

AGREEMENT FOR PROFESSIONAL SERVICES (HOURLY)

THIS AGREEMENT is made and entered into this ____ day of February, 2019 (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 W.L. Contractors, Inc., an independent contractor with a principal place of business at 5920 Lamar Street, Arvada, Colorado 80003 ("Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires professional services for the Traffic Signal Communications Project, Project # P18-444; 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 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.

C. This Agreement may be renewed for up to 2 additional 12-month terms by written agreement of the Parties. Any such renewal shall be negotiated and finalized at least 30 days prior to the expiration of the then-current term. If renewed, Contractor agrees to honor its then-current compensation, plus not more than a 2% annual increase. Contractor shall justify any increase in compensation in writing to the Town's satisfaction.

III. COMPENSATION

In consideration for the work performed by Contractor under the Scope of Services, the Town shall pay Contractor as set forth in **Exhibit B**, attached hereto and incorporated herein by this reference.

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.

B. 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.

C. 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.

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.

C. 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.

D. 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 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 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, and 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.

TOWN OF ERIE, COLORADO

Jennifer Carroll, Mayor

ATTEST:

Jessica Koenig, Town Clerk

CONTRACTOR

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ____ day of _____, 2019, by _____ as _____ of _____.

My commission expires:

(S E A L)

Notary Public

EXHIBIT A
Scope of Services
Traffic Signal Communications Project,
Project # P18-444

Design Phase – Introduction Scope:

As the very first step, Contractor shall meet with the agency to better understand such details, while assisting the agency in understanding the potential and stated directions of interagency and intra-agency influences including without limitation Emergency Services (Police and Fire), the Colorado Department of Transportation ("CDOT"), and the Denver Regional Council of Governments ("DRCOG").

Based on Contractor's initial meeting with Town staff on 09.10.2018, Town staff identified the desire for a wireless based network infrastructure with potential availability for wireless Access Points (AP) at existing water sites within Town limits. Use of fiber may be considered only where absolutely necessary due to path obstructions. While initial signal quantities totaled 12, Town staff noted the desire to increase signal counts from 12 to 14, adding the two additional near future signals of County Line Road and Vista Parkway, and Erie Parkway and State Highway 7.

Due to the complexities of a total wireless network, and concerns with both path and frequency interference, Contractor makes the following assumptions.

1. That Contractor is focusing on traffic signal/ITS systems communications only at locations as defined to date using Town defined Access Points (AP) for connectivity.
2. That all proposed AP at Town facilities have been internally reviewed by the Town prior to being identified for project use, such that there is a higher degree of confidence regarding their use, providing line-on-sight between the AP's and traffic signals.
3. That the primary scope will focus on review and evaluation of proposed paths such as to identify the best AP for use for each signal location.
4. That, where signal links are determined to be unusable based on Town defined AP, that signals may need to be removed from the scope noting the need to address via fiber, DSL, or other.
5. That where fiber, DSL, or other method is to be considered, and where the Town wishes to pursue such options through this contract, that such project scope changes are addressed through a Change Order process with the not-to-exceed pricing being increased as required. Current not-to-exceed pricing is based on the scope as further defined here within.

Phase Scope:

As part of this phase, Contractor shall conduct meetings with identified stakeholders focusing on the following topics. It is understood that, as additional stakeholders are identified, additional meetings may be required. Consulting Hours for this phase are estimated at 14 hours. Mobilization is further estimated at 6 hours.

Meeting 1:

Introduction to primary stakeholders.

1. Discuss/Review assumptions, and preliminary preferences.
2. Discuss/Review existing Town limits and the plans or potential for near term and long-term expansion

3. Discuss/Identify potential interagency and intra-agency interests toward data/infrastructure sharing, and potential additional stakeholders.
4. Discuss/Identify ITS sub-systems, both common use and cutting edge for potential inclusion in the final design.
5. Identify initial network bandwidth needs based on ITS sub-system inclusions.
6. Discuss/Review 2019 budget and expectations.
7. Develop revised stakeholder list/schedule additional stakeholder meeting(s).

Meeting 2:

Introduction to extended stakeholders.

1. Provide overview of project goals and expectation as identified during Meeting 1.
2. Discuss/Identify additional opportunities and associated requirements.

Deliverables:

1. Pre-Meeting written agendas
2. Post-Meeting meeting notes documenting discussions and preliminary decisions/scope adjustment as may be applicable. Where scope adjustments required, not-to-exceed pricing will need to be reviewed for potential adjustment.

Design Phase 1 – Communications Design Scope:

Phase Scope:

As part of this phase, Contractor shall prepare and present a preliminary communications design focused on Wireless Ethernet based communications. The design will consider all information as gathered through the “Design Phase – Introduction”. Consulting Hours for this phase are estimated at 156 hours. Mobilization is estimated at 104 hours.

Preliminary Communications Design:

Develop preliminary design plans for review and comment by stakeholders.

1. Complete site visits to review potential AP sites as defined by project stakeholders, recording proposed mounting heights for each.
2. Based on AP site data as gathered through site visits, topology maps as provided by the Town, and site elevation data obtained through Google Earth, map all planned AP and traffic signals, defining proposed wireless links.
3. Identify preliminary path concerns as may be pertinent and where consideration for fiber, DSL or additional wireless AP may be desired/required.

Meeting 1:

Preliminary design review.

1. Meet with stakeholders to review preliminary design and review identified path concerns.
2. Discuss options for overcoming path issues, including use of fiber, DSL, and/or additional wireless AP.
3. Discuss and address any other comments/concerns regarding the preliminary communications design.

Intermediate Communications Design:

Develop intermediate design plans for review and comment by stakeholders.

1. Make design plan adjustments as necessary based on Meeting 1.

2. Work with wireless manufacturers/vendors to complete wireless studies identifying existing frequency interference and path obstructions.
3. Work with wireless manufacturers/vendors to identify wireless systems best supporting the transmission distances and transmission bandwidths as identified in “Design Phase – Introduction”.
4. Add design details to design including, Wireless Access Point (AP) locations, Wireless Repeater locations, and Wireless Endpoint locations.

Note: During the Intermediate Communications Design, and while path review is included as part of the Preliminary Communications Design, manufacturers/vendors often rely on in-house tools to help confirm such preliminary findings. Based on their results, additional design adjustments and discussions may be required.

Meeting 2 (Optional):

Intermediate design review.

1. Meet with stakeholders to review intermediate design, design details, and address any comments/concerns.
2. Review wireless manufacturer/vendor findings.
3. Provide recommendations regarding wireless manufacturer, make and model, for use.

Finalized Communications Design:

Develop finalized design plans with Engineer’s Estimate for full build out.

1. Make design plan adjustments as necessary based on Meeting 2 to finalize communications design plans.
2. Develop summary of quantities for full build out.
3. Develop Engineer’s Estimate for full build out.
4. Provide cut sheets for proposed primary materials; Wireless AP/Repeaters, Wireless Endpoints, and Ethernet Switches.

Deliverables:

1. Pre-Meeting written agendas
2. Post-Meeting meeting notes documenting discussions and preliminary decisions/scope adjustment as may be applicable.
3. Preliminary design plans
4. Intermediate design plans
5. Finalized design plans.
6. Summary of quantities for full build out.
7. Engineer’s Estimate for full build out.
8. Cut Sheets for proposed primary materials; Wireless AP/Repeaters, Wireless Endpoints, and Ethernet Switches.

Note: All design plans will be in PDF format focused on Wireless AP/Repeater locations, and Wireless Endpoint locations. Tasks related to fiber design have been excluded. Estimated labor hours as defined are for Contractor’s time, with primary focus on the first 12 traffic signals as identified in the RFQ. Considerations will be made for 2 future traffic signals although the Town needs to recognize that, until additional buildout is complete, path interference cannot be fully realized.

Design Phase 2 – ITS Systems Design Scope:

Contractor shall work with the Town to identify ITS sub-systems for initial inclusion in the Town's master ITS plan. Contractor shall assist the Town in understanding the pros and cons of each system and key manufacturers as currently used throughout Colorado. Based on short listed manufacturers, Contractor shall assist in arranging for vendor demonstrations as may be desired.

Phase Scope:

As part of this phase, Contractor will work with the Town to define the minimum requirements for the various networked subsystems for initial inclusion in the Town's ITS master plan. Systems for consideration will be limited to Centralized Traffic Signal System software, networked traffic controllers, CCTV Camera Monitoring Systems, CCTV cameras, and Travel Time (TT) Systems. Consulting hours for this phase are estimated at 108 Hours. Mobilization is estimated at 18 hours.

Preliminary ITS Systems Design:

Provide the Town with a list of commonly used ITS sub-systems, and associated hardware/software, as are currently used throughout Colorado. Provide list of agencies using each ITS sub-system for reference with a goal of 3 references for each.

1. Develop list of commonly used ITS sub-system for each ITS category; Centralized Traffic Signal System software, networked traffic controllers, CCTV Camera Monitoring Systems, CCTV cameras, and Travel Time (TT) Systems.
2. Develop list of agencies using each ITS sub-system for reference with a goal of three (3) references for each.
3. Define general requirements for each sub-system.
4. Obtain budgetary cost where available.
5. Define pro and cons for each option focused on cost, interagency data sharing opportunities, reference reviews, and Contractor's history with each.

Meeting 1:

Preliminary ITS Systems Design review.

1. Meet with the stakeholders to review ITS sub-system options.
2. Discuss identified pros and cons to each subsystem.
3. Discuss potential short listing and potential desire for manufacturer/vendor demonstrations.

Manufacturer/Vendor Demonstrations:

As part of the phase, Contractor has included a maximum of 2 manufacturers/vendors for each of the ITS sub-systems in each category of Centralized Traffic Signal System software, CCTV Camera Monitoring Systems, and Travel Time (TT) Systems. 6 demonstrations maximum.

1. Meet with stakeholders and short-listed manufacturers/vendors for product demonstrations.

Meeting 2:

Intermediate design review.

1. Meet with stakeholders to finalize decisions for ITS Systems sub-systems for inclusion in the Town ITS master plan.
2. Discuss/Identify locations for inclusion of ITS devices.

Finalized Communications Design:

Develop finalized design plans with Engineer's Estimate for full build out.

1. Develop spreadsheet identifying initial locations for installation of ITS sub-system limited to Centralized Traffic Signal System software (Servers and Clients), CCTV Camera Monitoring Systems (Servers and Clients), CCTV Cameras, and Travel Time (TT) Systems collection units.
2. Work with manufactures/vendors to obtain generic system layout plans with cut sheets for systems and major components.
3. Work with manufacturers/vendors on preliminary ITS sub-system pricing based on full build out.

Deliverables:

1. Pre-Meeting written agendas
2. Post-Meeting meeting notes documenting discussions and preliminary decisions/scope adjustment as may be applicable.
3. Spreadsheet identifying initial locations for installation of ITS sub-system limited to Centralized Traffic Signal System software (Servers and Clients), CCTV Camera Monitoring Systems (Servers and Clients), CCTV Cameras, and Travel Time (TT) Systems collection units.
4. Manufacture's/Vendor's generic system layout plans with cut sheets for systems and major components as available.
5. Manufacturer's/Vendor's price breakdown as provided.
6. Engineer's Estimate for full build out.

Design Phase 3 – Construction Preparation:

The scope and fees for this phase will be negotiated and approved at a later date.

EXHIBIT B COMPENSATION

Contractor shall be paid on an hourly basis for the time spent by Contractor's employees performing the work described in **Exhibit A**, Scope of Services. Contractor shall provide itemized invoices detailing the work performed, and shall bill in increments of not less than 15 minutes. Such invoices shall be submitted to the Town on a monthly basis.

The hourly rates for Contractor's employees and equipment are as follows:

Contractor Employees	Hourly Rate
Engineer	\$115.00
Consultant	\$100.00
Technician	\$60.00
Laborer	\$50.00
Traffic Control - Non UTC	\$55.00
Traffic Control - UTC (4 Hr Minimum)	\$125.00

Contractor Equipment	Hourly Rate
Bucket Truck	\$35.00
Service Vehicle	\$25.00

In addition to the hourly rates established above, Contractor shall be entitled to invoice the Town for out-of-pocket expenses for Wireless Engineering Sub, at Contractor's actual cost with a 15% mark-up.

Contractor has estimated that the total compensation due to Contractor to provide all services described in the Scope of Services will be \$50,000. Contractor shall not exceed such amount without the prior written approval of Town staff. Contractor acknowledges that the total compensation to be paid to Contractor is subject to amounts appropriated by the Town's Board of Trustees.

*[To be completed only if Contractor participates in the
Department of Labor Lawful Presence Verification Program]*

3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Agreement.

Notary Public