

Agreement for Professional Services

This Agreement for Professional Services (the "Agreement") is made and entered into this _____ day of _____, 2022 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation with an address of 645 Holbrook Street, P.O. Box 750, Erie, CO 80516 (the "Town"), and W-T Group LLC, an independent contractor with a principal place of business at 2675 Pratum Avenue, Hoffman Estates, IL 60192 ("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 \$255,535.35. 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. This project will be phased over a 3-year period and costs will be phased accordingly based on tasks completed.

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 without limitation all current and future federal, state and local statutes, regulations, ordinances 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, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act, 42 U.S.C. § 7401, *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. § 651, *et seq.*; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

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

DocuSigned by:

By:

John McGovern

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State of Colorado)
) ss.
County of _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ____ day of _____, 2022, by _____ as _____ of _____.

My commission expires:

(Seal)

Notary Public

Exhibit A Scope of Services

Contractor's Duties

During the term of this Agreement, Contractor shall perform the following duties, as directed by the Town:

1. Conduct an evaluation of Town policies and practices for accessibility
 - a. Inventory and review existing ADA policies and procedures to determine if programmatic accessibility barriers exist.
 - b. Review programs, activities, and services to identify accessibility barriers.
 - c. Audit Town website.
 - d. Provide informed guidance and templates for ensuring up-to-date ADA-related policies and procedures.
 - e. Produce an Executive Summary Report that assesses the risk and potential liability of any website, policies, procedures, programs, activities, and services that are not ADA compliant.
2. Develop a Public Outreach Plan for various stakeholders
 - a. Coordinate on-site and/or virtual forums and workshops at the Town's request.
 - b. Solicit public input by inviting community representatives to participate in the evaluation process and document a summary of public input.
 - c. Ensure equitable participation of stakeholders and individuals who are part of the ADA community
3. Conduct an evaluation of all relevant public facilities
 - a. Provide a survey methodology and schedule for project deliverables.
 - b. Conduct a comprehensive review of the Town's facilities (see Attachment A for scope of project facilities) and Public Right of Way to identify ADA compliance issues.
 - c. Provide detailed analysis of data.
 - d. Provide data results and analysis in a consolidated database.
 - e. Produce a Summary Report describing the overview of the process and standards used for data collection, analysis, and the procedure for assigning priorities and milestones.
4. Develop a Transition Plan
 - a. Provide recommendations to remedy all non-compliant elements of program accessibility (viewed in its entirety), extent of feasibility, and fundamental alteration.
 - b. Provide cost references for planning purposes for retrofits.
 - c. Identify project priorities based on public input, impact, and clear metrics.
 - d. Provide a comprehensive Transition Plan that includes all non-compliant elements, priorities for retrofits, and cost references for planning purposes.
5. Provide management, monitoring, and tracking tools
 - a. Provide a fully searchable, sortable, and filterable electronic version of the Executive Summary Report, Transition Plan, and comprehensive database of all

evaluated elements that is compatible with commercially available programs such as Microsoft Office.

Contractor's Deliverables

Please see following pages.



**TOWN OF ERIE, COLORADO
AMERICANS WITH DISABILITIES ACT SELF-EVALUATION & TRANSITION PLAN
REQUEST FOR PROPOSALS PROJECT NUMBER HR22-510**

**THE W-T GROUP, LLC ACCESSIBILITY PRACTICE
SCOPE, DELIVERABLES, COSTS, AND THREE-YEAR PROJECT SPREAD**

SUBMITTED JULY 26, 2022

INTRODUCTION

This Scope and Cost document assumes that the Town of Erie, Colorado awards the Americans with Disabilities Act (ADA) to The W-T Group, LLC (WTG) Accessibility Practice, by August 25, 2022. In this document, WTG spreads tasks, costs, and other activities over a three-year period.

Some task activity may occur in a year other than designated below. WTG will make every effort to adhere to the schedules below.

TASKS, COSTS, AND DELIVERABLES BY YEAR

The tables below spread costs from 2022 to 2025. Each year includes projected tasks for that year, and deliverables.

YEAR ONE (Approximately 8/25/22 to 8/24/23)			
Task 1	Project Management	\$	3,390.00
Task 2	Policy, Program, and Process Review	\$	5,292.00
Task 3	Audit Town Website	\$	9,000.00
Task 4	Program and Policy Report	\$	9,306.00
Task 5	Propose and Implement CE Process	\$	5,486.00
Task 6	Park and Facility Audits and Reports	\$	34,597.00
Task 7	PROW Audits and Reports	\$	0.00
Task 8	Transition Plan with Cost References	\$	9,594.00
Task 9	Task Tracker	\$	4,158.00
Task 10	Final Report	\$	6,183.00
TOTAL	All Year One Tasks	\$	87,006.00

Year One Deliverables

- T1: WTG manages monthly agendas, meeting coordination, and distributes meeting minutes.
- T2: WTG coordinates Town staff interviews regarding disability nexus, conducts interviews, and compares interview content to the title II regulation.

Town of Erie ADA Transition Plan Initiative RFP HR22-510
WT Group Proposed Scope, Annual Spread, Costs, and Deliverables
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- T3: WTG subcontractor begins website audit.
- T4: WTG prepares report with recommendations after T2 completion.
- T5: WTG prepares with Town of Erie staff Year One CE events.
- T6: WTG schedules, conducts, and prepares site reports of Town parks and facilities.
- T7: No Year One activity.
- T8: WTG develops Transition Plan format, using parks and facilities as examples.
- T9: WTG develops Task Tracker for use by Town staff regarding Transition Plan.
- T10: WTG develops and shares with Town staff Transition Plan Final Report format.

YEAR TWO (Approximately 8/25/23 to 8/24/24)			
Task 1	Project Management		\$ 3,390.00
Task 2	Policy, Program, and Process Review		\$ 0.00
Task 3	Audit Town Website		\$ 11,659.00
Task 4	Program and Policy Report		\$ 0.00
Task 5	Implement CE Process		\$ 5,486.00
Task 6	Park and Facility Audits and Reports		\$ 0.00
Task 7	PROW Audits and Reports		\$ 47,784.00
Task 8	Transition Plan with Cost References		\$ 4,284.00
Task 9	Task Tracker		\$ 2,304.00
Task 10	Final Report		\$ 7,272.00
TOTAL	All Year One Tasks		\$ 82,179.00

Year Two Deliverables

- T1: WTG manages monthly agendas, meeting coordination, and distributes meeting minutes.
- T2: No activity this task.
- T3: WTG subcontractor completes website audit.
- T4: No activity this task.
- T5: WTG prepares with Town of Erie staff Year Two CE events.
- T6: No activity this task.
- T7: WTG begins PROW audits and reports.
- T8: WTG continues Transition Plan work, incorporating PROW assets.
- T9: WTG refines Task Tracker for use by Town staff regarding Transition Plan.
- T10: WTG refines and shares with Town staff Transition Plan Final Report format.

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YEAR THREE (Approximately 8/25/24 to 8/24/25)			
Task 1	Project Management		\$ 3,390.00
Task 2	Policy, Program, and Process Review		\$ 0.00
Task 3	Audit Town Website		\$ 0.00
Task 4	Program and Policy Report		\$ 0.00
Task 5	Propose and Implement CE Process		\$ 5,486.00
Task 6	Park and Facility Audits and Reports		\$ 0.00
Task 7	PROW Audits and Reports		\$ 60,419.35
Task 8	Transition Plan with Cost References		\$ 6,714.00
Task 9	Task Tracker		\$ 4,158.00
Task 10	Final Report		\$ 6,183.00
TOTAL	All Year One Tasks		\$ 86,350.35

Year Three Deliverables

- T1: WTG manages monthly agendas, meeting coordination, and distributes meeting minutes.
- T2: No activity this task.
- T3: No activity this task.
- T4: No activity this task.
- T5: WTG prepares with Town of Erie staff Year Three CE events.
- T6: No activity this task.
- T7: WTG completes PROW audits and reports.
- T8: WTG completes Transition Plan, including PROW, parks, and facilities.
- T9: WTG completes Task Tracker for use by Town staff regarding Transition Plan.
- T10: WTG completes and delivers to Town staff the Transition Plan Final Report.

The total project cost, over three years, is \$255,535.35.

JNM/TOWN OF ERIE SCOPE AND COST ADA PROJECT 202201

TOWN OF ERIE

TASK AND COSTS PROJECT SPREAD

PREPARED JULY 22, 2022

REVISED JULY 26, 2022

LEGEND: PY1 is Project Year 1
 PY2 is Project Year 2
 PY3 is Project Year 3
 FY is Town of Erie Fiscal Year (calendar year)

TASK		PROJECT YEAR 1		PROJECT YEAR 2		PROJECT YEAR 3		TOTAL
		FY 22	FY 23	FY 23	FY 24	FY 24	FY 25	
1	Project Management	\$ 1,412.50	\$ 1,977.50	\$ 1,695.00	\$ 1,695.00	\$ 1,695.00	\$ 1,695.00	\$ 10,170.00
2	Policy, Program, and Process Review	\$ -	\$ 5,292.00	\$ -	\$ -	\$ -		\$ 5,292.00
3	Audit Town Website	\$ 4,500.00	\$ 4,500.00	\$ 11,659.00	\$ -	\$ -		\$ 20,659.00
4	Program and Policy Report	\$ -	\$ 9,306.00	\$ -	\$ -	\$ -		\$ 9,306.00
5	Propose and Implement CE Process	\$ 2,286.00	\$ 3,200.00	\$ 2,743.00	\$ 2,743.00	\$ 2,743.00	\$ 2,743.00	\$ 16,458.00
6	Park and Facility Audits and Reports	\$ 30,000.00	\$ 4,597.00	\$ -	\$ -	\$ -		\$ 34,597.00
7	PROW Audits & Reports	\$ -	\$ -	\$ 23,892.00	\$ 23,892.00	\$ 35,314.51	\$ 25,104.84	\$ 108,203.35
8	TP with Cost References	\$ 4,500.00	\$ 5,094.00	\$ -	\$ 4,284.00	\$ 1,500.00	\$ 5,214.00	\$ 20,592.00
9	Task Tracker	\$ -	\$ 4,158.00	\$ -	\$ 2,304.00	\$ -	\$ 4,158.00	\$ 10,620.00
10	TP Final Report	\$ 2,000.00	\$ 4,183.00	\$ -	\$ 7,272.00	\$ -	\$ 6,183.00	\$ 19,638.00
SUBTOTALS		\$ 44,698.50	\$ 42,307.50	\$ 39,989.00	\$ 42,190.00	\$ 41,252.51	\$ 45,097.84	\$ 255,535.35
		PY1 TOTAL: \$ 87,006.00	PY2 TOTAL: \$ 82,179.00	PY3 TOTAL: \$ 86,350.35				
		FY 22	FY 23	FY 24	FY 25			
FISCAL YEAR TOTALS		\$ 44,698.50	\$ 82,296.50	\$ 83,442.51	\$ 45,097.84	TOTAL		\$ 255,535.35

JNM/TOWN OF ERIE TASK AND COST SPREAD 202203