

AGREEMENT FOR PROFESSIONAL SERVICES
(Impact Fee Study)

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into this ____ day of _____, 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 TischlerBise, Inc., a corporation with a principal place of business at 4701 Sangamore Road, Suite S240, Bethesda, Maryland 20816 ("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 (the "Scope of Services").

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 a total amount not to exceed \$66,680. 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 upon satisfactory completion of tasks, as set forth in **Exhibit B**, attached hereto and incorporated herein by this reference, which shall be paid by the Town within 30 days of receipt.

IV. PROFESSIONAL RESPONSIBILITY

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

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

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

D. Contractor shall at all times comply with all applicable laws, including without limitation 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 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. Workers' 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 cancelled, 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 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 prepaid, 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

10/9/2020
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NO EMPLOYEE AFFIDAVIT

[To be completed only if Contractor has no employees]

1. Check and complete one:

☐ I, _____, am a sole proprietor doing business as _____. I do not currently employ any individuals. Should I employ any employees during the term of my Agreement with the Town of Erie (the "Town"), I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

☐ I, _____, am the sole owner/member/shareholder of _____, a _____ [specify type of entity – i.e., corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the Town, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

2. Check one.

☐ I am a United States citizen or legal permanent resident.

The Town must verify this statement by reviewing one of the following items:

- *A valid Colorado driver's license or a Colorado identification card;*
- *A United States military card or a military dependent's identification card;*
- *A United States Coast Guard Merchant Mariner card;*
- *A Native American tribal document;*
- *In the case of a resident of another state, the driver's license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card; or*
- *Any other documents or combination of documents listed in the Town's "Acceptable Documents for Lawful Presence Verification" chart that prove both Contractor's citizenship/lawful presence and identity.*

OR

☐ I am otherwise lawfully present in the United States pursuant to federal law.

Contractor must verify this statement through the federal Systematic Alien Verification of Entitlement ("SAVE") program, and provide such verification to the Town.

Signature

Date

DEPARTMENT PROGRAM AFFIDAVIT

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

I, _____, as a public contractor under contract with the Town of Erie (the "Town"), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are newly hired for employment to perform work under this public contract for services ("Agreement") with the Town within 20 days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a, which verify the employment eligibility and identity of newly hired employees who perform work under this Agreement; and

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

Signature

Date

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ____ day of _____, 2020, by _____ as _____ of _____.

My commission expires:

(S E A L)

Notary Public

EXHIBIT A SCOPE OF SERVICES

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

TASK 1: PROJECT INITIATION / DATA ACQUISITION

Contractor shall meet with Town staff to establish lines of communication, review and discuss project goals and expectations related to the project, review (and revise if necessary) the project schedule, request data and documentation related to new proposed development, and discuss staff's role in the project. The objectives of this initial discussion are outlined below:

- Obtain and review current demographics and other land use information for the Town;
- Review and refine work plan and schedule;
- Assess additional information needs and required staff support;
- Identify and collect data and documents relevant to the analysis; and
- Identify any relevant policy issues.

Meetings: One meeting with Town project staff as appropriate.

Deliverables: Data request memorandum (prepared in advance of meeting).

TASK 2: PREPARE LAND USE ASSUMPTIONS AND DEVELOPMENT PROJECTIONS

The purpose of this task is to review and understand the current demographics of the Town and determine the likely development future for the Town in terms of new population, housing units, employment, and nonresidential building area over the next 10-20 years. Information from the Town, as well as other regional/State sources may serve as the basis for preparing projections of residential and nonresidential development for consideration by staff. Contractor shall prepare a plan that includes projections of changes in land uses, densities, intensities, and population. A map of the area(s) to which the land use assumptions apply will also be included in this task.

Meetings: Discussions with the Planning and Development Department and other relevant staff will be held as part of Task 1, as well as conference calls as needed.

Deliverables: Contractor shall prepare a draft Technical Memorandum discussing the recommended land use factors and projections. After review and sign-off by the Town, a final memorandum will be issued, which will become part of the final Impact Fee Report.

TASK 3: DETERMINE CAPITAL FACILITY NEEDS AND SERVICE LEVELS

This Task, as well as Tasks 4-6, may vary somewhat depending on the methodology applied to a particular impact fee category. The development impact fee study for each facility type would be presented in separate chapters in the Impact Fee Report.

Identify Facilities/Costs Eligible for Development Impact Fee Funding. As an essential part of the nexus analysis, Contractor shall evaluate the impact of development on the need for additional facilities, by type, and identify costs eligible for impact fee funding. Elements of the analysis include:

- Review facility plans, fixed asset inventories, and other documents establishing the relationship between development and facility needs by type;
- Identify planned facilities, vehicles, equipment, and other capital components eligible for impact fee funding;
- Prepare forecast of relevant capital facility needs; and
- Adjust costs as needed to reflect other funding sources.

As part of calculating the fee, the Town may include the construction contract price; the cost of acquiring land, improvements, materials, and fixtures; the cost for planning, surveying, and engineering fees for services provided for and directly related to the construction system improvement; and debt service charges, if the Town might use impact fees as a revenue stream to pay the principal and interest on bonds, notes or other obligations issued to finance the cost of system improvements. All of these components shall be considered in developing an equitable allocation of costs.

Identify Appropriate Level of Service (LOS) Standards. Contractor shall review needs analyses and LOS for each facility type. Activities related to this Task include:

- Apply defined service standards to data on future development to identify the impacts of development on facility and other capital needs. This will include discussions with staff of the existing versus adopted LOS, as appropriate;
- Ascertain and evaluate the actual demand factors (measures of impact) that generate the need for each type of facility to be addressed in the study;
- Identify actual existing service levels for each facility type. This is typically expressed in the number of demand units served;
- Define service standards to be used in the impact fee analysis; and
- Determine appropriate geographic service areas for each fee category.

Meetings: Two meetings with Town staff to discuss capital facility needs and levels-of-service.

Deliverables: Memoranda as appropriate. Results integrated into Draft/Final Impact Fee Report.

TASK 4: EVALUATE DIFFERENT ALLOCATION METHODOLOGIES

The purpose of this Task is to determine the methodology most appropriate for each impact fee category. The three basic methodologies that can be applied in the calculation of development impact fees are the plan-based, incremental expansion, and cost-recovery approaches. Selection of the particular methodology for each component of the development impact fee category will depend on which is most beneficial for the Town. In a number of cases, Contractor will prepare the development impact fees for a particular infrastructure category using several methodologies and will discuss the trade-offs with the Town. Policy discussions will then be held at the staff

level regarding the trade-offs associated with each allocation method prior to proceeding to the next Task as well as trade-offs regarding implementation as development impact fees.

Meetings: One meeting with relevant Town staff and Stakeholders to discuss issues related to allocation methodologies and relevant policy issues.

Deliverables: "Storyboard" presentation on fee options.

TASK 5: DETERMINE NEED FOR "CREDITS" TO BE APPLIED AGAINST CAPITAL COSTS

There are two types of "credits" that are included in the calculation of development impact fees, each with specific, distinct characteristics. The first is a credit due to possible double payment situations. This could occur when a property owner will make future contributions toward the capital costs of a public facility covered by an impact fee. The second is a credit toward the payment of a development impact fee for the required dedication of public sites and improvements provided by the developer and for which the impact fee is imposed. Contractor shall consider both types of credits in the development impact fee study.

Deliverables: Memoranda as appropriate. *See* Task 7.

TASK 6: CONDUCT FUNDING AND CASH FLOW ANALYSIS

In order to prepare a meaningful capital funding strategy, it is important to not only understand the gross revenues, but also the capital facility costs and any deficits. In this case, some consideration should be given to anticipated funding sources. This calculation will allow the Town to better understand the various revenue sources possible and the amount that would be needed if the development impact fees were discounted. The initial cash flow analysis will indicate whether additional funds might be needed or if the funding strategy might need to be changed to have new growth pay its fair share of new capital facilities.

This could also affect the total credits calculated in the previous Task. Therefore, it is likely that a number of iterations will be conducted in order to refine the cash flow analysis reflecting the capital improvement needs.

Deliverables: *See* Task 7.

TASK 7: PREPARE IMPACT FEE REPORT, PUBLIC PRESENTATIONS

Contractor shall prepare a draft report for the Town's review. The report shall summarize the need for all relevant categories of impact fees in the Town and the relevant methodologies employed in the calculation. It will also document all assumptions and cost factors. The report shall include at a minimum the following information:

- Executive summary;
- A detailed description of the methodologies used during the study;
- A detailed description of all LOS standards and cost factors used and accompanying rationale;

- A detailed schedule of all proposed fees listed by land use type and activity;
- Other information which adequately explains and justifies the resulting recommended fee schedule;
- Cash flow analysis;
- Peer community survey; and
- Implementation and administration procedures.

Following the Town's review of the draft report, Contractor will make mutually agreed upon changes to the impact fee report and issue a final version.

Analysis of Peer Community Fee Structures. Contractor shall prepare a comparative analysis of peer communities' impact fee structures. The analysis will compare how the proposed impact fee structure for the Town compares to other peer communities, including noting any differences in fee schedules and methodologies.

Meetings: Two meetings to present the draft Impact Fee Study to the Board of Trustees.

Deliverables: Draft and final Impact Fee Study.

TASK 8: PUBLIC OUTREACH

Stakeholder Committee. Meetings with various stakeholder groups will allow interested parties, designated by the Town, to understand assumptions and raise any questions about the technical data and approach being used in the fee update. The intent is for these discussions to be an opportunity for interested parties to understand the soundness and reasonableness of the technical methodologies, and to a certain extent, the political and/or philosophical use of fees. The first meeting would focus on the land use assumptions as well as the initial data assumptions, proposed methodologies and services areas. The second meeting will focus on the presentation of the final Development Impact Fee Report.

Meetings: Two meetings with stakeholders.

Deliverables: Presentation materials for meetings.

PROJECT SCHEDULE

PROPOSED SCHEDULE- IMPACT FEE STUDY			
Tasks	Anticipated Dates	Meetings*	Meetings/Deliverables
Task 1: Project Initiation	Month 1	1	Data Request Memorandum and Revised Project Schedule, if necessary.
Task 2: Prepare Land Use Assumptions and Development Projections	Months 1 and 2	1	Technical Memorandum on Land Use Assumptions/Development Projections
Task 3: Determine Capital Facility Needs and Service Levels	Months 1 through 4	2	Memoranda as Appropriate
Task 4: Evaluate Different Allocation Methodologies	Month 4	1	"Storyboard" Presentation on Fee Pptions
Task 5: Determine Need for "Credits" to be Applied Against Capital Costs	Month 4	0	Memoranda as Appropriate
Task 6: Conduct Funding and Cash Flow Analysis	Month 4	0	See Task 7
Task 7: Prepare Impact Fee Report, Presentations	Months 4 and 5	2	Draft and Final Impact Fee Report
Task 8: Public Outreach	Months 3 through 5	2	Presentation Materials as Appropriate

*In several cases it is assumed meetings are held with multiple departments over one (1) trip.

EXHIBIT B COMPENSATION

PROPOSED FEE - IMPACT FEE STUDY					
Project Team Member:	Bise	Herlands	McAweeney	Total	
Hourly Rate*	\$210	\$195	\$180	Hours	Cost
Task 1: Project Initiation	8	0	8	16	\$3,120
Task 2: Prepare Land Use Assumptions and Development Projections	6	16	24	46	\$8,700
Task 3: Determine Capital Facility Needs and Service Levels	32	16	48	96	\$18,480
Task 4: Evaluate Different Allocation Methodologies	16	4	8	28	\$5,580
Task 5: Determine Need for "Credits" to be Applied Against Capital Costs	4	0	8	12	\$2,280
Task 6: Conduct Funding and Cash Flow Analysis	2	0	8	10	\$1,860
Task 7: Prepare Impact Fee Report, Presentations	36	16	40	92	\$17,880
Task 8: Public Outreach	16	0	4	20	\$4,080
Expenses:				\$4,700	
Total Cost:	120	52	148	320	\$66,680