



# J-U-B ENGINEERS, Inc. AGREEMENT FOR PROFESSIONAL SERVICES

J-U-B Project No.: 60-23-011  
J-U-B Project Manager: Jestin Hurst

**This Agreement** entered into and effective this 15 day of August 2023, between Board of Control for Triangle Irrigation District and Wood River Irrigation District #45 (BOC), hereinafter referred to as the "CLIENT" and J-U-B ENGINEERS, Inc., an Idaho corporation, hereinafter referred to as "J-U-B".

**WITNESSETH:**

WHEREAS the CLIENT intends to: Big Wood River Diversion Dam Rehabilitation Engineering Services hereinafter referred to as the "Project". The Services to be performed by J-U-B are hereinafter referred to as the "Services."

NOW, THEREFORE, the CLIENT and J-U-B, in consideration of their mutual covenants herein, agree as set forth below:

**CLIENT INFORMATION AND RESPONSIBILITIES**

The CLIENT will provide to J-U-B all criteria and full information as to CLIENT's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards, rules and laws which CLIENT or others will require to be included in the drawings and specifications, and upon which J-U-B can rely for completeness and accuracy.

The CLIENT will furnish to J-U-B all data, documents, and other items in CLIENT's possession, or reasonably obtainable by CLIENT, including, without limitation: 1) borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; 2) appropriate professional interpretations of all of the foregoing; 3) environmental assessment and impact statements; 4) surveys of record, property descriptions, zoning, deeds and other land use restrictions, rules and laws; and 5) other special data or consultations, all of which J-U-B may use and rely upon in performing Services under this Agreement.

The CLIENT will obtain, arrange and pay for all advertisements for bids, permits and licenses, and similar fees and charges required by authorities, and provide all land, easements, rights-of-ways and access necessary for J-U-B's Services and the Project.

In addition, the CLIENT will furnish to J-U-B those items described in **Attachment 1**.

**PROJECT REPRESENTATIVES**

The CLIENT and J-U-B hereby designate their authorized representatives to act on their behalf with respect to the Services and responsibilities under this Agreement. The following designated representatives are authorized to receive notices, transmit information, and make decisions regarding the Project and Services on behalf of their respective parties, except as expressly limited herein. These representatives are not authorized to alter or modify the TERMS AND CONDITIONS of this Agreement.

**For the CLIENT:**

1.	Name	<u>John Wright</u>	Work telephone	<u>775-934-6200</u>
	Address	<u>661 Gannett Rd.</u>	Home/cell phone	<u>775-934-6200</u>
		<u>Gannett, ID 83313</u>	FAX telephone	<u></u>
		<u></u>	E-mail address	<u>jandmw@icloud.com</u>

**For J-U-B:**

1.	Name	<u>Jestin Hurst</u>	Work telephone	<u>208-932-4486</u>
	Address	<u>400 Memorial Drive</u>	Cell phone	<u>208-360-7698</u>
		<u>Idaho Falls, ID 83402</u>	FAX telephone	<u></u>
		<u></u>	E-mail address	<u>jhurst@jub.com</u>

In the event any changes are made to the authorized representatives or other information listed above, the CLIENT and J-U-B agree to furnish each other timely, written notice of such changes.

**SERVICES TO BE PERFORMED BY J-U-B ("Services")**

J-U-B will perform the Services described in **Attachment 1** in a manner consistent with the applicable standard of care. J-U-B's services shall be limited to those expressly set forth therein, and J-U-B shall have no other obligations, duties, or responsibilities for the Project except as provided in this Agreement.

**SCHEDULE OF SERVICES TO BE PERFORMED**

J-U-B will perform said Services in accordance with the schedule described in **Attachment 1** in a manner consistent with the applicable standard of care. This schedule shall be equitably adjusted as the Project progresses, allowing for changes in scope, character or size of the Project requested by the CLIENT or for delays or other causes beyond J-U-B's control.

**BASIS OF FEE**

The CLIENT will pay J-U-B for their Services and reimbursable expenses as described in **Attachment 1**. A ten percent administrative fee will be applied to sub-consultant invoices.

Other work that J-U-B performs in relation to the Project at the written request or acquiescence of the CLIENT, which are not defined as Services, shall be considered "Additional Services" and subject to the express terms and conditions of this Agreement. Unless otherwise agreed, the CLIENT will pay J-U-B for Additional Services on a time and materials basis. Resetting of survey and/or construction stakes shall constitute Additional Services.

File Folder Title: 60-23-011 Big Wood Diversion Dam Rehab-011

Remarks: N/A

**The Notice to Proceed, by the CLIENT, verbal or written, or execution of the Agreement shall constitute acceptance of the terms of this Agreement. THE TERMS AND CONDITIONS ON PAGES 3 AND 4, INCLUDING RISK ALLOCATION, ARE PART OF THIS AGREEMENT. THE CLIENT AGREES TO SAID TERMS AND CONDITIONS FOR ALL SERVICES AND ADDITIONAL SERVICES. Special Provisions that modify these TERMS AND CONDITIONS, if any, are included in Attachment 2. All other modifications to these terms and conditions must be in writing and signed by both parties.**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written. These parties represent and acknowledge that they have authority to execute this Agreement.

CLIENT:  
BOC

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NAME  
661 Gannett Rd.

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STREET  
Gannett, ID 83313

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CITY / STATE / ZIP CODE

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BY (Signature)  
*Sarah Gardner*

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NAME / TITLE  
*Sarah Gardner*

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BY (Signature)

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ADDITIONAL NAME / TITLE

J-U-B ENGINEERS, Inc.:  
2114 Village Park Ave Ste 100,

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STREET  
Twin Falls, ID 83301

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CITY / STATE / ZIP CODE  
*Mark Holtzen*

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BY (Signature)  
Mark Holtzen, P.E., Area Manager

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NAME / TITLE

*Applicable Attachments or Exhibits to this Agreement are indicated as marked.*

Attachment 1 – Scope of Services, Schedule, and Basis of Fee

Attachment 2 – Special Provisions

Standard Exhibit A – Construction Phase Services

REV: 4/23

DISTRIBUTION: Accounting; Project File; CLIENT

# J-U-B ENGINEERS, Inc.

## TERMS AND CONDITIONS

### GENERAL

All J-U-B Services shall be covered by this Agreement. The Services will be performed in accordance with the care and skill ordinarily used by members of the subject profession practicing under like circumstances at the same time and in the same locality. **J-U-B MAKES NO WARRANTY EITHER EXPRESS OR IMPLIED ON BEHALF OF IT OR OTHERS.** Nothing herein shall create a fiduciary duty between the parties.

The CLIENT acknowledges and agrees that requirements governing the Project may be ambiguous and otherwise subject to various and possibly contradictory interpretations and J-U-B is, therefore, only responsible to use its reasonable professional efforts and judgment to interpret such requirements. Accordingly, CLIENT should prepare and plan for clarifications or modifications which may impact both the cost and schedule of the Project.

J-U-B shall not be responsible for acts or omissions of any other party involved in the Project, including but not limited to the following: the failure of CLIENT or a third party to follow J-U-B's recommendations; the means, methods, techniques, sequences or procedures of construction; safety programs and precautions selected by third parties; compliance by CLIENT or third parties with laws, rules, regulations, ordinances, codes, orders or authority; and delays caused by CLIENT or third parties. CLIENT, therefore, releases and shall indemnify, defend and hold J-U-B harmless from the acts, errors, or omissions of CLIENT or third parties involved in the Project.

J-U-B shall not be required to execute any documents, no matter by whom requested, that would result in J-U-B's having to certify, guarantee or warrant the existence of conditions. CLIENT acknowledges that subsurface conditions can vary widely between adjacent samples and test points, and therefore J-U-B makes no warranty or other representation regarding soil investigations and characterization of subsurface conditions for the Project.

Any sales tax or other tax on the Services rendered under this Agreement, additional costs due to changes in regulation, and fees for credit card payment transactions shall be paid by the CLIENT.

CLIENT grants J-U-B and its subsidiaries the unrestricted right to take, use, and publish images, or edited images, of the project site and workers for J-U-B's purposes including, but not limited to, website, intranet, and marketing. This right shall survive the termination of this Agreement.

### REUSE OF DOCUMENTS

Documents that may be relied upon by CLIENT as instruments of service under this Agreement are limited to the printed copies (also known as hard copies) that are signed or sealed by J-U-B (including non-vector PDF facsimiles thereof). All printed materials or other communication or information ("Documents") that may be prepared or furnished by J-U-B pursuant to this Agreement are instruments of service with respect to the Project. J-U-B grants CLIENT a limited license to use the Documents on the Project subject to receipt by J-U-B of full payment for all Services related to preparation of the Documents.

Although CLIENT may make and retain copies of Documents for reference, J-U-B shall retain all common law, statutory and other reserved rights, including the copyright thereto, and the same shall not be reused on this Project or any other Project without J-U-B's prior written consent. Submission or distribution of Documents to meet regulatory or permitting requirements, or for similar purposes, in connection with the Project, including but not limited to distribution to contractors or subcontractors for the performance of their work, is not to be construed as publication adversely affecting the reserved rights of J-U-B.

Any reuse without written consent by J-U-B, or without verification or adoption by J-U-B for the specific purpose intended by the reuse, will be at CLIENT's sole risk and without liability or legal exposure to J-U-B. The CLIENT shall release, defend, indemnify, and hold J-U-B harmless from any claims, damages, actions or causes of action, losses, and expenses, including reasonable attorneys' and expert fees, arising out of or resulting from such reuse.

### CONSTRUCTION PHASE SERVICES

It is understood and agreed that J-U-B does not have control over, and neither the professional activities of J-U-B nor the presence of J-U-B at the Project Site shall give, J-U-B control over contractor(s) work nor shall J-U-B have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by contractor(s), for safety precautions and programs incident to the work of the contractor(s) or for any failure of contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to contractor(s)

furnishing and performing their work or providing any health and safety precautions required by any regulatory agencies. Accordingly, J-U-B does not guarantee or warrant the performance of the construction contracts by contractor(s), nor assume responsibility of contractor(s)' failure to furnish and perform their work in accordance with the Contract Documents.

The CLIENT agrees that the general contractor shall be solely responsible for jobsite safety, and CLIENT agrees that this intent shall be set forth in the CLIENT's contract with the general contractor. The CLIENT also agrees that the CLIENT, J-U-B, and J-U-B's subconsultants shall be indemnified by the general contractor in the event of general contractor's failure to assure jobsite safety and shall be made additional insureds under the general contractor's policies of general liability insurance.

If **Standard Exhibit A – Construction Phase Services** is attached, the additional terms contained therein apply to this Agreement.

### OPINIONS OF COST AND PROJECT FINANCIAL INFORMATION

CLIENT understands that J-U-B has no control over the cost of labor, materials, equipment or services furnished by others, the contractor(s)' methods of determining prices, nor bidding or market conditions. J-U-B's opinions of probable Project costs and construction, if any, are to be made on the basis of J-U-B's experience, and represent J-U-B's best judgment as a professional engineer, familiar with the construction industry.

CLIENT understands and acknowledges that J-U-B cannot and does not guarantee that proposals, bids or actual Project or construction costs will not vary from opinions of probable cost prepared by J-U-B. J-U-B's Services to modify the Project to bring the construction costs within any limitation established by the CLIENT will be considered Additional Services and paid for as such by the CLIENT in accordance with the terms herein.

CLIENT agrees that J-U-B is not acting as a financial advisor to the CLIENT and does not owe CLIENT or any third party a fiduciary duty pursuant to Section 15B of the Exchange Act with respect to J-U-B's professional Services. J-U-B will not give advice or make specific recommendations regarding municipal securities or investments and is therefore exempt from registration with the SEC under the municipal advisors rule. CLIENT agrees to retain a registered financial municipal advisor as appropriate for Project financing and implementation.

### TIMES OF PAYMENTS

J-U-B shall submit monthly statements for Services rendered and for expenses incurred, which statements are due on presentation. CLIENT shall make prompt monthly payments. If CLIENT fails to make any payment in full within thirty (30) days after receipt of J-U-B's statement, the amounts due J-U-B will accrue interest at the rate of 1% per month from said thirtieth day or at the maximum interest rate allowed by law, whichever is less.

If the CLIENT fails to make payments when due or otherwise is in breach of this Agreement, J-U-B may suspend performance of Services upon five (5) days' notice to the CLIENT. J-U-B shall have no liability whatsoever to the CLIENT for any costs or damages as a result of such suspension caused by any breach of the Agreement by the CLIENT. Upon cure of breach or payment in full by the CLIENT within thirty (30) days of the date breach occurred or payment is due, J-U-B shall resume Services under the Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension, plus any other reasonable time and expense necessary for J-U-B to resume performance. If the CLIENT fails to make payment as provided herein and cure any other breach of this Agreement within thirty (30) days after suspension of Services, such failure shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by J-U-B.

CLIENT shall promptly review J-U-B's invoices and shall notify J-U-B in writing of any dispute with said invoice, or portion thereof, within thirty (30) days of receipt. Failure to provide notice to J-U-B of any dispute as required herein shall constitute a waiver of any such dispute. CLIENT shall pay all undisputed portions of such invoice as required by this Agreement. Client shall not withhold any payment or portion thereof as an offset to any current or prospective claim.

### TERMINATION

The obligation to provide further Services under the Agreement may be terminated by either party upon thirty (30) days' written notice. If this Agreement is terminated by either party, J-U-B will be paid for Services and Additional Services rendered and for expenses incurred. In addition to any other remedies at law or equity, if the Agreement is terminated by

the CLIENT for reasons other than J-U-B's material breach of this Agreement, or is terminated by J-U-B for CLIENT's material breach of this Agreement, J-U-B shall be paid a termination fee which shall include: the cost and expense J-U-B incurs in withdrawing its labor and resources from the Project, the costs and expense incurred by J-U-B to obtain and engage in a new Project with the labor and resources withdrawn from the Project, and the lost profit on the remainder of the work.

#### **RISK ALLOCATION**

In recognition and equitable allocation of relative risks and benefits of the Project, CLIENT limits the total aggregate liability of J-U-B and its employees and consultants, whether in tort or in contract, for any cause of action, as follows: 1) for insured liabilities, to the amount of insurance then available to fund any settlement, award, or verdict, or 2) if no such insurance coverage is held or available with respect to the cause of action, twenty five thousand dollars (\$25,000.00) or one hundred percent (100%) of the fee paid to J-U-B under this Agreement, whichever is less. J-U-B carries professional liability insurance and will provide a certificate of insurance at the request of the CLIENT. For purposes of this section, attorney fees, expert fees and other costs incurred by J-U-B, its employees, consultants, insurance carriers in the defense of such claim shall be included in calculating the total aggregate liability.

The CLIENT agrees that J-U-B is not responsible for damages arising directly or indirectly from any delays for causes beyond J-U-B's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; emergencies or acts of God; failure of any government agency or other third party to act in a timely manner; failure of performance by the CLIENT or the CLIENT's contractors or consultants; or discovery of any hazardous substance or differing site conditions. In addition, if the delays resulting from any such causes increase the cost or time required by J-U-B to perform its Services in an orderly and efficient manner, J-U-B shall be entitled to an equitable adjustment in schedule and compensation.

Notwithstanding any other provision contained within this Agreement, nothing shall be construed so as to void, vitiate, or adversely affect any insurance coverage held by either party to this Agreement. The CLIENT further agrees that, to the fullest extent permitted by law, no shareholder, officer, director, or employee of J-U-B shall have personal liability under this Agreement, or for any matter in connection with the professional services provided in connection with the Project.

Neither CLIENT nor J-U-B shall be responsible for incidental, indirect, or consequential damages.

#### **HAZARDOUS WASTE, ASBESTOS, AND TOXIC MATERIALS**

The CLIENT agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless J-U-B, its officers, employees, successors, partners, heirs and assigns (collectively, J-U-B) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the Project location, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action, except for the sole negligence or willful misconduct of J-U-B.

#### **RIGHT OF ENTRY**

The CLIENT shall provide J-U-B adequate and timely access to all property reasonably necessary to the performance of J-U-B and its subconsultant's services. The CLIENT understands that use of testing or other equipment may unavoidably cause some damage, the correction of which, or compensation for, is expressly disclaimed by J-U-B. Any such costs incurred are CLIENT's sole responsibility.

#### **MEDIATION BEFORE LITIGATION**

Any and all disputes arising out of or related to the Agreement, except for the payment of J-U-B's fees, shall be submitted to nonbinding mediation before a mutually-acceptable mediator as a condition precedent to litigation or other binding adjudicative procedure unless the parties mutually agree otherwise. The CLIENT further agrees to include a similar mediation provision in all agreements with independent contractors, consultants, subcontractors, subconsultants, suppliers and fabricators on the Project, thereby providing for mediation as the primary method for dispute resolution among all the parties involved in the Project. In the event the parties are unable to agree on a mediator, said mediator shall be appointed by a court of competent jurisdiction or, if not possible, the American Arbitration Association. If a dispute relates to, or is the subject

of a lien arising out of J-U-B's Services, J-U-B or its subconsultants may proceed in accordance with applicable law to comply with the lien notice and filing deadlines prior to submission of the matter by mediation.

#### **LIMITATION PERIODS**

For statutes of limitation or repose purposes, any and all CLIENT claims shall be deemed to have accrued no later than the date of substantial completion of J-U-B's Services.

#### **LEGAL FEES**

For any action arising out of or relating to this Agreement, the Services, or the Project, each party shall bear its own attorneys fees and costs.

#### **SURVIVAL**

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

#### **EXTENT OF AGREEMENT**

In entering into this Agreement, neither party has relied upon any statement, estimate, forecast, projection, representation, warranty, action, or agreement of the other party except for those expressly contained in this Agreement. CLIENT shall include a similar provision in its contracts with any contractor, subcontractor, or consultant stating that any such contractor, subcontractor, or consultant is not relying upon any statement, estimate, forecast, projection, representation, warranty, action, or agreement of J-U-B when entering into its agreement with CLIENT.

This Agreement represents the entire and integrated agreement between the CLIENT and J-U-B and supersedes all prior negotiations, representations or agreements, either written or oral. The Agreement may be amended only by written instrument signed by both CLIENT and J-U-B.

In the event any provision herein or portion thereof is invalid or unenforceable, the remaining provisions shall remain valid and enforceable. Waiver or a breach of any provision is not a waiver of a subsequent breach of the same of any other provision.

#### **SUCCESSORS AND ASSIGNS**

Neither party shall assign, sublet, or transfer any rights or interest (including, without limitation, moneys that are due or may become due) or claims under this Agreement without the prior, express, written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated in any written consent to an assignment, no assignment will release the assignor from any obligations under this Agreement.

No third party beneficiary rights are intended or created under this Agreement, nor does this Agreement create any cause of action in favor of any third party hereto. J-U-B's Services under this Agreement are being performed solely for the CLIENT's benefit, and no other party or entity shall have any claim against J-U-B because of this Agreement or the performance or nonperformance of Services hereunder. In the event of such third party claim, CLIENT agrees to indemnify and hold J-U-B harmless from the same. The CLIENT agrees to require a similar provision in all contracts with contractors, subcontractors, consultants, vendors and other entities involved in the Project to carry out the intent of this provision to make express to third parties that they are not third party beneficiaries.

#### **CONTROLLING LAW, JURISDICTION, AND VENUE**

This Agreement shall be interpreted and enforced in and according to the laws of the state in which the Project is primarily located. Venue of any dispute resolution process arising out of or related to this Agreement shall be in the state in which the Project is primarily located and subject to the exclusive jurisdiction of said state.

#### **CYBER INSURANCE**

CLIENT shall maintain and submit proof of Cyber-Liability insurance coverage with limits no less than \$2M to cover claims, damages, or costs resulting from or related to a cybersecurity incident involving CLIENT's systems that affects J-U-B including, but not limited to, costs incurred by J-U-B resulting from said incident. Whether or not covered by CLIENT's insurance, CLIENT shall indemnify, defend, and hold J-U-B harmless from any claims, damages, or costs related to any cybersecurity incident.