

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into this 24<sup>th</sup> day of March, 2020 (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 Fox Tuttle Transportation Group, an independent Consultant with a principal place of business at 1624 Market Street, Suite 202, Denver, Colorado 80202 ("Consultant") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires professional services; and

WHEREAS, Consultant 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. Consultant 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: **Erie Parkway and WCR 7 Traffic Signal (P17-437) Project**.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Consultant proceeds without such written authorization, Consultant 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, TERMINATION, AND RENEWAL**

A. This Agreement shall commence on the Effective Date and shall continue for 12 months unless sooner terminated as provided herein.

B. Either Party may terminate this Agreement upon 30 days advance written notice. The Town shall pay Consultant for all work previously authorized and completed prior to the date of termination. If, however, Consultant 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 shall automatically renew for additional 12-month terms, unless, at least 30 days prior to the expiration of the then-current term, either Party terminates this Agreement. Consultant shall provide the Town with the proposed increase for the following year at least 60 days prior to the expiration of the then-current term. For each renewal term, the Compensation set forth in Section III hereof may not increase by more than 2%.



### **III. COMPENSATION**

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

### **IV. PROFESSIONAL RESPONSIBILITY**

A. Consultant 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 Consultant 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 Consultant 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.

D. Because the Town has hired Consultant for its professional expertise, Consultant agrees not to employ sub-consultants to perform any work except as expressly set forth in the Scope of Services.

### **V. OWNERSHIP**

Any materials, items, and work specified in the Scope of Services, and related documentation and materials provided or developed by Consultant shall be exclusively owned by the Town. Consultant 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," Consultant 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 Consultant. Any and all unauthorized reuse of Consultant's instruments of service will be at the Town's sole risk and without liability to Consultant.

### **VI. INDEPENDENT CONSULTANT**

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



## **VII. INSURANCE**

A. Consultant 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 Consultant pursuant to this Agreement. At a minimum, Consultant shall procure and maintain, and shall cause any sub-consultant 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 Consultants 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 Consultants shall be excess and not contributory insurance to that provided by Consultant. Consultant shall be solely responsible for any deductible losses under any policy.

D. Consultant 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. Consultant 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 Consultant, any sub-consultant of Consultant, or any officer, employee, representative, or agent of Consultant, or which arise out of a worker's compensation claim of any employee of Consultant or of any employee of any sub-consultant of Consultant. Consultant'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 Consultant, any sub-



consultant of Consultant, or any officer, employee, representative, or agent of Consultant or of any sub-consultant of Consultant.

B. If Consultant is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Consultant's obligation to indemnify and hold harmless the Town may be determined only after Consultant'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, Consultant 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 Consultant 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. Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a sub-consultant that fails to certify to Consultant that the sub-consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

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



D. Duty to Comply with Investigations. Consultant 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 Consultant is complying with the terms of this Agreement.

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

\_\_\_\_\_  
Heidi Leatherwood, Town Clerk

**CONSULTANT**

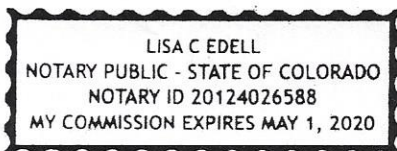
By: \_\_\_\_\_

STATE OF COLORADO )  
COUNTY OF Arapahoe ) ss.

The foregoing instrument was subscribed, sworn to and acknowledged before me this 9<sup>th</sup> day of MARCH, 2020, by STEVE TUTTLE as PRINCIPAL of FOX TUTTLE.

My commission expires: may 01, 2020

(S E A L)



\_\_\_\_\_  
Notary Public



## **EXHIBIT A**

### **SCOPE OF SERVICES**

During the term of this Agreement, Consultant shall perform the following duties and provide the following deliverables, as directed by the Town:

1. Conduct a design scoping review meeting, including field visit.
2. Provide design survey including project right-of-way.
3. Locate and pot hole existing utilities in the project area and prepare a subsurface utility engineering report.
4. Establish vertical and horizontal control.
5. Incorporate traffic communications components that will work with the Town's traffic communications software and hardware currently being selected.
6. Attend regular progress meetings, and prepare cost estimates as the design progresses.
7. Prepare a plan submittal, and cost estimate with enough detail for a combined FIR/FOR meeting.
8. Prepare Colorado Department of Transportation ("CDOT") format construction plans and specifications and full contract documents for bid, estimated construction time, updated final cost estimate, written response to all questions during the bid phase, all addendums, and recommendation for awarding the construction contract to be presented to CDOT and the Town's Board of Trustees.
9. The bid documents must include a Stormwater Management Plan ("SWMP") for the contractor to use during construction.
10. Environmental Requirements – Consultant shall be responsible for the air clearance, and coordinating with CDOT to prepare documents in accordance with requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA). The project will likely qualify as a Categorical Exclusion for NEPA documentation.

## **EXHIBIT B COMPENSATION**

Consultant shall be paid on an hourly basis for the time spent by Consultant's employees performing the work described in the Scope of Services. Consultant 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 Consultant's employees are as follows:

Classification	Rate/hour
Engineering VP	\$185
Engineer III	\$146
Engineer II	\$125

Other Direct Costs	Estimated cost
Reproduction	\$150
Mileage	\$111

Outside Services	
Firm Name	Estimated cost
J-U-B Engineers (Civil)	\$20,654
Clark Land Surveying (SUE)	\$16,500
RockSol (Environmental)	\$5,238
Felsburg Holt & Ullevig (Air)	\$4,000
King Surveyors (Survey)	\$2,000

The total annual compensation under this Agreement shall not exceed \$68,000.