negligence.

(e) Compensation for authorized work beyond the scope of this Agreement or Work Order shall be governed by the provisions of Section 2(e).

(f) All proposed fees shall remain fixed for the term of the agreement. In the event the City exercises the provision to extend the agreement after the initial term, requests for annual increases in fees may not exceed 1) three percent (3%) or, 2) the prior year's United States Bureau of Labor Statistics Consumer Price Index (CPI), whichever of the two options is lower.

SECTION 4. CLIENT'S RESPONSIBILITIES

(a) Client agrees to advise Consultant regarding Client's Project requirements and to provide all relevant information, surveys, data and previous reports accessible to Client which Consultant may reasonably require.

(b) Client shall designate a Project Representative to whom all communications from Consultant shall be directed and who shall have limited administrative authority on behalf of Client to receive and transmit information and make decisions with respect to the Project. Said representative shall not, however, have authority to bind Client as to matters of governmental policy or fiscal policy, nor to contract for Work Orders or Compensation for authorized work beyond the scope of this Agreement or a Work Order.

(c) Client shall examine all documents presented by Consultant and render decisions pertaining thereto within a reasonable time. The Client's approval of any drawings, specifications, reports, documents or other materials or product furnished hereunder shall not in any way relieve Consultant of responsibility for the professional adequacy of its work.

(d) Client shall perform its obligations and render decisions within a reasonable time under the circumstances presented. Based upon the nature of Client and its requirements, a period of 14 days shall be presumed reasonable for any decision not involving policy decision or significant financial impact, when all information reasonably necessary for Client to responsibly render a decision has been furnished. A period of 45 days shall be presumed reasonable for Client to act with respect to any matter involving policy or significant financial impact. The above periods of presumed reasonableness shall be extended where information reasonably required is not within the custody or control of Client but must be procured from others.

SECTION 5. TERM AND TERMINATION

(a) Term. The term of this Agreement shall be for three (3) consecutive years. The Agreement may be renewed in two (2) successive one-year periods by a written addendum signed by both parties. Adjustments in fees or costs shall follow Section 3(f) of this agreement.

(b) This agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Pueblo, contrary to Article X, §20 of the Colorado Constitution or any other constitutional, statutory or charter debt limitation. Notwithstanding any other provision of this agreement, with respect to any financial obligation of City which may arise under this agreement in any fiscal year after the current year, in the event the budget or other means of appropriations for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default by or breach of this agreement. The termination of this Agreement due to lack of funding shall be without penalty to the City.

(c) Client reserves the right to terminate this Agreement and Consultant's performance hereunder, at any time upon written notice, either for cause or for convenience. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, drawings, specifications, reports, plans, calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing this Agreement, together with all finished work and work in progress. Client further reserves the right to terminate for convenience any Work Order and Consultant's performance thereunder, at any time upon written notice. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, drawings, specifications, reports, plans, calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing the Work Order, together with all finished work and work in progress. The termination of a Work Order shall not terminate or be deemed to terminate this Agreement or any other Work Order issued by Client.

(d) Upon termination of this Agreement, or as applicable a Work Order, for events or reasons not the fault of Consultant, Consultant shall be paid at the rates specified in Schedule 2 for all services rendered to date of such termination; together with any reasonable costs incurred within 10 days of termination provided such latter costs could not be avoided or were incurred in mitigating loss or expenses to Consultant or Client. In no event shall payment to Consultant upon termination exceed the maximum compensation provided for complete performance in Section 3(a).

(e) In the event termination of this Agreement or Consultant's services is for breach of this Agreement by Consultant, or for other fault of Consultant including but not limited to any failure to timely proceed with work, or to pay its employees and consultants, or to perform work according to the highest professional standards, or to perform work in a manner deemed satisfactory by Client's Project Representative, then in that event, Consultant's entire right to compensation shall be limited to the lesser of (a) the reasonable value of completed work to Client or (b) payment at the rates specified in Schedule 2 for services satisfactorily performed, prior to date of termination.

(f) Consultant's professional responsibility for its completed work and services shall survive any termination.

SECTION 6. SITE ACCESS

In the event the Project will require access to property not under the control of Client, Consultant and Consultant's employees and consultants shall obtain all additional necessary approval and clearances required for access to such property. Client shall assist Consultant in obtaining access to such property at reasonable times but makes no warranty or representation whatsoever regarding access to such property. Notwithstanding the foregoing, Consultant understands and agrees that entry to some property by Consultant may be subject to compliance by Consultant with the terms and conditions of an access agreement in accordance with Section 1(d) of this Agreement.

SECTION 7. DOCUMENTS AND USE OF DOCUMENTS

(a) Consultant shall provide an electronic copy on a USB Flash Drive in AutoCAD Civil 3D. The USB Flash Drive must include the linework drawing of existing features with a generated surface, filed book file for surface generation and field notes explaining all codes and linework for ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels (the assigned manhole number shown in plan set), sanitary sewer pipes with pipe type and diameter, control points for future staking, etc.

(b) Plans, drawings, designs, specifications, reports and all other documents prepared or provided by Consultant hereunder shall become the sole property of Client, subject to applicable federal grant requirements, and Client shall be vested with all rights therein of whatever kind and however created, whether by common law, statute or equity. Client shall have access at all reasonable times to inspect and make copies of all notes, designs, drawings, specifications, and all other technical data or other documents pertaining to the work to be performed under this Agreement. In no event shall Consultant publish work product developed pursuant to this Agreement except (i) with advance written consent of Client, which consent may be granted or withheld in Client's sole and absolute discretion and (ii) in full compliance with the requirements of this Agreement and applicable federal regulations.

SECTION 8. INSURANCE AND INDEMNITY

(a) Consultant agrees that it shall procure and will maintain during the term of this Agreement, such insurance as will protect it from claims under workers' compensation acts, claims for damages because of personal injury including bodily injury, sickness or disease or death of any of its employees or of any person other than its employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom; and such insurance will provide for coverage in such amounts as set forth in subparagraph (b).

(b) The minimum insurance coverage which Consultant shall obtain and keep in force is as follows:

(i) Workers' Compensation Insurance complying with statutory requirements in Colorado and in any other state or states where the work is performed. The Workers' Compensation Insurance policy shall contain an endorsement waiving subrogation against the Client.

(ii) Commercial General Liability Insurance. The Consultant shall secure and maintain during the period of this Agreement and for such additional time as work on the project is being performed, Commercial General Liability Insurance issued to and covering the liability of the Consultant with respect to all work performed by him and all his subcontractors under the Agreement, to be written on a comprehensive policy

form. This insurance shall be written in amounts not less than \$1,000,000 for each occurrence and aggregate for personal injury including death and bodily injury and \$1,000,000 for each occurrence and aggregate for property damage. This policy of insurance shall name the City of Pueblo, its agents, officers and employees as additional insureds. This policy shall have all necessary endorsements to provide coverage without exclusion for explosion and collapse hazards, underground property damage hazard, blanket contractual coverage, as well as Owner's and Contractor's Protective Liability (OCP) coverage. The policy shall also provide coverage for contractual liability assumed by Consultant under the provisions of the Agreement, and "Completed Operations and Projects Liability" coverage.

(iii) Professional Liability Insurance with coverage of not less than \$1,000,000, and with a deductible amount acceptable by the Client.

(iv) Comprehensive Automobile Liability Insurance. The Consultant shall procure and maintain during the period of the Agreement and for such additional time as work on the project is being performed, Comprehensive Automobile Liability Insurance. This insurance shall be written with limits of liability for and injury to one person in any single occurrence of not less than \$350,000 and for any injury to two or more persons in any single occurrence of not less than \$1,000,000. This insurance shall include uninsured/underinsured motorist coverage and shall protect the Consultant from any and all claims arising from the use both on and off the site of the project of automobiles, trucks, tractors, backhoes and similar equipment whether owned, leased, hired or used by Consultant.

(c) Consultant agrees to hold harmless, defend and indemnify Client from and against any liability to third parties, arising out of negligent acts or omissions of Consultant, its employees, subcontractors and consultants.

SECTION 9. SUBCONTRACTS

(a) Client acknowledges that Consultant is the prime contractor and the only party with whom Client has a contractual relationship under this Agreement. To the extent Consultant performs any Project activities through subconsultants or subcontractors, Consultant shall contractually bind each of its subconsultants and subcontractors by subcontract agreement to all of the terms of this Agreement which are for the benefit of Client, and Client shall be a third-party beneficiary of those subcontract provisions.

(b) Consultant shall indemnify and defend Client from all claims and demands for payment for services provided by subcontractors of Consultant.

(c) Consultant acknowledges that, due to the nature of the services to be provided under this Agreement, the Client has a substantial interest in the personnel and consultants to whom Consultant assigns principal responsibility for services performed under this Agreement. Consequently, Consultant represents that it has selected and intends to employ or assign the key personnel and consultants identified in its proposal submitted to Client prior to execution of this Agreement to induce Client to enter this Agreement. Consultant shall not change such consultants or key personnel except after giving notice of a proposed change to Client and receiving Client's consent thereto. Consultant shall not assign or reassign Project work to any person to whom Client has reasonable objection.

SECTION 10. MISCELLANEOUS

(a) Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either Consultant or Client by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to the Client at City of Pueblo Waste Reclamation Facility, Attn: Wastewater Director, 1300 South Queens Ave., Pueblo, CO 81001, with a copy to the City of Pueblo Law Department, 1 City Hall Place, Pueblo, CO 81003; or to Consultant at Bohannon-Huston, Inc., Attn: Denise Aten, 9785 Maroon Circle, Suite 140, Englewood, CO 80112. Either party may change his address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

(b) Entire Agreement. This instrument contains the entire agreement between Consultant and Client respecting the Project, and any other written or oral agreement or representation respecting the Project or the duties of either Client or Consultant in relation thereto not expressly set forth in this instrument and its attachments is null and void. In the case of any conflict between the terms of this Agreement for Professional Services and terms of Schedule 1 or any other attachment hereto, the terms of this Agreement shall govern.

(c) Successors and Assigns. This Agreement shall be binding on the parties hereto and on their successors and assigns; provided, however, neither this Agreement, nor any part thereof, nor any moneys due or to become due hereunder to Consultant may be assigned by it without the written consent of Client, which consent may be withheld in Client's sole and absolute discretion. Any assignment or attempted assignment in violation of this subsection shall be void.

(d) Amendments. No amendment to this Agreement shall be made nor be enforceable unless made by written amendment signed by an authorized representative of Consultant and by Client in accordance with the requirements of Section 4(b) of this Agreement or upon authorization of Client's governing board.

(e) Choice of Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Colorado. Any unresolved dispute arising from or concerning any breach of this Agreement shall be decided in a state court of competent jurisdiction located in Pueblo, Colorado.

(f) Equal Employment Opportunity. In connection with the performance of this Agreement, neither Consultant nor its consultants shall discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability or age. Consultant shall endeavor to insure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, disability or age.

(g) Severability. If any provision of this Agreement, except for Section 2, is determined to be directly contrary to and prohibited by law or the requirements of any federal grant or other Project funding source, then such provision shall be deemed void and the remainder of the Agreement enforced. However, it is the intent of the parties that Section 2 of this Agreement not be severable, and that if any provision of said section be determined to be contrary to law or the terms of any federal grant, then this entire Agreement shall be void.

SECTION 11. STATE-IMPOSED MANDATES PROHIBITING WORKERS WITHOUT AUTHORIZATION FROM PERFORMING WORK

(a) At or prior to the time for execution of this Agreement, Consultant shall submit to the Purchasing Agent of the City its certification that it does not knowingly employ or contract with a "Worker Without Authorization", as that term is defined within §8-17.5-101 (9), C.R.S. (herein "Worker Without Authorization"), who will perform work under this Agreement and that the Consultant will participate in either the "E-Verify Program" created in Public Law 208, 104th Congress, as amended and expanded in Public law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security or the "Department Program" established pursuant to section 8-17.5-102(5)(c), C.R.S. that is administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(b) Consultant shall not:

(i) Knowingly employ or contract with a Worker Without Authorization to perform work under this Agreement;

(ii) Enter into a contract with a subcontractor that fails to certify to Consultant that the subcontractor shall not knowingly employ or contract with a Worker Without Authorization to perform work under this Agreement.

(c) The following state-imposed requirements apply to this Agreement:

(i) The Consultant shall have confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or Department Program.

(ii) The Consultant is prohibited from using either the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

(iii) If the Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with a Worker Without Authorization to perform work under this Agreement, the Consultant shall be required to:

A. Notify the subcontractor and the Purchasing Agent of the City within three (3) days that the Consultant has actual knowledge that the subcontractor is employing or contracting with a Worker Without Authorization; and

B. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (c)(iii)A. above, the subcontractor does not stop employing or contracting with the Worker Without Authorization; except that the Consultant shall not terminate the contract with the subcontractor if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a Worker Without Authorization.

(iv) The Consultant is required to comply with any reasonable request by the Colorado Department of Labor and Employment (hereinafter referred to as "CDLE") made in the course of an investigation that CDLE is undertaking pursuant to its authority under §8-17.5-102(5), C.R.S.

(d) Violation of this Section by the Consultant shall constitute a breach of contract and grounds for termination. In the event of such termination, the Consultant shall be liable for City's actual and consequential damages.

(e) Nothing in this Section shall be construed as requiring the Consultant to violate any terms of participation in the E-Verify Program.

SECTION 12. PERA LIABILITY

Consultant shall reimburse the City for the full amount of any employer contribution required to be paid by the City of Pueblo to the Public Employees' Retirement Association ("PERA") for salary or other compensation paid to a PERA retiree performing contracted services for the City under this Agreement. The Consultant shall fill out the Colorado PERA Questionnaire attached hereto and submit the completed form to City as part of the signed Agreement.

(Signature Section on following page)

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

CITY OF PUEBLO, A MUNICIPAL CORPORATION

BOHANNAN-HUSTON, INC.

By: _____
Naomi Hedden, Director of Purchasing

By: _____
Denise Aten, Senior Vice President

Attest: _____
City Clerk

[S E A L]

BALANCE OF APPROPRIATION EXISTS FOR THIS AGREEMENT AND FUNDS ARE AVAILABLE.

Director of Finance

APPROVED AS TO FORM:

City Attorney

Attachments: Schedule 1: Scope of Services
 Schedule 2: Fee Schedule
 Schedule 3: Sample Work Order
 Additional Information for Agreement

SCHEDULE 1 – SCOPE OF SERVICES

Excerpt from Request for Proposal dated October 8, 2021, Section 2., Addendum No. 2 dated November 3, 2021, and Communication Regarding Agreement Dated January 27, 2022

2.3 Scope of Service:

2.3.1 The firm or team of consultants will be required to provide utility locations and topographic surveys for the removal and replacement of sanitary sewer mains and any surface improvements required to do so. The consultant should attend and facilitate meetings as necessary with City staff throughout the development of each individual project. Firm must be familiar with public processes and coordinate with City staff in presenting details to City Council if required.

2.3.2 Field Requirements:

a) To include but not limited to locating sanitary sewer manholes with all inverts in and out elevations, ground surface elevations, control points for future staking, setting hubs for construction, providing cut sheets for the contractor, all existing utilities, identification of existing surface improvements such as curb and gutter, sidewalks, alley pans, buildings, fences, control points, etc. within the proposed boundary. In the field, the survey boundary shall cover a width of 30 feet along the sewer line, 15 feet on each side of the pipe axis. In the residential areas, the survey boundary shall be from property/fence lines to property/fence lines. In areas where a manhole is located at the start or end of the survey boundary, the survey shall cover the area extended 30 feet in the direction of sewer pipe axis before or after the manhole.

b) Centerline profiles of all allies or streets.

c) Each project shall start within two weeks of request and finish no later than 90 days from start *or no later than the delivery time provided in the Work Order Fee and agreed upon with each proposal.*

2.3.3 Office Requirements:

Provide an electronic copy on a USB Flash Drive in AutoCAD Civil 3D. The USB Flash Drive must include the linework drawing of existing features with a generated surface, filed book file for surface generation and field notes explaining all codes and linework for ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels, sanitary sewer pipes with pipe type and diameter, control points for future staking, etc.

SCHEDULE 2 – FEE SCHEDULE

Excerpt from Consultant’s Proposal Submittal dated November 12, 2021, Section 1.8, Page 36



1.8 FEE SCHEDULE

We have provided our standard rate schedule, highlighting the classifications we anticipate to be used the most for this contract.

**BOHANNAN HUSTON, INC.
FEE SCHEDULE HOURLY RATES
OCTOBER 2, 2021
(modified expenses)**

	1	2	3	4	5	6	7
ENGINEER Civil, Structural, Mechanical, Electrical	\$105	\$123	\$143	\$163	\$183	\$220	\$245
SURVEYOR Field Surveyor: 3 & 4; Survey Technician: 5; Professional Land Surveyor: 6	\$105	\$123	\$143	\$163	\$183	\$220	\$245
TECHNICAL MANAGER IT, GIS, Spatial Data, Construction, Project Manager	\$105	\$123	\$143	\$163	\$183	\$220	\$245
PLANNER Community, Transportation	\$95	\$105	\$120	\$135	\$155	\$190	\$235
GIS PROFESSIONAL Geographic Information Systems	\$90	\$100	\$115	\$130	\$150	\$180	\$210
TECHNICAL SPECIALIST Engineering Tech, Survey Tech, Geospatial Analyst, Graphics Specialist	\$72	\$77	\$82	\$92	\$107	\$120	\$135
CONSTRUCTION OBSERVER	\$73	\$78	\$83	\$93	\$108	\$123	\$163
MATERIALS TECHNICIAN Field and Laboratory Materials Testing	\$55	\$65	\$75	\$80	\$95	\$115	\$135
PROJECT ADMINISTRATOR	\$85	\$100	\$120	\$140	\$160	\$180	\$210
ADMINISTRATIVE ASSISTANT Clerical Support	\$55	\$65	\$75	\$85	\$95	\$105	\$120

MATERIALS AND REIMBURSABLE EXPENSES

Plotting, Printing and Binding - As invoiced at cost of labor and materials.

Courier / Delivery Service - As invoiced by provider.

Survey Equipment Charge - \$25.00/Hour.

Survey Material Charge - \$2.60/Hour (*construction staking only*).

Expert Witness - Rates shall be negotiated based on the requirements of the contract with a minimum of four hours while in court.

Other Direct Project Expenses - At Cost.

Subconsultants - At Cost.

Overtime - Performed upon request of the client; will be invoiced at 1.30 times the standard hourly rate.

Applicable Gross Receipts or Sales and Use Tax - Added to all fees charged for professional services unless they are exempt and official documentation is on file with Bohannon Huston, Inc.

UAV Usage Charge - Rates shall be negotiated based on the requirements of the contract.

Mobile LiDAR - Lump sum on a per task order basis.

Terrestrial LiDAR - Lump sum on a per task order basis.

Aerial Mapping - Lump sum on a per task order basis.

SCHEDULE 3 – SAMPLE WORK ORDER

Excerpt from Request for Proposal dated October 8, 2021, Appendix D
(including approval of Director of Purchasing per Section 1b)

WORK ORDER

This Work Order is entered pursuant to and subject to the terms and conditions of the Professional Services Agreement dated _____, 20__ between Pueblo, a Municipal Corporation ("Client"), and _____ ("Consultant").

Scope of Work:

Time for Completion:

Work Order Compensation:

Approved by: _____ Dated: _____
Client: City of Pueblo, Wastewater Director

Approved by: _____ Dated: _____
Client: City of Pueblo, Director of Finance

Approved by: _____ Dated: _____
Client: City of Pueblo, Director of Purchasing

Consultant
Accepted by: _____ Dated: _____

Consultant's
Printed Name and Title: _____

Attachments: PDF Drawings/Sheets _____
Compensation Details

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
CITY OF PUEBLO
AND
CLARK LAND SURVEYING, INC.**

THIS AGREEMENT is made and entered this ____ day of February, 2021, by and between Pueblo, a Municipal Corporation (hereinafter referred to as "City" and/or "Client") and Clark Land Surveying, Inc., a Colorado Corporation (hereinafter referred to as "Consultant"), for Consultant to render professional services for Client with respect to Bid 21-074 Surveying Services for Sanitary Sewer Projects and City-Wide Surveying Projects and related ancillary services, hereinafter referred to as the "Project." In consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

SECTION 1. GENERAL AND SCOPE OF SERVICES

(a) Consultant shall satisfactorily perform the professional surveying and related services which may be requested and approved by Client, including the following category of service:

(i) Topographic and improvement surveys as well as construction staking with respect to sanitary sewer projects including but not limited to projects for the removal and replacement of sanitary sewer mains. Survey work to include ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels (the assigned manhole number shown in plan set), sanitary sewer pipes with pipe type and diameter, control points for future staking, setting hubs for construction, providing cut sheets for the contractor, etc. In the field, the survey boundary shall cover a width of 30 feet along the sewer line, 15 feet on each side of the pipe axis. In the residential areas, the survey boundary shall be from property/fence lines to property/fence lines. In areas where a manhole is located at the start or end of the survey boundary, the survey shall cover the area extended 30 feet in the direction of sewer pipe axis before or after the manhole ("Sanitary Sewer Survey Project").

(b) Request for services shall be initiated and documented by a written work order agreement ("Work Order" with sample attached as Schedule 3) signed by the Wastewater Director of Client and approved by the Director of Finance and Director of Purchasing. The Work Order shall set forth the work to be performed, the time for completion and the compensation, including maximum compensation, for performance of such work. Said compensation shall be approved as provided in Section 3 of this Agreement. The work to be performed under any Work Order shall be included in the "Basic Services" and "Project" as such terms are used in this Agreement and shall be subject to all terms and conditions of this Agreement. All such services shall include all usual and customary professional costs for this type of service as indicated in the Scope of Service in Section 2 of the Request for Proposal (RFP). Consultant acknowledges that the selection of Consultant by Client was pursuant to an RFP. All of the requirements of that RFP are incorporated herein by reference. If the work to be performed is a fiber repair project, it shall include and comply with the Scope of Services set forth in Section 1(a) above unless specific exceptions are provided for in the Work Order.

(c) To the extent Consultant performs any of the Project work through subconsultants or subcontractors, if previously requested and approved by the Client in each individual Work Order, Consultant shall be and remain as fully responsible for the full performance and quality of services performed by such subconsultants or subcontractors as it is for services performed directly by Consultant or Consultant's employees.

(d) To the extent Consultant requires access to private property to perform its services hereunder, Consultant shall be required to make arrangements to obtain such access. However, in the event Client has already secured access for Consultant to any such property through a right of entry agreement, access agreement, letter of consent or other instrument, Consultant shall fully comply with and be subject to the terms and conditions set forth therein. A copy of any such instrument will be provided to Consultant upon request.

(e) No minimum amount of work is guaranteed under this Agreement. Client reserves the right to engage and/or contract with other parties to perform services which otherwise might be requested under this Agreement. Consultant specifically acknowledges that any Change Order may be awarded to other parties under similar agreements as this Agreement.

SECTION 2. CONSULTANT'S RESPONSIBILITIES

- (a) Consultant shall be responsible for the professional quality, technical accuracy and timely completion of Consultant's work, including that performed by Consultant's subconsultants and subcontractors, and including drawings, reports and other services, irrespective of Client's approval of or acquiescence in same.
- (b) Consultant shall be responsible, in accordance with applicable law, to Client for all loss or damage to Client caused by Consultant's negligent act or omission; except that Consultant hereby irrevocably waives and excuses Client and Client's attorneys from compliance with any requirement to obtain a certificate of review as a condition precedent to commencement of an action, including any such requirements set forth in Section 13-20-602, C.R.S. or similar statute, whether now existing or hereafter enacted.
- (c) Consultant shall be completely responsible for the safety of Consultant's employees in the execution of work under this Agreement and shall provide all necessary safety and protective equipment for said employees.
- (d) Consultant acknowledges that time is of the essence with respect to the completion of its services under this Agreement. Consultant shall accomplish its work within the period of time set forth in the Work Order. Except to the extent the parties agree to time extensions for delays beyond the control of Consultant, Consultant shall adhere to the schedule set forth in the Work Order and perform its work in a timely manner so as not to delay Client's timetable for achievement of interim tasks and final completion of any related or dependent work.
- (e) Before undertaking any work which Consultant considers beyond or in addition to the scope of the Work Order, Consultant shall advise Client in writing that (i) Consultant considers the work beyond the scope of the Work Order, (ii) the reasons that Consultant believes the out of scope or additional work should be performed, and (iii) a reasonable estimate of the cost of such work. Consultant shall not proceed with any out of scope or additional work until authorized in writing by Client. Client shall negotiate with the Consultant prior to authorizing any additional work; negotiated compensation shall be based upon the fee schedule set forth in Schedule 2 attached hereto and incorporated herein.
- (f) Consultant shall designate a representative who shall have authority to approve and accept Work Orders on behalf of Consultant and prepare bid amounts under Section 3 of this Agreement.

SECTION 3. FEES FOR SERVICES/PAYMENT

- (a) When requested by Client, Consultant shall prepare without charge to Client a bid amount for any proposed Work Order ("Work Order Compensation") which shall be based upon the fee schedule set forth in Schedule 2 and shall itemize compensation amounts and include the maximum compensation amount necessary for completion and performance of all work set forth in the Work Order. Should Client have any dispute, question, required clarification or other issue with respect to the Work Order Compensation, Consultant shall meet and confer in good faith with Client to resolve such issue. No Work Order shall be signed and issued by the Wastewater Director of Client unless and until Client approves the Work Order Compensation.
- (b) Consultant shall submit periodic, but not more frequently than monthly, applications for payment for actual professional services rendered. Applications for payment shall be separately submitted for each Work Order and shall never aggregate to more than the maximum amount set forth in the Work Order. Applications for payment shall be submitted based upon the fee schedule set forth in Schedule 2 and the approved Work Order Compensation and shall contain appropriate documentation that such services have been performed and such expenses incurred. As applicable, subcontractor invoices shall be required in any payment application, and no markups for such invoiced subcontracting services shall be allowed. Thereafter, Client shall pay Consultant for the amount of the application within 45 days of the date such application is received.
- (c) No separate or additional payment shall be made for profit, overhead, local telephone expenses, lodging, routine photocopying, computer time, secretarial or clerical time.
- (d) No compensation shall be paid to Consultant for services required and expenditures incurred in correcting Consultant's mistakes or negligence.

(e) Compensation for authorized work beyond the scope of this Agreement or Work Order shall be governed by the provisions of Section 2(e).

(f) All proposed fees shall remain fixed for the term of the agreement. In the event the City exercises the provision to extend the agreement after the initial term, requests for annual increases in fees may not exceed 1) three percent (3%) or, 2) the prior year's United States Bureau of Labor Statistics Consumer Price Index (CPI), whichever of the two options is lower.

SECTION 4. CLIENT'S RESPONSIBILITIES

(a) Client agrees to advise Consultant regarding Client's Project requirements and to provide all relevant information, surveys, data and previous reports accessible to Client which Consultant may reasonably require.

(b) Client shall designate a Project Representative to whom all communications from Consultant shall be directed and who shall have limited administrative authority on behalf of Client to receive and transmit information and make decisions with respect to the Project. Said representative shall not, however, have authority to bind Client as to matters of governmental policy or fiscal policy, nor to contract for Work Orders or Compensation for authorized work beyond the scope of this Agreement or a Work Order.

(c) Client shall examine all documents presented by Consultant and render decisions pertaining thereto within a reasonable time. The Client's approval of any drawings, specifications, reports, documents or other materials or product furnished hereunder shall not in any way relieve Consultant of responsibility for the professional adequacy of its work.

(d) Client shall perform its obligations and render decisions within a reasonable time under the circumstances presented. Based upon the nature of Client and its requirements, a period of 14 days shall be presumed reasonable for any decision not involving policy decision or significant financial impact, when all information reasonably necessary for Client to responsibly render a decision has been furnished. A period of 45 days shall be presumed reasonable for Client to act with respect to any matter involving policy or significant financial impact. The above periods of presumed reasonableness shall be extended where information reasonably required is not within the custody or control of Client but must be procured from others.

SECTION 5. TERM AND TERMINATION

(a) Term. The term of this Agreement shall be for three (3) consecutive years. The Agreement may be renewed in two (2) successive one-year periods by a written addendum signed by both parties. Adjustments in fees or costs shall follow Section 3(f) of this agreement.

(b) This agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Pueblo, contrary to Article X, §20 of the Colorado Constitution or any other constitutional, statutory or charter debt limitation. Notwithstanding any other provision of this agreement, with respect to any financial obligation of City which may arise under this agreement in any fiscal year after the current year, in the event the budget or other means of appropriations for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default by or breach of this agreement. The termination of this Agreement due to lack of funding shall be without penalty to the City.

(c) Client reserves the right to terminate this Agreement and Consultant's performance hereunder, at any time upon written notice, either for cause or for convenience. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, drawings, specifications, reports, plans, calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing this Agreement, together with all finished work and work in progress. Client further reserves the right to terminate for convenience any Work Order and Consultant's performance thereunder, at any time upon written notice. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, drawings, specifications, reports, plans, calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing the Work Order, together with all finished work and work in progress. The termination of a Work Order shall not terminate or be deemed to terminate this Agreement or any other Work Order issued by Client.

(d) Upon termination of this Agreement, or as applicable a Work Order, for events or reasons not the fault of Consultant, Consultant shall be paid at the rates specified in Schedule 2 for all services rendered to date of such termination; together with any reasonable costs incurred within 10 days of termination provided such latter costs could not be avoided or were incurred in mitigating loss or expenses to Consultant or Client. In no event shall payment to Consultant upon termination exceed the maximum compensation provided for complete performance in Section 3(a).

(e) In the event termination of this Agreement or Consultant's services is for breach of this Agreement by Consultant, or for other fault of Consultant including but not limited to any failure to timely proceed with work, or to pay its employees and consultants, or to perform work according to the highest professional standards, or to perform work in a manner deemed satisfactory by Client's Project Representative, then in that event, Consultant's entire right to compensation shall be limited to the lesser of (a) the reasonable value of completed work to Client or (b) payment at the rates specified in Schedule 2 for services satisfactorily performed, prior to date of termination.

(f) Consultant's professional responsibility for its completed work and services shall survive any termination.

SECTION 6. SITE ACCESS

In the event the Project will require access to property not under the control of Client, Consultant and Consultant's employees and consultants shall obtain all additional necessary approval and clearances required for access to such property. Client shall assist Consultant in obtaining access to such property at reasonable times but makes no warranty or representation whatsoever regarding access to such property. Notwithstanding the foregoing, Consultant understands and agrees that entry to some property by Consultant may be subject to compliance by Consultant with the terms and conditions of an access agreement in accordance with Section 1(d) of this Agreement.

SECTION 7. DOCUMENTS AND USE OF DOCUMENTS

(a) Consultant shall provide an electronic copy on a USB Flash Drive in AutoCAD Civil 3D. The USB Flash Drive must include the linework drawing of existing features with a generated surface, filed book file for surface generation and field notes explaining all codes and linework for ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels (the assigned manhole number shown in plan set), sanitary sewer pipes with pipe type and diameter, control points for future staking, etc.

(b) Plans, drawings, designs, specifications, reports and all other documents prepared or provided by Consultant hereunder shall become the sole property of Client, subject to applicable federal grant requirements, and Client shall be vested with all rights therein of whatever kind and however created, whether by common law, statute or equity. Client shall have access at all reasonable times to inspect and make copies of all notes, designs, drawings, specifications, and all other technical data or other documents pertaining to the work to be performed under this Agreement. In no event shall Consultant publish work product developed pursuant to this Agreement except (i) with advance written consent of Client, which consent may be granted or withheld in Client's sole and absolute discretion and (ii) in full compliance with the requirements of this Agreement and applicable federal regulations.

SECTION 8. INSURANCE AND INDEMNITY

(a) Consultant agrees that it shall procure and will maintain during the term of this Agreement, such insurance as will protect it from claims under workers' compensation acts, claims for damages because of personal injury including bodily injury, sickness or disease or death of any of its employees or of any person other than its employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom; and such insurance will provide for coverage in such amounts as set forth in subparagraph (b).

(b) The minimum insurance coverage which Consultant shall obtain and keep in force is as follows:

(i) Workers' Compensation Insurance complying with statutory requirements in Colorado and in any other state or states where the work is performed. The Workers' Compensation Insurance policy shall contain an endorsement waiving subrogation against the Client.

(ii) Commercial General Liability Insurance. The Consultant shall secure and maintain during the period of this Agreement and for such additional time as work on the project is being performed, Commercial General Liability Insurance issued to and covering the liability of the Consultant with respect to all work performed by him and all his subcontractors under the Agreement, to be written on a comprehensive policy

form. This insurance shall be written in amounts not less than \$1,000,000 for each occurrence and aggregate for personal injury including death and bodily injury and \$1,000,000 for each occurrence and aggregate for property damage. This policy of insurance shall name the City of Pueblo, its agents, officers and employees as additional insureds. This policy shall have all necessary endorsements to provide coverage without exclusion for explosion and collapse hazards, underground property damage hazard, blanket contractual coverage, as well as Owner's and Contractor's Protective Liability (OCP) coverage. The policy shall also provide coverage for contractual liability assumed by Consultant under the provisions of the Agreement, and "Completed Operations and Projects Liability" coverage.

(iii) Professional Liability Insurance with coverage of not less than \$1,000,000, and with a deductible amount acceptable by the Client.

(iv) Comprehensive Automobile Liability Insurance. The Consultant shall procure and maintain during the period of the Agreement and for such additional time as work on the project is being performed, Comprehensive Automobile Liability Insurance. This insurance shall be written with limits of liability for and injury to one person in any single occurrence of not less than \$350,000 and for any injury to two or more persons in any single occurrence of not less than \$1,000,000. This insurance shall include uninsured/underinsured motorist coverage and shall protect the Consultant from any and all claims arising from the use both on and off the site of the project of automobiles, trucks, tractors, backhoes and similar equipment whether owned, leased, hired or used by Consultant.

(c) Consultant agrees to hold harmless, defend and indemnify Client from and against any liability to third parties, arising out of negligent acts or omissions of Consultant, its employees, subcontractors and consultants.

SECTION 9. SUBCONTRACTS

(a) Client acknowledges that Consultant is the prime contractor and the only party with whom Client has a contractual relationship under this Agreement. To the extent Consultant performs any Project activities through subconsultants or subcontractors, Consultant shall contractually bind each of its subconsultants and subcontractors by subcontract agreement to all of the terms of this Agreement which are for the benefit of Client, and Client shall be a third-party beneficiary of those subcontract provisions.

(b) Consultant shall indemnify and defend Client from all claims and demands for payment for services provided by subcontractors of Consultant.

(c) Consultant acknowledges that, due to the nature of the services to be provided under this Agreement, the Client has a substantial interest in the personnel and consultants to whom Consultant assigns principal responsibility for services performed under this Agreement. Consequently, Consultant represents that it has selected and intends to employ or assign the key personnel and consultants identified in its proposal submitted to Client prior to execution of this Agreement to induce Client to enter this Agreement. Consultant shall not change such consultants or key personnel except after giving notice of a proposed change to Client and receiving Client's consent thereto. Consultant shall not assign or reassign Project work to any person to whom Client has reasonable objection.

SECTION 10. MISCELLANEOUS

(a) Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either Consultant or Client by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to the Client at City of Pueblo Waste Reclamation Facility, Attn: Wastewater Director, 1300 South Queens Ave., Pueblo, CO 81001, with a copy to the City of Pueblo Law Department, 1 City Hall Place, Pueblo, CO 81003; or to Consultant at Clark Land Surveying, Inc., Attn: Justin Crosson, 177 S. Tiffany Dr., Pueblo West, CO 81007. Either party may change his address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

(b) Entire Agreement. This instrument contains the entire agreement between Consultant and Client respecting the Project, and any other written or oral agreement or representation respecting the Project or the duties of either Client or Consultant in relation thereto not expressly set forth in this instrument and its attachments is null and void. In the case of any conflict between the terms of this Agreement for Professional Services and terms of Schedule 1 or any other attachment hereto, the terms of this Agreement shall govern.

(c) Successors and Assigns. This Agreement shall be binding on the parties hereto and on their successors and assigns; provided, however, neither this Agreement, nor any part thereof, nor any moneys due or to become due hereunder to Consultant may be assigned by it without the written consent of Client, which consent may be withheld in Client's sole and absolute discretion. Any assignment or attempted assignment in violation of this subsection shall be void.

(d) Amendments. No amendment to this Agreement shall be made nor be enforceable unless made by written amendment signed by an authorized representative of Consultant and by Client in accordance with the requirements of Section 4(b) of this Agreement or upon authorization of Client's governing board.

(e) Choice of Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Colorado. Any unresolved dispute arising from or concerning any breach of this Agreement shall be decided in a state court of competent jurisdiction located in Pueblo, Colorado.

(f) Equal Employment Opportunity. In connection with the performance of this Agreement, neither Consultant nor its consultants shall discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability or age. Consultant shall endeavor to insure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, disability or age.

(g) Severability. If any provision of this Agreement, except for Section 2, is determined to be directly contrary to and prohibited by law or the requirements of any federal grant or other Project funding source, then such provision shall be deemed void and the remainder of the Agreement enforced. However, it is the intent of the parties that Section 2 of this Agreement not be severable, and that if any provision of said section be determined to be contrary to law or the terms of any federal grant, then this entire Agreement shall be void.

SECTION 11. STATE-IMPOSED MANDATES PROHIBITING WORKERS WITHOUT AUTHORIZATION FROM PERFORMING WORK

(a) At or prior to the time for execution of this Agreement, Consultant shall submit to the Purchasing Agent of the City its certification that it does not knowingly employ or contract with a "Worker Without Authorization", as that term is defined within §8-17.5-101 (9), C.R.S. (herein "Worker Without Authorization"), who will perform work under this Agreement and that the Consultant will participate in either the "E-Verify Program" created in Public Law 208, 104th Congress, as amended and expanded in Public law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security or the "Department Program" established pursuant to section 8-17.5-102(5)(c), C.R.S. that is administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(b) Consultant shall not:

(i) Knowingly employ or contract with a Worker Without Authorization to perform work under this Agreement;

(ii) Enter into a contract with a subcontractor that fails to certify to Consultant that the subcontractor shall not knowingly employ or contract with a Worker Without Authorization to perform work under this Agreement.

(c) The following state-imposed requirements apply to this Agreement:

(i) The Consultant shall have confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or Department Program.

(ii) The Consultant is prohibited from using either the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

(iii) If the Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with a Worker Without Authorization to perform work under this Agreement, the Consultant shall be required to:

A. Notify the subcontractor and the Purchasing Agent of the City within three (3) days that the Consultant has actual knowledge that the subcontractor is employing or contracting with a Worker Without Authorization; and

B. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (c)(iii)A. above, the subcontractor does not stop employing or contracting with the Worker Without Authorization; except that the Consultant shall not terminate the contract with the subcontractor if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a Worker Without Authorization.

(iv) The Consultant is required to comply with any reasonable request by the Colorado Department of Labor and Employment (hereinafter referred to as "CDLE") made in the course of an investigation that CDLE is undertaking pursuant to its authority under §8-17.5-102(5), C.R.S.

(d) Violation of this Section by the Consultant shall constitute a breach of contract and grounds for termination. In the event of such termination, the Consultant shall be liable for City's actual and consequential damages.

(e) Nothing in this Section shall be construed as requiring the Consultant to violate any terms of participation in the E-Verify Program.

SECTION 12. PERA LIABILITY

Consultant shall reimburse the City for the full amount of any employer contribution required to be paid by the City of Pueblo to the Public Employees' Retirement Association ("PERA") for salary or other compensation paid to a PERA retiree performing contracted services for the City under this Agreement. The Consultant shall fill out the Colorado PERA Questionnaire attached hereto and submit the completed form to City as part of the signed Agreement.

(Signature Section on following page)

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

CITY OF PUEBLO, A MUNICIPAL CORPORATION

CLARK LAND SURVEYING, INC.

By: _____
Naomi Hedden, Director of Purchasing

By: _____
Justin Crosson, President & Secretary

Attest: _____
City Clerk

[S E A L]

BALANCE OF APPROPRIATION EXISTS FOR THIS AGREEMENT AND FUNDS ARE AVAILABLE.

Director of Finance

APPROVED AS TO FORM:

City Attorney

Attachments: Schedule 1: Scope of Services
 Schedule 2: Fee Schedule
 Schedule 3: Sample Work Order
 Additional Information for Agreement

SCHEDULE 1 – SCOPE OF SERVICES

Excerpt from Request for Proposal dated October 8, 2021, Section 2., Addendum No. 2 dated November 3, 2021, and Communication Regarding Agreement Dated January 27, 2022

2.3 Scope of Service:

2.3.1 The firm or team of consultants will be required to provide utility locations and topographic surveys for the removal and replacement of sanitary sewer mains and any surface improvements required to do so. The consultant should attend and facilitate meetings as necessary with City staff throughout the development of each individual project. Firm must be familiar with public processes and coordinate with City staff in presenting details to City Council if required.

2.3.2 Field Requirements:

a) To include but not limited to locating sanitary sewer manholes with all inverts in and out elevations, ground surface elevations, control points for future staking, setting hubs for construction, providing cut sheets for the contractor, all existing utilities, identification of existing surface improvements such as curb and gutter, sidewalks, alley pans, buildings, fences, control points, etc. within the proposed boundary. In the field, the survey boundary shall cover a width of 30 feet along the sewer line, 15 feet on each side of the pipe axis. In the residential areas, the survey boundary shall be from property/fence lines to property/fence lines. In areas where a manhole is located at the start or end of the survey boundary, the survey shall cover the area extended 30 feet in the direction of sewer pipe axis before or after the manhole.

b) Centerline profiles of all allies or streets.

c) Each project shall start within two weeks of request and finish no later than 90 days from start *or no later than the delivery time provided in the Work Order Fee and agreed upon with each proposal.*

2.3.3 Office Requirements:

Provide an electronic copy on a USB Flash Drive in AutoCAD Civil 3D. The USB Flash Drive must include the linework drawing of existing features with a generated surface, filed book file for surface generation and field notes explaining all codes and linework for ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels, sanitary sewer pipes with pipe type and diameter, control points for future staking, etc.

SCHEDULE 2 – FEE SCHEDULE

Excerpt from Consultant’s Proposal Submittal dated November 12, 2021, Item 3, Pages 13-14



ITEM 3 FIRM RATES

Fee Schedule

> Survey Field Services

1-Man Survey Crew <i>1 surveyor, truck, 1 GPS System and/or 1 Robotic Total Station</i>	\$150 / hour
2-Man Survey Crew <i>2 surveyors, truck, 1 GPS System and/or 1 Robotic Total Station</i>	\$190 / hour
Construction Staking <i>1-2 surveyors, truck, 1 GPS System and/or 1 Robotic Total Station</i>	\$190 / hour

> Survey Office Services

CAD Technician	\$80 / hour
Project Surveyor	\$130 / hour
Operations Manager	\$130 / hour
Professional Land Surveyor	\$140 / hour
Professional Engineer	\$140 / hour
Principal	\$150 / hour

> Subsurface Utility Services

Subsurface Utility Designating <i>1 designator, truck and industry standard geophysical designating equipment</i>	\$150 / hour
Subsurface Utility Test Holes	See Test Hole Fee Schedule
Ground Penetrating Radar	Call for pricing

> Travel

Vehicle Mileage	Current IRS Rate
Per Diem <i>For sites more than 100 miles from office</i>	Current GSA Rates

Fee Schedule - Test Holes

> Utility Test Holes

Per Hole Rates

- > **Level 1 (Basic)** \$350 / hole
Includes coordination with 811, utility targeting, backfill, depth and surveyed position.
- > **Level 2 (Paved Areas)** \$650 / hole
Includes Level 1 services, and core drilling and hole / pavement remediation.
- > **Level 3 (Paved+Traffic Control)** \$1,550 / hole
Includes Level 1 and Level 2 services, and ROW permits, flow-fill, traffic control.

Per Day Rate \$3,500 / day

- *Service includes utility designation, excavation, surveyed position, hole remediation and digital deliverables.*
- *Traffic Control is additional \$2,200 / day, as needed, to support Utility Test Holes.*
- *Traffic Control fee includes up to \$250 for right-of-way permitting.*

SCHEDULE 3 – SAMPLE WORK ORDER

Excerpt from Request for Proposal dated October 8, 2021, Appendix D
(including approval of Director of Purchasing per Section 1b)

WORK ORDER

This Work Order is entered pursuant to and subject to the terms and conditions of the Professional Services Agreement dated _____, 20__ between Pueblo, a Municipal Corporation ("Client"), and _____ ("Consultant").

Scope of Work:

Time for Completion:

Work Order Compensation:

Approved by: _____ Dated: _____
Client: City of Pueblo, Wastewater Director

Approved by: _____ Dated: _____
Client: City of Pueblo, Director of Finance

Approved by: _____ Dated: _____
Client: City of Pueblo, Director of Purchasing

Consultant
Accepted by: _____ Dated: _____

Consultant's
Printed Name and Title: _____

Attachments: PDF Drawings/Sheets _____
Compensation Details

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
CITY OF PUEBLO
AND
ENCOMPASS SERVICES, LLC**

THIS AGREEMENT is made and entered this ____ day of February, 2021, by and between Pueblo, a Municipal Corporation (hereinafter referred to as "City" and/or "Client") and Encompass Services, LLC, a Texas Limited Liability Company authorized to do business in the State of Colorado (hereinafter referred to as "Consultant"), for Consultant to render professional services for Client with respect to Bid 21-074 Surveying Services for Sanitary Sewer Projects and City-Wide Surveying Projects and related ancillary services, hereinafter referred to as the "Project." In consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

SECTION 1. GENERAL AND SCOPE OF SERVICES

(a) Consultant shall satisfactorily perform the professional surveying and related services which may be requested and approved by Client, including the following category of service:

(i) Topographic and improvement surveys as well as construction staking with respect to sanitary sewer projects including but not limited to projects for the removal and replacement of sanitary sewer mains. Survey work to include ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels (the assigned manhole number shown in plan set), sanitary sewer pipes with pipe type and diameter, control points for future staking, setting hubs for construction, providing cut sheets for the contractor, etc. In the field, the survey boundary shall cover a width of 30 feet along the sewer line, 15 feet on each side of the pipe axis. In the residential areas, the survey boundary shall be from property/fence lines to property/fence lines. In areas where a manhole is located at the start or end of the survey boundary, the survey shall cover the area extended 30 feet in the direction of sewer pipe axis before or after the manhole ("Sanitary Sewer Survey Project").

(b) Request for services shall be initiated and documented by a written work order agreement ("Work Order" with sample attached as Schedule 3) signed by the Wastewater Director of Client and approved by the Director of Finance and Director of Purchasing. The Work Order shall set forth the work to be performed, the time for completion and the compensation, including maximum compensation, for performance of such work. Said compensation shall be approved as provided in Section 3 of this Agreement. The work to be performed under any Work Order shall be included in the "Basic Services" and "Project" as such terms are used in this Agreement and shall be subject to all terms and conditions of this Agreement. All such services shall include all usual and customary professional costs for this type of service as indicated in the Scope of Service in Section 2 of the Request for Proposal (RFP). Consultant acknowledges that the selection of Consultant by Client was pursuant to an RFP. All of the requirements of that RFP are incorporated herein by reference. If the work to be performed is a fiber repair project, it shall include and comply with the Scope of Services set forth in Section 1(a) above unless specific exceptions are provided for in the Work Order.

(c) To the extent Consultant performs any of the Project work through subconsultants or subcontractors, if previously requested and approved by the Client in each individual Work Order, Consultant shall be and remain as fully responsible for the full performance and quality of services performed by such subconsultants or subcontractors as it is for services performed directly by Consultant or Consultant's employees.

(d) To the extent Consultant requires access to private property to perform its services hereunder, Consultant shall be required to make arrangements to obtain such access. However, in the event Client has already secured access for Consultant to any such property through a right of entry agreement, access agreement, letter of consent or other instrument, Consultant shall fully comply with and be subject to the terms and conditions set forth therein. A copy of any such instrument will be provided to Consultant upon request.

(e) No minimum amount of work is guaranteed under this Agreement. Client reserves the right to engage and/or contract with other parties to perform services which otherwise might be requested under this Agreement. Consultant specifically acknowledges that any Change Order may be awarded to other parties under similar agreements as this Agreement.

SECTION 2. CONSULTANT'S RESPONSIBILITIES

- (a) Consultant shall be responsible for the professional quality, technical accuracy and timely completion of Consultant's work, including that performed by Consultant's subconsultants and subcontractors, and including drawings, reports and other services, irrespective of Client's approval of or acquiescence in same.
- (b) Consultant shall be responsible, in accordance with applicable law, to Client for all loss or damage to Client caused by Consultant's negligent act or omission; except that Consultant hereby irrevocably waives and excuses Client and Client's attorneys from compliance with any requirement to obtain a certificate of review as a condition precedent to commencement of an action, including any such requirements set forth in Section 13-20-602, C.R.S. or similar statute, whether now existing or hereafter enacted.
- (c) Consultant shall be completely responsible for the safety of Consultant's employees in the execution of work under this Agreement and shall provide all necessary safety and protective equipment for said employees.
- (d) Consultant acknowledges that time is of the essence with respect to the completion of its services under this Agreement. Consultant shall accomplish its work within the period of time set forth in the Work Order. Except to the extent the parties agree to time extensions for delays beyond the control of Consultant, Consultant shall adhere to the schedule set forth in the Work Order and perform its work in a timely manner so as not to delay Client's timetable for achievement of interim tasks and final completion of any related or dependent work.
- (e) Before undertaking any work which Consultant considers beyond or in addition to the scope of the Work Order, Consultant shall advise Client in writing that (i) Consultant considers the work beyond the scope of the Work Order, (ii) the reasons that Consultant believes the out of scope or additional work should be performed, and (iii) a reasonable estimate of the cost of such work. Consultant shall not proceed with any out of scope or additional work until authorized in writing by Client. Client shall negotiate with the Consultant prior to authorizing any additional work; negotiated compensation shall be based upon the fee schedule set forth in Schedule 2 attached hereto and incorporated herein.
- (f) Consultant shall designate a representative who shall have authority to approve and accept Work Orders on behalf of Consultant and prepare bid amounts under Section 3 of this Agreement.

SECTION 3. FEES FOR SERVICES/PAYMENT

- (a) When requested by Client, Consultant shall prepare without charge to Client a bid amount for any proposed Work Order ("Work Order Compensation") which shall be based upon the fee schedule set forth in Schedule 2 and shall itemize compensation amounts and include the maximum compensation amount necessary for completion and performance of all work set forth in the Work Order. Should Client have any dispute, question, required clarification or other issue with respect to the Work Order Compensation, Consultant shall meet and confer in good faith with Client to resolve such issue. No Work Order shall be signed and issued by the Wastewater Director of Client unless and until Client approves the Work Order Compensation.
- (b) Consultant shall submit periodic, but not more frequently than monthly, applications for payment for actual professional services rendered. Applications for payment shall be separately submitted for each Work Order and shall never aggregate to more than the maximum amount set forth in the Work Order. Applications for payment shall be submitted based upon the fee schedule set forth in Schedule 2 and the approved Work Order Compensation and shall contain appropriate documentation that such services have been performed and such expenses incurred. As applicable, subcontractor invoices shall be required in any payment application, and no markups for such invoiced subcontracting services shall be allowed. Thereafter, Client shall pay Consultant for the amount of the application within 45 days of the date such application is received.
- (c) No separate or additional payment shall be made for profit, overhead, local telephone expenses, lodging, routine photocopying, computer time, secretarial or clerical time.
- (d) No compensation shall be paid to Consultant for services required and expenditures incurred in correcting Consultant's mistakes or negligence.

(e) Compensation for authorized work beyond the scope of this Agreement or Work Order shall be governed by the provisions of Section 2(e).

(f) All proposed fees shall remain fixed for the term of the agreement. In the event the City exercises the provision to extend the agreement after the initial term, requests for annual increases in fees may not exceed 1) three percent (3%) or, 2) the prior year's United States Bureau of Labor Statistics Consumer Price Index (CPI), whichever of the two options is lower.

SECTION 4. CLIENT'S RESPONSIBILITIES

(a) Client agrees to advise Consultant regarding Client's Project requirements and to provide all relevant information, surveys, data and previous reports accessible to Client which Consultant may reasonably require.

(b) Client shall designate a Project Representative to whom all communications from Consultant shall be directed and who shall have limited administrative authority on behalf of Client to receive and transmit information and make decisions with respect to the Project. Said representative shall not, however, have authority to bind Client as to matters of governmental policy or fiscal policy, nor to contract for Work Orders or Compensation for authorized work beyond the scope of this Agreement or a Work Order.

(c) Client shall examine all documents presented by Consultant and render decisions pertaining thereto within a reasonable time. The Client's approval of any drawings, specifications, reports, documents or other materials or product furnished hereunder shall not in any way relieve Consultant of responsibility for the professional adequacy of its work.

(d) Client shall perform its obligations and render decisions within a reasonable time under the circumstances presented. Based upon the nature of Client and its requirements, a period of 14 days shall be presumed reasonable for any decision not involving policy decision or significant financial impact, when all information reasonably necessary for Client to responsibly render a decision has been furnished. A period of 45 days shall be presumed reasonable for Client to act with respect to any matter involving policy or significant financial impact. The above periods of presumed reasonableness shall be extended where information reasonably required is not within the custody or control of Client but must be procured from others.

SECTION 5. TERM AND TERMINATION

(a) Term. The term of this Agreement shall be for three (3) consecutive years. The Agreement may be renewed in two (2) successive one-year periods by a written addendum signed by both parties. Adjustments in fees or costs shall follow Section 3(f) of this agreement.

(b) This agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Pueblo, contrary to Article X, §20 of the Colorado Constitution or any other constitutional, statutory or charter debt limitation. Notwithstanding any other provision of this agreement, with respect to any financial obligation of City which may arise under this agreement in any fiscal year after the current year, in the event the budget or other means of appropriations for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default by or breach of this agreement. The termination of this Agreement due to lack of funding shall be without penalty to the City.

(c) Client reserves the right to terminate this Agreement and Consultant's performance hereunder, at any time upon written notice, either for cause or for convenience. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, drawings, specifications, reports, plans, calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing this Agreement, together with all finished work and work in progress. Client further reserves the right to terminate for convenience any Work Order and Consultant's performance thereunder, at any time upon written notice. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, drawings, specifications, reports, plans, calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing the Work Order, together with all finished work and work in progress. The termination of a Work Order shall not terminate or be deemed to terminate this Agreement or any other Work Order issued by Client.

(d) Upon termination of this Agreement, or as applicable a Work Order, for events or reasons not the fault of Consultant, Consultant shall be paid at the rates specified in Schedule 2 for all services rendered to date of such termination; together with any reasonable costs incurred within 10 days of termination provided such latter costs could not be avoided or were incurred in mitigating loss or expenses to Consultant or Client. In no event shall payment to Consultant upon termination exceed the maximum compensation provided for complete performance in Section 3(a).

(e) In the event termination of this Agreement or Consultant's services is for breach of this Agreement by Consultant, or for other fault of Consultant including but not limited to any failure to timely proceed with work, or to pay its employees and consultants, or to perform work according to the highest professional standards, or to perform work in a manner deemed satisfactory by Client's Project Representative, then in that event, Consultant's entire right to compensation shall be limited to the lesser of (a) the reasonable value of completed work to Client or (b) payment at the rates specified in Schedule 2 for services satisfactorily performed, prior to date of termination.

(f) Consultant's professional responsibility for its completed work and services shall survive any termination.

SECTION 6. SITE ACCESS

In the event the Project will require access to property not under the control of Client, Consultant and Consultant's employees and consultants shall obtain all additional necessary approval and clearances required for access to such property. Client shall assist Consultant in obtaining access to such property at reasonable times but makes no warranty or representation whatsoever regarding access to such property. Notwithstanding the foregoing, Consultant understands and agrees that entry to some property by Consultant may be subject to compliance by Consultant with the terms and conditions of an access agreement in accordance with Section 1(d) of this Agreement.

SECTION 7. DOCUMENTS AND USE OF DOCUMENTS

(a) Consultant shall provide an electronic copy on a USB Flash Drive in AutoCAD Civil 3D. The USB Flash Drive must include the linework drawing of existing features with a generated surface, filed book file for surface generation and field notes explaining all codes and linework for ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels (the assigned manhole number shown in plan set), sanitary sewer pipes with pipe type and diameter, control points for future staking, etc.

(b) Plans, drawings, designs, specifications, reports and all other documents prepared or provided by Consultant hereunder shall become the sole property of Client, subject to applicable federal grant requirements, and Client shall be vested with all rights therein of whatever kind and however created, whether by common law, statute or equity. Client shall have access at all reasonable times to inspect and make copies of all notes, designs, drawings, specifications, and all other technical data or other documents pertaining to the work to be performed under this Agreement. In no event shall Consultant publish work product developed pursuant to this Agreement except (i) with advance written consent of Client, which consent may be granted or withheld in Client's sole and absolute discretion and (ii) in full compliance with the requirements of this Agreement and applicable federal regulations.

SECTION 8. INSURANCE AND INDEMNITY

(a) Consultant agrees that it shall procure and will maintain during the term of this Agreement, such insurance as will protect it from claims under workers' compensation acts, claims for damages because of personal injury including bodily injury, sickness or disease or death of any of its employees or of any person other than its employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom; and such insurance will provide for coverage in such amounts as set forth in subparagraph (b).

(b) The minimum insurance coverage which Consultant shall obtain and keep in force is as follows:

(i) Workers' Compensation Insurance complying with statutory requirements in Colorado and in any other state or states where the work is performed. The Workers' Compensation Insurance policy shall contain an endorsement waiving subrogation against the Client.

(ii) Commercial General Liability Insurance. The Consultant shall secure and maintain during the period of this Agreement and for such additional time as work on the project is being performed, Commercial General Liability Insurance issued to and covering the liability of the Consultant with respect to all work performed by him and all his subcontractors under the Agreement, to be written on a comprehensive policy

form. This insurance shall be written in amounts not less than \$1,000,000 for each occurrence and aggregate for personal injury including death and bodily injury and \$1,000,000 for each occurrence and aggregate for property damage. This policy of insurance shall name the City of Pueblo, its agents, officers and employees as additional insureds. This policy shall have all necessary endorsements to provide coverage without exclusion for explosion and collapse hazards, underground property damage hazard, blanket contractual coverage, as well as Owner's and Contractor's Protective Liability (OCP) coverage. The policy shall also provide coverage for contractual liability assumed by Consultant under the provisions of the Agreement, and "Completed Operations and Projects Liability" coverage.

(iii) Professional Liability Insurance with coverage of not less than \$1,000,000, and with a deductible amount acceptable by the Client.

(iv) Comprehensive Automobile Liability Insurance. The Consultant shall procure and maintain during the period of the Agreement and for such additional time as work on the project is being performed, Comprehensive Automobile Liability Insurance. This insurance shall be written with limits of liability for and injury to one person in any single occurrence of not less than \$350,000 and for any injury to two or more persons in any single occurrence of not less than \$1,000,000. This insurance shall include uninsured/underinsured motorist coverage and shall protect the Consultant from any and all claims arising from the use both on and off the site of the project of automobiles, trucks, tractors, backhoes and similar equipment whether owned, leased, hired or used by Consultant.

(c) Consultant agrees to hold harmless, defend and indemnify Client from and against any liability to third parties, arising out of negligent acts or omissions of Consultant, its employees, subcontractors and consultants.

SECTION 9. SUBCONTRACTS

(a) Client acknowledges that Consultant is the prime contractor and the only party with whom Client has a contractual relationship under this Agreement. To the extent Consultant performs any Project activities through subconsultants or subcontractors, Consultant shall contractually bind each of its subconsultants and subcontractors by subcontract agreement to all of the terms of this Agreement which are for the benefit of Client, and Client shall be a third-party beneficiary of those subcontract provisions.

(b) Consultant shall indemnify and defend Client from all claims and demands for payment for services provided by subcontractors of Consultant.

(c) Consultant acknowledges that, due to the nature of the services to be provided under this Agreement, the Client has a substantial interest in the personnel and consultants to whom Consultant assigns principal responsibility for services performed under this Agreement. Consequently, Consultant represents that it has selected and intends to employ or assign the key personnel and consultants identified in its proposal submitted to Client prior to execution of this Agreement to induce Client to enter this Agreement. Consultant shall not change such consultants or key personnel except after giving notice of a proposed change to Client and receiving Client's consent thereto. Consultant shall not assign or reassign Project work to any person to whom Client has reasonable objection.

SECTION 10. MISCELLANEOUS

(a) Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either Consultant or Client by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to the Client at City of Pueblo Waste Reclamation Facility, Attn: Wastewater Director, 1300 South Queens Ave., Pueblo, CO 81001, with a copy to the City of Pueblo Law Department, 1 City Hall Place, Pueblo, CO 81003; or to Consultant at Encompass Services, LLC, Attn: Tyler Hastings, 10901 W. 120th Avenue, Suite 400, Broomfield, CO 80021. Either party may change his address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

(b) Entire Agreement. This instrument contains the entire agreement between Consultant and Client respecting the Project, and any other written or oral agreement or representation respecting the Project or the duties of either Client or Consultant in relation thereto not expressly set forth in this instrument and its attachments is null and void. In the case of any conflict between the terms of this Agreement for Professional Services and terms of Schedule 1 or any other attachment hereto, the terms of this Agreement shall govern.

(c) Successors and Assigns. This Agreement shall be binding on the parties hereto and on their successors and assigns; provided, however, neither this Agreement, nor any part thereof, nor any moneys due or to become due hereunder to Consultant may be assigned by it without the written consent of Client, which consent may be withheld in Client's sole and absolute discretion. Any assignment or attempted assignment in violation of this subsection shall be void.

(d) Amendments. No amendment to this Agreement shall be made nor be enforceable unless made by written amendment signed by an authorized representative of Consultant and by Client in accordance with the requirements of Section 4(b) of this Agreement or upon authorization of Client's governing board.

(e) Choice of Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Colorado. Any unresolved dispute arising from or concerning any breach of this Agreement shall be decided in a state court of competent jurisdiction located in Pueblo, Colorado.

(f) Equal Employment Opportunity. In connection with the performance of this Agreement, neither Consultant nor its consultants shall discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability or age. Consultant shall endeavor to insure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, disability or age.

(g) Severability. If any provision of this Agreement, except for Section 2, is determined to be directly contrary to and prohibited by law or the requirements of any federal grant or other Project funding source, then such provision shall be deemed void and the remainder of the Agreement enforced. However, it is the intent of the parties that Section 2 of this Agreement not be severable, and that if any provision of said section be determined to be contrary to law or the terms of any federal grant, then this entire Agreement shall be void.

SECTION 11. STATE-IMPOSED MANDATES PROHIBITING WORKERS WITHOUT AUTHORIZATION FROM PERFORMING WORK

(a) At or prior to the time for execution of this Agreement, Consultant shall submit to the Purchasing Agent of the City its certification that it does not knowingly employ or contract with a "Worker Without Authorization", as that term is defined within §8-17.5-101 (9), C.R.S. (herein "Worker Without Authorization"), who will perform work under this Agreement and that the Consultant will participate in either the "E-Verify Program" created in Public Law 208, 104th Congress, as amended and expanded in Public law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security or the "Department Program" established pursuant to section 8-17.5-102(5)(c), C.R.S. that is administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(b) Consultant shall not:

(i) Knowingly employ or contract with a Worker Without Authorization to perform work under this Agreement;

(ii) Enter into a contract with a subcontractor that fails to certify to Consultant that the subcontractor shall not knowingly employ or contract with a Worker Without Authorization to perform work under this Agreement.

(c) The following state-imposed requirements apply to this Agreement:

(i) The Consultant shall have confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or Department Program.

(ii) The Consultant is prohibited from using either the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

(iii) If the Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with a Worker Without Authorization to perform work under this Agreement, the Consultant shall be required to:

A. Notify the subcontractor and the Purchasing Agent of the City within three (3) days that the Consultant has actual knowledge that the subcontractor is employing or contracting with a Worker Without Authorization; and

B. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (c)(iii)A. above, the subcontractor does not stop employing or contracting with the Worker Without Authorization; except that the Consultant shall not terminate the contract with the subcontractor if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a Worker Without Authorization.

(iv) The Consultant is required to comply with any reasonable request by the Colorado Department of Labor and Employment (hereinafter referred to as "CDLE") made in the course of an investigation that CDLE is undertaking pursuant to its authority under §8-17.5-102(5), C.R.S.

(d) Violation of this Section by the Consultant shall constitute a breach of contract and grounds for termination. In the event of such termination, the Consultant shall be liable for City's actual and consequential damages.

(e) Nothing in this Section shall be construed as requiring the Consultant to violate any terms of participation in the E-Verify Program.

SECTION 12. PERA LIABILITY

Consultant shall reimburse the City for the full amount of any employer contribution required to be paid by the City of Pueblo to the Public Employees' Retirement Association ("PERA") for salary or other compensation paid to a PERA retiree performing contracted services for the City under this Agreement. The Consultant shall fill out the Colorado PERA Questionnaire attached hereto and submit the completed form to City as part of the signed Agreement.

(Signature Section on following page)

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

CITY OF PUEBLO, A MUNICIPAL CORPORATION

ENCOMPASS SERVICES, LLC

By: _____
Naomi Hedden, Director of Purchasing

By: _____
Tyler Hastings, Vice President Civil Services

Attest: _____
City Clerk

[S E A L]

BALANCE OF APPROPRIATION EXISTS FOR THIS AGREEMENT AND FUNDS ARE AVAILABLE.

Director of Finance

APPROVED AS TO FORM:

City Attorney

Attachments: Schedule 1: Scope of Services
 Schedule 2: Fee Schedule
 Schedule 3: Sample Work Order
 Additional Information for Agreement

SCHEDULE 1 – SCOPE OF SERVICES

Excerpt from Request for Proposal dated October 8, 2021, Section 2., Addendum No. 2 dated November 3, 2021, and Communication Regarding Agreement Dated January 27, 2022

2.3 Scope of Service:

2.3.1 The firm or team of consultants will be required to provide utility locations and topographic surveys for the removal and replacement of sanitary sewer mains and any surface improvements required to do so. The consultant should attend and facilitate meetings as necessary with City staff throughout the development of each individual project. Firm must be familiar with public processes and coordinate with City staff in presenting details to City Council if required.

2.3.2 Field Requirements:

a) To include but not limited to locating sanitary sewer manholes with all inverts in and out elevations, ground surface elevations, control points for future staking, setting hubs for construction, providing cut sheets for the contractor, all existing utilities, identification of existing surface improvements such as curb and gutter, sidewalks, alley pans, buildings, fences, control points, etc. within the proposed boundary. In the field, the survey boundary shall cover a width of 30 feet along the sewer line, 15 feet on each side of the pipe axis. In the residential areas, the survey boundary shall be from property/fence lines to property/fence lines. In areas where a manhole is located at the start or end of the survey boundary, the survey shall cover the area extended 30 feet in the direction of sewer pipe axis before or after the manhole.

b) Centerline profiles of all allies or streets.

c) Each project shall start within two weeks of request and finish no later than 90 days from start *or no later than the delivery time provided in the Work Order Fee and agreed upon with each proposal.*

2.3.3 Office Requirements:

Provide an electronic copy on a USB Flash Drive in AutoCAD Civil 3D. The USB Flash Drive must include the linework drawing of existing features with a generated surface, filed book file for surface generation and field notes explaining all codes and linework for ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels, sanitary sewer pipes with pipe type and diameter, control points for future staking, etc.

SCHEDULE 2 – FEE SCHEDULE

Excerpt from Consultant’s Proposal Submittal dated November 12, 2021, Section 1.8, Page 22



1.8 – FEE SCHEDULE

<u>Office Personnel</u>	<u>Hourly Rate</u>
Project Director -----	\$160.00
Project Manager/ PLS -----	\$155.00
Data Technician -----	\$95.00

NOTE: Overtime rate (1.5) applied for hours worked over 40 hours per week (Office Personnel)

Field Personnel

One-Man Survey Crew -----	\$135.00
Two-Man Survey Crew -----	\$165.00

NOTE: Overtime rate (1.5) applied for hours worked over 60 hours per week (Field Personnel)

Terms and Conditions

- Direct costs such as sub-consultant fees for traffic control, utility potholing, and permitting are not included and will be invoiced at cost w/ no markup.
- Project Director, Project Manager and Data Technician rates include administration costs and all software/ hardware necessary to perform the work. Rates are based on (8) hours per day/ (5) days per week/ (40) hours per week work schedule. Hours worked over (40) hours per week as requested by the City of Pueblo will be billed at a multiplier rate of 1.5x and will be considered out of the original scope of required man-hours.
- One-Man and Two-Man Survey Crew rates include administration costs, standard PPE, 3D scanner, robotic total station, GPS/ RTK base & receiver, digital level, utility locator, vehicle, mileage, cell phone, laptop, and all survey accessories and consumables necessary to perform the work. Rates are based on (12) hours per day/ (5) days per week/ (60) hours per week work schedule. Hours worked over (60) hours per week as requested by the client will be billed at a multiplier rate of 1.5x and will be considered out of the original scope of required man-hours.

SCHEDULE 3 – SAMPLE WORK ORDER

Excerpt from Request for Proposal dated October 8, 2021, Appendix D
(including approval of Director of Purchasing per Section 1b)

WORK ORDER

This Work Order is entered pursuant to and subject to the terms and conditions of the Professional Services Agreement dated _____, 20__ between Pueblo, a Municipal Corporation ("Client"), and _____ ("Consultant").

Scope of Work:

Time for Completion:

Work Order Compensation:

Approved by: _____ Dated: _____
Client: City of Pueblo, Wastewater Director

Approved by: _____ Dated: _____
Client: City of Pueblo, Director of Finance

Approved by: _____ Dated: _____
Client: City of Pueblo, Director of Purchasing

Consultant
Accepted by: _____ Dated: _____

Consultant's
Printed Name and Title: _____

Attachments: PDF Drawings/Sheets _____
Compensation Details

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
CITY OF PUEBLO
AND
NORTHSTAR ENGINEERING AND SURVEYING, INC.**

THIS AGREEMENT is made and entered this ____ day of February, 2021, by and between Pueblo, a Municipal Corporation (hereinafter referred to as "City" and/or "Client") and NorthStar Engineering and Surveying, Inc., a Colorado Corporation, (hereinafter referred to as "Consultant") for Consultant to render professional services for Client with respect to Bid 21-074 Surveying Services for Sanitary Sewer Projects and City-Wide Surveying Projects and related ancillary services, hereinafter referred to as the "Project." In consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

SECTION 1. GENERAL AND SCOPE OF SERVICES

(a) Consultant shall satisfactorily perform the professional surveying and related services which may be requested and approved by Client, including the following category of service:

(i) Topographic and improvement surveys as well as construction staking with respect to sanitary sewer projects including but not limited to projects for the removal and replacement of sanitary sewer mains. Survey work to include ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels (the assigned manhole number shown in plan set), sanitary sewer pipes with pipe type and diameter, control points for future staking, setting hubs for construction, providing cut sheets for the contractor, etc. In the field, the survey boundary shall cover a width of 30 feet along the sewer line, 15 feet on each side of the pipe axis. In the residential areas, the survey boundary shall be from property/fence lines to property/fence lines. In areas where a manhole is located at the start or end of the survey boundary, the survey shall cover the area extended 30 feet in the direction of sewer pipe axis before or after the manhole ("Sanitary Sewer Survey Project").

(b) Request for services shall be initiated and documented by a written work order agreement ("Work Order" with sample attached as Schedule 3) signed by the Wastewater Director of Client and approved by the Director of Finance and Director of Purchasing. The Work Order shall set forth the work to be performed, the time for completion and the compensation, including maximum compensation, for performance of such work. Said compensation shall be approved as provided in Section 3 of this Agreement. The work to be performed under any Work Order shall be included in the "Basic Services" and "Project" as such terms are used in this Agreement and shall be subject to all terms and conditions of this Agreement. All such services shall include all usual and customary professional costs for this type of service as indicated in the Scope of Service in Section 2 of the Request for Proposal (RFP). Consultant acknowledges that the selection of Consultant by Client was pursuant to an RFP. All of the requirements of that RFP are incorporated herein by reference. If the work to be performed is a fiber repair project, it shall include and comply with the Scope of Services set forth in Section 1(a) above unless specific exceptions are provided for in the Work Order.

(c) To the extent Consultant performs any of the Project work through subconsultants or subcontractors, if previously requested and approved by the Client in each individual Work Order, Consultant shall be and remain as fully responsible for the full performance and quality of services performed by such subconsultants or subcontractors as it is for services performed directly by Consultant or Consultant's employees.

(d) To the extent Consultant requires access to private property to perform its services hereunder, Consultant shall be required to make arrangements to obtain such access. However, in the event Client has already secured access for Consultant to any such property through a right of entry agreement, access agreement, letter of consent or other instrument, Consultant shall fully comply with and be subject to the terms and conditions set forth therein. A copy of any such instrument will be provided to Consultant upon request.

(e) No minimum amount of work is guaranteed under this Agreement. Client reserves the right to engage and/or contract with other parties to perform services which otherwise might be requested under this Agreement. Consultant specifically acknowledges that any Change Order may be awarded to other parties under similar agreements as this Agreement.

SECTION 2. CONSULTANT'S RESPONSIBILITIES

- (a) Consultant shall be responsible for the professional quality, technical accuracy and timely completion of Consultant's work, including that performed by Consultant's subconsultants and subcontractors, and including drawings, reports and other services, irrespective of Client's approval of or acquiescence in same.
- (b) Consultant shall be responsible, in accordance with applicable law, to Client for all loss or damage to Client caused by Consultant's negligent act or omission; except that Consultant hereby irrevocably waives and excuses Client and Client's attorneys from compliance with any requirement to obtain a certificate of review as a condition precedent to commencement of an action, including any such requirements set forth in Section 13-20-602, C.R.S. or similar statute, whether now existing or hereafter enacted.
- (c) Consultant shall be completely responsible for the safety of Consultant's employees in the execution of work under this Agreement and shall provide all necessary safety and protective equipment for said employees.
- (d) Consultant acknowledges that time is of the essence with respect to the completion of its services under this Agreement. Consultant shall accomplish its work within the period of time set forth in the Work Order. Except to the extent the parties agree to time extensions for delays beyond the control of Consultant, Consultant shall adhere to the schedule set forth in the Work Order and perform its work in a timely manner so as not to delay Client's timetable for achievement of interim tasks and final completion of any related or dependent work.
- (e) Before undertaking any work which Consultant considers beyond or in addition to the scope of the Work Order, Consultant shall advise Client in writing that (i) Consultant considers the work beyond the scope of the Work Order, (ii) the reasons that Consultant believes the out of scope or additional work should be performed, and (iii) a reasonable estimate of the cost of such work. Consultant shall not proceed with any out of scope or additional work until authorized in writing by Client. Client shall negotiate with the Consultant prior to authorizing any additional work; negotiated compensation shall be based upon the fee schedule set forth in Schedule 2 attached hereto and incorporated herein.
- (f) Consultant shall designate a representative who shall have authority to approve and accept Work Orders on behalf of Consultant and prepare bid amounts under Section 3 of this Agreement.

SECTION 3. FEES FOR SERVICES/PAYMENT

- (a) When requested by Client, Consultant shall prepare without charge to Client a bid amount for any proposed Work Order ("Work Order Compensation") which shall be based upon the fee schedule set forth in Schedule 2 and shall itemize compensation amounts and include the maximum compensation amount necessary for completion and performance of all work set forth in the Work Order. Should Client have any dispute, question, required clarification or other issue with respect to the Work Order Compensation, Consultant shall meet and confer in good faith with Client to resolve such issue. No Work Order shall be signed and issued by the Wastewater Director of Client unless and until Client approves the Work Order Compensation.
- (b) Consultant shall submit periodic, but not more frequently than monthly, applications for payment for actual professional services rendered. Applications for payment shall be separately submitted for each Work Order and shall never aggregate to more than the maximum amount set forth in the Work Order. Applications for payment shall be submitted based upon the fee schedule set forth in Schedule 2 and the approved Work Order Compensation and shall contain appropriate documentation that such services have been performed and such expenses incurred. As applicable, subcontractor invoices shall be required in any payment application, and no markups for such invoiced subcontracting services shall be allowed. Thereafter, Client shall pay Consultant for the amount of the application within 45 days of the date such application is received.
- (c) No separate or additional payment shall be made for profit, overhead, local telephone expenses, lodging, routine photocopying, computer time, secretarial or clerical time.
- (d) No compensation shall be paid to Consultant for services required and expenditures incurred in correcting Consultant's mistakes or negligence.

(e) Compensation for authorized work beyond the scope of this Agreement or Work Order shall be governed by the provisions of Section 2(e).

(f) All proposed fees shall remain fixed for the term of the agreement. In the event the City exercises the provision to extend the agreement after the initial term, requests for annual increases in fees may not exceed 1) three percent (3%) or, 2) the prior year's United States Bureau of Labor Statistics Consumer Price Index (CPI), whichever of the two options is lower.

SECTION 4. CLIENT'S RESPONSIBILITIES

(a) Client agrees to advise Consultant regarding Client's Project requirements and to provide all relevant information, surveys, data and previous reports accessible to Client which Consultant may reasonably require.

(b) Client shall designate a Project Representative to whom all communications from Consultant shall be directed and who shall have limited administrative authority on behalf of Client to receive and transmit information and make decisions with respect to the Project. Said representative shall not, however, have authority to bind Client as to matters of governmental policy or fiscal policy, nor to contract for Work Orders or Compensation for authorized work beyond the scope of this Agreement or a Work Order.

(c) Client shall examine all documents presented by Consultant and render decisions pertaining thereto within a reasonable time. The Client's approval of any drawings, specifications, reports, documents or other materials or product furnished hereunder shall not in any way relieve Consultant of responsibility for the professional adequacy of its work.

(d) Client shall perform its obligations and render decisions within a reasonable time under the circumstances presented. Based upon the nature of Client and its requirements, a period of 14 days shall be presumed reasonable for any decision not involving policy decision or significant financial impact, when all information reasonably necessary for Client to responsibly render a decision has been furnished. A period of 45 days shall be presumed reasonable for Client to act with respect to any matter involving policy or significant financial impact. The above periods of presumed reasonableness shall be extended where information reasonably required is not within the custody or control of Client but must be procured from others.

SECTION 5. TERM AND TERMINATION

(a) Term. The term of this Agreement shall be for three (3) consecutive years. The Agreement may be renewed in two (2) successive one-year periods by a written addendum signed by both parties. Adjustments in fees or costs shall follow Section 3(f) of this agreement.

(b) This agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Pueblo, contrary to Article X, §20 of the Colorado Constitution or any other constitutional, statutory or charter debt limitation. Notwithstanding any other provision of this agreement, with respect to any financial obligation of City which may arise under this agreement in any fiscal year after the current year, in the event the budget or other means of appropriations for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default by or breach of this agreement. The termination of this Agreement due to lack of funding shall be without penalty to the City.

(c) Client reserves the right to terminate this Agreement and Consultant's performance hereunder, at any time upon written notice, either for cause or for convenience. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, drawings, specifications, reports, plans, calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing this Agreement, together with all finished work and work in progress. Client further reserves the right to terminate for convenience any Work Order and Consultant's performance thereunder, at any time upon written notice. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, drawings, specifications, reports, plans,

calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing the Work Order, together with all finished work and work in progress. The termination of a Work Order shall not terminate or be deemed to terminate this Agreement or any other Work Order issued by Client.

(d) Upon termination of this Agreement, or as applicable a Work Order, for events or reasons not the fault of Consultant, Consultant shall be paid at the rates specified in Schedule 2 for all services rendered to date of such termination; together with any reasonable costs incurred within 10 days of termination provided such latter costs could not be avoided or were incurred in mitigating loss or expenses to Consultant or Client. In no event shall payment to Consultant upon termination exceed the maximum compensation provided for complete performance in Section 3(a).

(e) In the event termination of this Agreement or Consultant's services is for breach of this Agreement by Consultant, or for other fault of Consultant including but not limited to any failure to timely proceed with work, or to pay its employees and consultants, or to perform work according to the highest professional standards, or to perform work in a manner deemed satisfactory by Client's Project Representative, then in that event, Consultant's entire right to compensation shall be limited to the lesser of (a) the reasonable value of completed work to Client or (b) payment at the rates specified in Schedule 2 for services satisfactorily performed, prior to date of termination.

(f) Consultant's professional responsibility for its completed work and services shall survive any termination.

SECTION 6. SITE ACCESS

In the event the Project will require access to property not under the control of Client, Consultant and Consultant's employees and consultants shall obtain all additional necessary approval and clearances required for access to such property. Client shall assist Consultant in obtaining access to such property at reasonable times but makes no warranty or representation whatsoever regarding access to such property. Notwithstanding the foregoing, Consultant understands and agrees that entry to some property by Consultant may be subject to compliance by Consultant with the terms and conditions of an access agreement in accordance with Section 1(d) of this Agreement.

SECTION 7. DOCUMENTS AND USE OF DOCUMENTS

(a) Consultant shall provide an electronic copy on a USB Flash Drive in AutoCAD Civil 3D. The USB Flash Drive must include the linework drawing of existing features with a generated surface, filed book file for surface generation and field notes explaining all codes and linework for ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels (the assigned manhole number shown in plan set), sanitary sewer pipes with pipe type and diameter, control points for future staking, etc.

(b) Plans, drawings, designs, specifications, reports and all other documents prepared or provided by Consultant hereunder shall become the sole property of Client, subject to applicable federal grant requirements, and Client shall be vested with all rights therein of whatever kind and however created, whether by common law, statute or equity. Client shall have access at all reasonable times to inspect and make copies of all notes, designs, drawings, specifications, and all other technical data or other documents pertaining to the work to be performed under this Agreement. In no event shall Consultant publish work product developed pursuant to this Agreement except (i) with advance written consent of Client, which consent may be granted or withheld in Client's sole and absolute discretion and (ii) in full compliance with the requirements of this Agreement and applicable federal regulations.

SECTION 8. INSURANCE AND INDEMNITY

(a) Consultant agrees that it shall procure and will maintain during the term of this Agreement, such insurance as will protect it from claims under workers' compensation acts, claims for damages because of personal injury including bodily injury, sickness or disease or death of any of its employees or of any person other than its employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom; and such insurance will provide for coverage in such amounts as set forth in subparagraph (b).

(b) The minimum insurance coverage which Consultant shall obtain and keep in force is as follows:

(i) Workers' Compensation Insurance complying with statutory requirements in Colorado and in any other state or states where the work is performed. The Workers' Compensation Insurance policy shall contain an endorsement waiving subrogation against the Client.

(ii) Commercial General Liability Insurance. The Consultant shall secure and maintain during the period of this Agreement and for such additional time as work on the project is being performed, Commercial General Liability Insurance issued to and covering the liability of the Consultant with respect to all work performed by him and all his subcontractors under the Agreement, to be written on a comprehensive policy form. This insurance shall be written in amounts not less than \$1,000,000 for each occurrence and aggregate for personal injury including death and bodily injury and \$1,000,000 for each occurrence and aggregate for property damage. This policy of insurance shall name the City of Pueblo, its agents, officers and employees as additional insureds. This policy shall have all necessary endorsements to provide coverage without exclusion for explosion and collapse hazards, underground property damage hazard, blanket contractual coverage, as well as Owner's and Contractor's Protective Liability (OCP) coverage. The policy shall also provide coverage for contractual liability assumed by Consultant under the provisions of the Agreement, and "Completed Operations and Projects Liability" coverage.

(iii) Professional Liability Insurance with coverage of not less than \$1,000,000, and with a deductible amount acceptable by the Client.

(iv) Comprehensive Automobile Liability Insurance. The Consultant shall procure and maintain during the period of the Agreement and for such additional time as work on the project is being performed, Comprehensive Automobile Liability Insurance. This insurance shall be written with limits of liability for and injury to one person in any single occurrence of not less than \$350,000 and for any injury to two or more persons in any single occurrence of not less than \$1,000,000. This insurance shall include uninsured/underinsured motorist coverage and shall protect the Consultant from any and all claims arising from the use both on and off the site of the project of automobiles, trucks, tractors, backhoes and similar equipment whether owned, leased, hired or used by Consultant.

(c) Consultant agrees to hold harmless, defend and indemnify Client from and against any liability to third parties, arising out of negligent acts or omissions of Consultant, its employees, subcontractors and consultants.

SECTION 9. SUBCONTRACTS

(a) Client acknowledges that Consultant is the prime contractor and the only party with whom Client has a contractual relationship under this Agreement. To the extent Consultant performs any Project activities through subconsultants or subcontractors, Consultant shall contractually bind each of its subconsultants and subcontractors by subcontract agreement to all of the terms of this Agreement which are for the benefit of Client, and Client shall be a third-party beneficiary of those subcontract provisions.

(b) Consultant shall indemnify and defend Client from all claims and demands for payment for services provided by subcontractors of Consultant.

(c) Consultant acknowledges that, due to the nature of the services to be provided under this Agreement, the Client has a substantial interest in the personnel and consultants to whom Consultant assigns principal responsibility for services performed under this Agreement. Consequently, Consultant represents that it has selected and intends to employ or assign the key personnel and consultants identified in its proposal submitted to Client prior to execution of this Agreement to induce Client to enter this Agreement. Consultant shall not change such consultants or key personnel except after giving notice of a proposed change to Client and receiving Client's consent thereto. Consultant shall not assign or reassign Project work to any person to whom Client has reasonable objection.

SECTION 10. MISCELLANEOUS

(a) Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either Consultant or Client by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to the Client at City of Pueblo Waste Reclamation Facility, Attn: Wastewater Director, 1300 South Queens Ave., Pueblo, CO 81001, with a copy to the City of Pueblo Law Department, 1 City Hall Place, Pueblo, CO 81003; or to Consultant at NorthStar Engineering and Surveying, Inc., Attn: Michael Cuppy, 111 E. 5th Street, Pueblo, CO 81003. Either party may change his address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

(b) Entire Agreement. This instrument contains the entire agreement between Consultant and Client respecting the Project, and any other written or oral agreement or representation respecting the Project or the duties of either Client or Consultant in relation thereto not expressly set forth in this instrument and its attachments is null and void. In the case of any conflict between the terms of this Agreement for Professional Services and terms of Schedule 1 or any other attachment hereto, the terms of this Agreement shall govern.

(c) Successors and Assigns. This Agreement shall be binding on the parties hereto and on their successors and assigns; provided, however, neither this Agreement, nor any part thereof, nor any moneys due or to become due hereunder to Consultant may be assigned by it without the written consent of Client, which consent may be withheld in Client's sole and absolute discretion. Any assignment or attempted assignment in violation of this subsection shall be void.

(d) Amendments. No amendment to this Agreement shall be made nor be enforceable unless made by written amendment signed by an authorized representative of Consultant and by Client in accordance with the requirements of Section 4(b) of this Agreement or upon authorization of Client's governing board.

(e) Choice of Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Colorado. Any unresolved dispute arising from or concerning any breach of this Agreement shall be decided in a state court of competent jurisdiction located in Pueblo, Colorado.

(f) Equal Employment Opportunity. In connection with the performance of this Agreement, neither Consultant nor its consultants shall discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability or age. Consultant shall endeavor to insure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, disability or age.

(g) Severability. If any provision of this Agreement, except for Section 2, is determined to be directly contrary to and prohibited by law or the requirements of any federal grant or other Project funding source, then such provision shall be deemed void and the remainder of the Agreement enforced. However, it is the intent of the parties that Section 2 of this Agreement not be severable, and that if any provision of said section be determined to be contrary to law or the terms of any federal grant, then this entire Agreement shall be void.

SECTION 11. STATE-IMPOSED MANDATES PROHIBITING WORKERS WITHOUT AUTHORIZATION FROM PERFORMING WORK

(a) At or prior to the time for execution of this Agreement, Consultant shall submit to the Purchasing Agent of the City its certification that it does not knowingly employ or contract with a "Worker Without Authorization", as that term is defined within §8-17.5-101 (9), C.R.S. (herein "Worker Without Authorization"), who will perform work under this Agreement and that the Consultant will participate in either the "E-Verify Program" created in Public Law 208, 104th Congress, as amended and expanded in Public law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security or the "Department Program" established pursuant to section 8-17.5-102(5)(c), C.R.S. that is administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(b) Consultant shall not:

(i) Knowingly employ or contract with a Worker Without Authorization to perform work under this Agreement;

(ii) Enter into a contract with a subcontractor that fails to certify to Consultant that the subcontractor shall not knowingly employ or contract with a Worker Without Authorization to perform work under this Agreement.

(c) The following state-imposed requirements apply to this Agreement:

(i) The Consultant shall have confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or Department Program.

(ii) The Consultant is prohibited from using either the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

(iii) If the Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with a Worker Without Authorization to perform work under this Agreement, the Consultant shall be required to:

A. Notify the subcontractor and the Purchasing Agent of the City within three (3) days that the Consultant has actual knowledge that the subcontractor is employing or contracting with a Worker Without Authorization; and

B. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (c)(iii)A. above, the subcontractor does not stop employing or contracting with the Worker Without Authorization; except that the Consultant shall not terminate the contract with the subcontractor if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a Worker Without Authorization.

(iv) The Consultant is required to comply with any reasonable request by the Colorado Department of Labor and Employment (hereinafter referred to as "CDLE") made in the course of an investigation that CDLE is undertaking pursuant to its authority under §8-17.5-102(5), C.R.S.

(d) Violation of this Section by the Consultant shall constitute a breach of contract and grounds for termination. In the event of such termination, the Consultant shall be liable for City's actual and consequential damages.

(e) Nothing in this Section shall be construed as requiring the Consultant to violate any terms of participation in the E-Verify Program.

SECTION 12. PERA LIABILITY

Consultant shall reimburse the City for the full amount of any employer contribution required to be paid by the City of Pueblo to the Public Employees' Retirement Association ("PERA") for salary or other compensation paid to a PERA retiree performing contracted services for the City under this Agreement. The Consultant shall fill out the Colorado PERA Questionnaire attached hereto and submit the completed form to City as part of the signed Agreement.

(Signature Section on following page)

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

CITY OF PUEBLO, A MUNICIPAL CORPORATION

NORTHSTAR ENGINEERING AND SURVEYING,
INC.

By: _____
Naomi Hedden, Director of Purchasing

By: _____
Michael Cuppy, Vice President

Attest: _____
City Clerk

[S E A L]

BALANCE OF APPROPRIATION EXISTS FOR THIS AGREEMENT AND FUNDS ARE AVAILABLE.

Director of Finance

APPROVED AS TO FORM:

City Attorney

Attachments: Schedule 1: Scope of Services
 Schedule 2: Fee Schedule
 Schedule 3: Sample Work Order
 Additional Information for Agreement

SCHEDULE 1 – SCOPE OF SERVICES

Excerpt from Request for Proposal dated October 8, 2021, Section 2., Addendum No. 2 dated November 3, 2021, and Communication Regarding Agreement Dated January 27, 2022

2.3 Scope of Service:

2.3.1 The firm or team of consultants will be required to provide utility locations and topographic surveys for the removal and replacement of sanitary sewer mains and any surface improvements required to do so. The consultant should attend and facilitate meetings as necessary with City staff throughout the development of each individual project. Firm must be familiar with public processes and coordinate with City staff in presenting details to City Council if required.

2.3.2 Field Requirements:

a) To include but not limited to locating sanitary sewer manholes with all inverts in and out elevations, ground surface elevations, control points for future staking, setting hubs for construction, providing cut sheets for the contractor, all existing utilities, identification of existing surface improvements such as curb and gutter, sidewalks, alley pans, buildings, fences, control points, etc. within the proposed boundary. In the field, the survey boundary shall cover a width of 30 feet along the sewer line, 15 feet on each side of the pipe axis. In the residential areas, the survey boundary shall be from property/fence lines to property/fence lines. In areas where a manhole is located at the start or end of the survey boundary, the survey shall cover the area extended 30 feet in the direction of sewer pipe axis before or after the manhole.

b) Centerline profiles of all allies or streets.

c) Each project shall start within two weeks of request and finish no later than 90 days from start *or no later than the delivery time provided in the Work Order Fee and agreed upon with each proposal.*

2.3.3 Office Requirements:

Provide an electronic copy on a USB Flash Drive in AutoCAD Civil 3D. The USB Flash Drive must include the linework drawing of existing features with a generated surface, filed book file for surface generation and field notes explaining all codes and linework for ground surface elevations, identification of existing surface improvements (such as curb and gutter, sidewalks, alley pans, building, fences, etc.), utility locates, centerline profile of alleys or streets, sanitary sewer manholes with invert elevations and manhole labels, sanitary sewer pipes with pipe type and diameter, control points for future staking, etc.

SCHEDULE 2 – FEE SCHEDULE

Excerpt from Consultant’s Proposal Submittal dated November 12, 2021, Section 5.0, Page 7

NorthStar Engineering and Surveying, Inc.

5.0 FEE SCHEDULE

SCHEDULE OF STANDARD TIME AND MATERIAL RATES

OFFICE ENGINEERING AND PLANNING:

Principal	\$170.00/hr.
Registered Professional Engineer (Project Manager)	\$140.00/hr.
Licensed Land Surveyor (Project Manager).....	\$130.00/hr.
Project Engineer (EI)/Surveyor (SI).....	\$120.00/hr.
Engineer/Planner	\$100.00/hr.
Designer / GIS.....	\$ 90.00/hr.
AutoCAD Technician.....	\$ 80.00/hr.
Accounting	\$ 60.00/hr.
Clerical	\$ 50.00/hr.
Messenger	\$ 35.00/hr.

FIELD ENGINEERING AND SURVEYING:

3-Man Survey Crew	\$170.00/hr.
Overtime Rate	\$200.00/hr.
2-Man Survey Crew	\$150.00/hr.
Overtime Rate	\$175.00/hr.
1-Man Survey Crew	\$120.00/hr.
Overtime Rate	\$140.00/hr.
Construction Manager.....	\$125.00/hr.
Construction Inspector	\$100.00/hr.
Survey Crew – Out of Town Drive Time.....	\$110.00/hr.
GPS Equipment: Standard Survey Crew Rate Plus.....	\$ 50.00/hr.

REIMBURSABLE RATES:

Blueline Prints	\$ 0.70/sq.ft.
Mylar Prints	\$ 2.85/sq.ft.
Color Bond	\$ 2.20/sq.ft.
Xerox Copies.....	\$ 0.15/ea.
Color Copies (8.5x11)	\$ 2.25/ea.
Large Xerox Copies	\$ 2.20/ea.

SUBCONTRACTED EXPENSES AND SPECIAL EQUIPMENT:

Mileage – Trucks and Autos.....	\$ 0.50/mile
Direct Costs plus 15%	

NOTE: In the event Principals are involved for an extended period on a project, rates charged will be commensurate with work performed.

SCHEDULE 3 – SAMPLE WORK ORDER

Excerpt from Request for Proposal dated October 8, 2021, Appendix D
(including approval of Director of Purchasing per Section 1b)

WORK ORDER

This Work Order is entered pursuant to and subject to the terms and conditions of the Professional Services Agreement dated _____, 20__ between Pueblo, a Municipal Corporation ("Client"), and _____ ("Consultant").

Scope of Work:

Time for Completion:

Work Order Compensation:

Approved by: _____ Dated: _____
Client: City of Pueblo, Wastewater Director

Approved by: _____ Dated: _____
Client: City of Pueblo, Director of Finance

Approved by: _____ Dated: _____
Client: City of Pueblo, Director of Purchasing

Consultant
Accepted by: _____ Dated: _____

Consultant's
Printed Name and Title: _____

Attachments: PDF Drawings/Sheets _____
Compensation Details