

Agreement for Professional Services
(Village at Coal Creek Planning Services)

This Agreement for Professional Services (the "Agreement") is made and entered into this ____ day of _____, 2024 (the "Effective Date"), by and between the Town of Erie, a Colorado home rule municipality with an address of 645 Holbrook Street, P.O. Box 750, Erie, CO 80516 (the "Town"), and Dig Studio, Inc., an independent contractor with a principal place of business at 1521 15th Street Denver, CO 80202 ("Contractor") (each a "Party" and collectively the "Parties").

Whereas, the Town requires professional services; and

Whereas, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required professional services.

Now Therefore, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. Scope of Services

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference, and known as:

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

II. Term and Termination

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor completes the Scope of Services to the satisfaction of the Town, or until terminated as provided herein.

B. Either Party may terminate this Agreement upon 30 days advance written notice. The Town shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

III. Compensation

In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor \$198,946. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the Town for such fees, costs and expenses. Contractor may submit periodic invoices, which shall be paid by the Town within 30 days of receipt.

IV. Professional Responsibility

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

B. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

C. Because the Town has hired Contractor for its professional expertise, Contractor agrees not to employ subcontractors to perform any work under this Agreement, except as expressly set forth in the Scope of Services.

D. Contractor shall at all times comply with all applicable law, including all federal, state and local statutes, regulations, ordinances, decrees and rules relating to the emission, discharge, release or threatened release of a hazardous material into the air, surface water, groundwater or land, the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a hazardous material, and the protection of human health and safety, including without limitation the following, as amended: the Comprehensive Environmental Response, Compensation and Liability Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act; the Toxic Substances Control Act; the Clean Water Act; the Clean Air Act; the Occupational Safety and Health Act; the Solid Waste Disposal Act; the Davis Bacon Act; the Copeland Act; the Contract Work Hours and Safety Standards Act; the Byrd Anti-Lobbying Amendment; the Housing and Community Development Act; and the Energy Policy and Conservation Act.

V. Ownership

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor shall be

exclusively owned by the Town. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change the Work Product without providing notice to or receiving consent from Contractor; provided that Contractor shall have no liability for any work that has been modified by the Town.

VI. Independent Contractor

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

VII. Insurance

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.
3. Professional liability insurance with minimum limits of \$1,000,000 each claim and \$2,000,000 general aggregate.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and

extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

VIII. Indemnification

A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including reasonable attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor; provided that Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

IX. Miscellaneous

A. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

B. *No Waiver.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. *Integration.* This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

E. *Notice.* Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

F. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. *Modification.* This Agreement may only be modified upon written agreement of the Parties.

H. *Assignment.* Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. *Governmental Immunity.* The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

J. *Rights and Remedies.* The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. *Subject to Annual Appropriation.* Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

L. *Force Majeure.* No Party shall be in breach of this Agreement if such Party's failure to perform any of the duties under this Agreement is due to Force Majeure, which shall be defined as the inability to undertake or perform any of the duties under this Agreement due to acts of God, floods, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government or pandemics.

In Witness Whereof, the Parties have executed this Agreement as of the Effective Date.

Town of Erie, Colorado

Justin Brooks, Mayor

Attest:

Debbie Stamp, Town Clerk

Contractor

By: _____

State of Colorado)
) ss.
County of _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ____ day of _____, 2024, by _____ as _____ of Dig Studio, Inc.

My commission expires:

(Seal)

Notary Public

Exhibit A Scope of Services

Contractor shall provide Concept and Planned Development (PD) services as follows:

Task 1: Project Management

Contractor shall schedule and coordinate bi-weekly project team meetings with Contractor's team and key Town staff. During each bi-weekly meeting, Contractor shall document an agenda and meeting notes for clarity, key decisions, open items and action items. These shall be primarily virtual, unless special circumstances require in-person meetings. Contractor shall also set up and manage a file-sharing platform to serve as the "project library" for both background information and project deliverables. Contractor shall also provide content for posting on the Town's website project page.

Meetings:

- Biweekly Project Management Team meeting (virtual, unless otherwise noted for special cases)

Deliverables:

- Meeting agendas and minutes

Task 2: Concept Plan (Sub Tasks A-F)

2A: Background Information Review

Contractor shall review and document all relevant background information that could impact the project site, including without limitation the Elevate Erie Comprehensive Plan, the Unified Development Code, Town Engineering Standards and Specifications, the Housing Needs Assessment, nearby utility reports, drainage and flood plain documents, pond evaluation memo, Phase 1 & 2 Environmental Site Assessment, Threatened and Endangered Species and Wetland Report, and economic market development and housing profiles study.

Meetings:

- None

Deliverables:

- Background Information Summary to be included with Site Analysis Summary Memo (Task 2B)

2B: Site Analysis

Contractor shall organize a site tour with the Town, document the key issues discussed during the site walk in a memorandum, and create diagrammatic analysis drawings that document key physical features including vegetation, high-level soil information, drainage, utility easements, topography, adjacent edge conditions, and a high-level Cheesman Street bridge analysis (not including structural engineering assessment). These diagrams shall build upon and refine the work previously completed through the CU Denver capstone project in 2023-2024. Contractor shall evaluate potential open space against the following TNACC criteria for use of funds:

- Protect natural areas along Coal Creek and Boulder Creek;
- Conserve scenic landscapes and views;
- Create and enhance hiking, biking, and walking trails;
- Protect wildlife habitat;
- Acquire natural areas to separate Erie from other communities; and
- Construct, improve and maintain trails, parks, parkland infrastructure and open space;

Meetings:

- Site tour with Project Management Team and others as needed

Deliverables:

- Site Analysis & Background Information Report

2C: Initial Stakeholder Interviews

Contractor shall work with the Town to organize the appropriate project stakeholder group, including representatives of the following: the Open Space Trails Advisory Board; Erie Housing Partnership; adjacent neighbors (Erie Meadows, Northridge and Colliers Hill HOA representative); St. Vrain Valley School District; Mountain View Fire Protection District; Xcel Energy; Black Hills Energy; and others the Town deems are appropriate to make the Stakeholder group efficient, representative and effective. Contractor shall organize a series of stakeholder interviews.

Meetings:

- Stakeholder Interviews (up to 8)

Deliverables:

- Summary Meeting Notes

2D: Concept Plan

Contractor shall develop 3-4 alternative concept plans to explore land use areas, open space areas and trail connections. Contractor shall host a "pin-up" review session with the Town and Stakeholder Group to understand the pros and cons of each alternative. Contractor shall also develop and illustrate housing typologies to communicate massing, overall project density and yield in relationship to open space viewsheds and natural area protection. Contractor shall hold a final "pin-up" review with the Town and Stakeholder Group to refine and confirm direction for a preferred Concept Plan.

Meetings:

- (2) Pin-ups with Stakeholder Groups and Town Staff
- Town Council Study Session to present 3-4 alternative concept plans for selection of preferred concept plan for refinement
- Concept Plan Public Charrette (add alternative)

Deliverables:

- 3-4 Alternative Concept Plans

2E: Concept Plan Refinement

Contractor shall prepare a draft Preferred Concept Plan, which shall identify land use areas, open space areas, and trail connections. The draft Preferred Concept Plan shall be presented to the broader Erie community, the Stakeholder Group, Planning Commission, and Town Council.

Meetings:

- Preferred Concept Plan Presentations to:
 - o Stakeholder Group
 - o Community Open House
 - o Planning Commission
 - o Town Council

Deliverables:

- Preferred Concept Plan Presentation materials

2F: Final Concept Plan

Based on feedback from these groups, Contractor shall prepare a Final Concept Plan for the Planning Commission and Town Council. In addition to all of the plan content outlined above, the Final Concept Plan shall include the summaries of the site analysis, stakeholder engagement, concept plan charrette and alternative concept plans.

Meetings:

- Final Concept Plan Presentation to Town Council

Deliverables:

- Final Concept Plan

Task 3: Rezoning (Sub Tasks A-C)

3A: Draft Rezoning Application

Contractor shall develop the Zoning Map and application materials as required by the Town's User Guide and based on the approved final concept plan. Draft documents include:

- Written Narrative
- ALTA Title Survey and Boundary Survey Plat
- Zoning Map
- Concept Plan
- • Project Phasing Plan
- Internal Open Space Plan illustrating all parks, natural open space, drainage-ways, trails and trail connections
- Utility Concept Plan (if needed based on separate Building Feasibility Study)

Meetings:

- None other than designated bi-weekly meetings

Deliverables:

- Draft Rezoning Application

3B: Draft Development Reports and Studies

Draft documents include:

- Assessment of Impact Report

- Phase 1 Drainage Report
- Preliminary Utility Report (if needed based on separate Building Feasibility Study)
- Traffic Impact Analysis Report based on the approved layout and density of the final concept plan
- Native Tree and Vegetation Protection Plan developed in conjunction with the Park and Open Space Division
- High-Level Soils and Geological Report

Meetings:

- 2 Meetings with Town staff after each submittal
- Neighborhood Meeting after 1st submittal as required for Rezoning, with Contractor participation as needed

Deliverables:

- Draft Reports and Studies
- 1st submittal for Rezoning, not to exceed three rounds of submittal

3C: Final ZoningMap, Reports and Studies

Contractor shall incorporate feedback on Tasks 3A and 3B deliverables into the Final ZoningMap and Reports for submittal to the Planning Commission and Town Council for approval. Contractor's full team shall attend one meeting each for presentations to the Planning Commission and Town Council and additional continuation hearings, if needed.

Meetings:

- 1st Presentation to Planning Commission
- 1st Presentation to Town Council
- 2nd Presentation to Planning Commission, if needed
- 2nd Presentation to Town Council, if needed

Deliverables:

- Final Zoning Map as required for adoption and Reports/Studies