

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this 23rd day of October, 2018 (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, Colorado 80516, (the "Town"), and RockSol Consulting Group, Inc., an independent contractor with a principal place of business at 12076 Grant St., Thornton, Colorado 80241 ("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.

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 \$484,834. 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 shall not be paid until the Scope of Services is completed to the satisfaction of the Town.

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 the Scope of Services.

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 such work without providing notice to or receiving consent from Contractor.

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 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 act, 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. 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. ILLEGAL ALIENS

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. If Contractor has employees, Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Contractor shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that Contractor shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under this Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. Affidavits. If Contractor does not have employees, Contractor shall sign the “No Employee Affidavit” attached hereto. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the “Department Program Affidavit” attached hereto.

X. 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 Weld 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 United States 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.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Jennifer Carroll, Mayor

Jessica Koenig, Deputy Town Clerk

By:

The foregoing instrument was subscribed, sworn to and acknowledged before me this 16th day of October, 2018, by Scott McDaniel as Sr. Transportation Mgr. of RockSol Consulting Group.

(S E A L)

Rebecca Lencu
Notary Public



EXHIBIT A
SCOPE OF SERVICES

Scope of Work
Construction Management, Inspection, and Materials Testing
October 9, 2018
Town of Erie
Erie Parkway Bridge over Coal Creek
Project Number: P17-440

This scope of work consists of construction management, inspection, and materials testing services required to support the Town of Erie in completing the construction of the Erie Parkway Bridge over Coal Creek project. Rocksol will follow all requirements of the Colorado Department of Transportation Standard Specification for Road and Bridge Construction dated 2017 and the most recent CDOT Construction Manual, Field Materials Manual, and Local Agency Manual.

Services provided will include administrative services, construction management, inspection and pay item documentation, post design services, materials testing and documentation, and project final paperwork documentation.

To complete these services Rocksol will provide an on-site Project Engineer, an Assistant Project Engineer and one Inspector/Materials tester. If adjustments are needed to increase or decrease staff during the construction for the project, Rocksol will adjust accordingly with coordination of the Town of Erie.

General descriptions of the proposed professional services are included as per the manuals listed above with the more specific items listed below:

Administrative Services:

Rocksol will provide administrative services for this project as listed below:

- **Preconstruction Meeting** – Rocksol will schedule the meeting, prepare the agenda, conduct the pre-construction meeting and prepare minutes. In addition, the project engineer will include a list of items to be submitted by the contractor in advance of the meeting and will review the documents.
- **Other Project Meetings** – Rocksol will schedule, prepare agendas, conduct and prepare minutes for other necessary project meetings such as the project weekly meetings, the pre-survey meeting, the pre-paving conferences, the initial environmental conference, and the structural concrete pre-pour conference.
- **Construction Schedule** – Rocksol will review and provide comments on the contractor's initial project schedule and on subsequent monthly schedule updates.
- **Weekly Time Counts** – Weekly time counts - CDOT Form #263 will be prepared by Rocksol, and reviewed and signed weekly by the contractor.
- **Project Safety Management** – The project safety management plan will be reviewed and field staff will ensure compliance with the contractor's plan.
- **Materials Testing Schedule** – CDOT Form #250 and Independent Assurance Testing Schedule – CDOT Form #379 – Rocksol will acquire these two forms from CDOT and will use these forms as the guide to meet the requirements in the CDOT Materials Manual Testing Schedule.
- **Public Outreach** – Rocksol will coordinate with the contractor and the Town of Erie as needed for all communications with the stakeholders and public.

Construction Management and Pay Quantity Documentation:

Rocksol will provide competent, experienced project managers, engineers and inspectors to provide construction oversight and compliance with the Town of Erie and CDOT specifications. Construction management services include the following:

- **On-site construction management and inspection** of all construction activities to ensure the activities are being performed within Town of Erie and CDOT specifications.
- **Prepare pay item quantity documentation** - Includes measurement and calculations per the payment for materials specifications for each pay item. Documentation on Items paid by weight will need corresponding scale tickets that will be checked by project staff.
- **Daily Diaries** – Rocksol will provide both written and photographic documentation of the project including daily diaries per the construction manual supplemented with photographs of key items of work.
- **Change Orders and Minor Contract Revisions** – Rocksol will work with the Town of Erie and the contractor on any contract change orders or revisions. Rocksol will assist the Town of Erie in negotiation of change orders, will prepare the documentation to meet the Town of Erie's requirements and get the necessary signatures for the changes. We will also prepare the back-up supporting documentation for the change orders documenting the cost and time modifications to be submitted to the Town for their review and signatures.
- **Shop Drawings** – Rocksol will review and approve all shop drawings as required in the project specifications. Inspection of structural components will be done by the Rocksol bridge design engineer and other shop drawing submittals will be reviewed by the project engineer.
- **Construction Surveying and Monumentation Services** – Rocksol will provide oversight and general checks on the surveying and monumentation by the contractor.
- **Traffic Control Plans and Inspections** – Rocksol will review and approve traffic control plans and will check for compliance during work days, ensure that the traffic control company is completing daily checks and associated daily diaries, and will complete regular traffic control inspections.
- **Permitting and Erosion Control** – Rocksol will provide oversight of the permit requirements for any permits including the CDPS permit, the 404 permit, SB 40 requirements, and dewatering permit. Oversight includes checking that requirements are being met for all permitting and that the appropriate devices including bmp's are in place and in working order. This includes the appropriate documentation is being kept up to date, regular inspections are being performed and that permit commitments and requirements are being met.
- **Monthly Bill and Progress Report** - All documentation for payment will be done on CDOT form 266. The monthly project billings will be prepared in coordination with the contractor based on the monthly work completed, measured and accepted. The bills will be submitted to the Town of Erie for review, approval and payment. Rocksol will also monitor project financial status and keep in close contact with the Town of Erie with any budget issues.
- **Utility Billings**– Prepare, review and approve interim and final utility billings. This will be coordinated with the Town of Erie for accuracy and content.

Post Design Services

The RockSol design team or its subconsultants will be available to support construction management as needed. This work may include:

- **Submittal Review** - Complete reviews of shop drawings, samples, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor as required by the construction contract.
 - Become thoroughly familiar with the construction contract documents and all applicable standards and codes. Review and recommend approval or rejection of all submittals. Complete reviews within reasonable timelines to minimize contractor delay.
 - Check each submittal to verify conformance to the plans and specifications. Make corrections to submittals in red line comments.
- **Support Services** - Provide services to assist the Town of Erie in matters other than submittal reviews. Support services may be required for design changes that are not the responsibility of the designer of record, including preparation of design sketches, specifications and detailed construction cost estimates; review of contractor's claims for changed conditions; preparation or analysis of construction schedules; review value engineering proposals; and other mutually agreed upon work.
 - 8 hours of Senior Bridge Engineer and 48 hours of Bridge Engineer I have been included in the labor estimate for construction management to support the potential for using alternate girders than are specified in the contract documents.
- **Site Visit(s)** - During construction, the design team may be required to visit the site to perform specialized inspections, attend meetings or to perform other mutually agreed upon work. All site visits must be approved by the Town of Erie.

Materials Testing Services:

Rocksol will provide testing staff with the necessary certifications to complete the materials testing for the project. The staff will complete the necessary field and laboratory tests and complete documentation as outlined in the CDOT Materials Manual. Materials testing services are listed below:

- **Prepare materials notebooks** - The notebooks will include tabs for each pay item that will be filled in with necessary test results, certificates of compliance, and other required documentation.
- **Complete CDOT Form #250 – materials testing schedule**- These forms are the schedule for the project testing and will be updated as tests are completed with form numbers, as required.
- **Review mix designs** – Rocksol will review and approve the mix design documentation and additional documentation for truck weights, concrete truck mixer certifications, plant certifications, and scale certifications.
- **Provide required certifications for the testing lab and the testers to meet all requirements.**
- **Final Materials Testing Forms**– such as the Final Materials Documentation Review and Audit Checklist – CDOT Form #1199 and Letter of Materials Certification and the Explanation of Exceptions – CDOT Form #473. All final documentation will be coordinated with the Town of Erie for final audit approval.

Project Final Documentation:

Rocksol will provide and check all documentation required by Town of Erie for the final project review and approval. The following items will be completed:

- **Final walk-through** scheduling and documentation of the project with the Town of Erie.
- **Final Quantities, plans and pay estimate** – Rocksol will have a second person check all the documentation in accordance with the CDOT Construction manual.
- **Final Project acceptance letter preparation**
- **As Constructed Plans** – Rocksol will prepare the as-constructed plans. This will be an on-going recording process in the plans throughout the project with a final red-lined version created at the end of the project.
- **Final Material Certification**

RockSol Consulting Group, Inc.
Estimate for Construction Management, Inspection, and Materials Testing
Town of Erie
Erie Parkway Bridge over Coal Creek
Project Number: P17-440

<i>Labor</i>	<i>Hours</i>	<i>Rate/Hour*</i>	<i>Total Estimated Fee</i>
Construction Management			
Senior Project Manager	40	\$198.00	\$7,920.00
Administrative Assistant	20	\$80.00	\$1,600.00
Construction Manager	1,600	\$120.00	\$192,000.00
Lab Manager	20	\$99.80	\$1,996.00
Inspector II (3 to 10 years)	1,440	\$93.00	\$133,920.00
Materials Technician II (2 to 15 years)	1,360	\$83.00	\$112,880.00
Subtotal	4,480		\$450,316.00
Post Design Support			
Senior Project Manager	16	\$198.00	\$3,168.00
Senior Bridge Engineer	28	\$176.00	\$4,928.00
Bridge Engineer I	78	\$107.00	\$8,346.00
Engineer In Training II	80	\$82.00	\$6,560.00
Roadway Engineer	28	\$147.00	\$4,116.00
Subtotal	230		\$27,118.00
Total Labor			\$477,434.00
Other Direct Costs			
	Each	Rate/each	
Vehicle (10,000 miles @ \$0.54)	10,000	\$0.54	\$5,400.00
Misc expenses			\$2,000.00
Total Other Direct Costs			\$7,400.00
Total for Construction Management and Post Design Support (Labor and ODC)			\$484,834.00

* Rates are good thru 2019.

Note: RockSol will be charging the Town of Erie for the actual hours worked and mileage incurred on this project.