

Agreement for Professional Services (Hourly)

This Agreement for Professional Services (the "Agreement") is made and entered into this _____ day of _____, 2021 (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 Sanderson Stewart, an independent contractor with a principal place of business at 425 West Mulberry Street, Suite 210, Fort Collins, Colorado 80521 ("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 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 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.

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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. 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.

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 law, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

V. Ownership

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all

work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor; provided that Contractor shall have no liability for any work that has been modified by the Town.

VI. Independent Contractor

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

VII. Insurance

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.
3. Professional liability insurance with minimum limits of \$1,000,000 each claim and \$2,000,000 general aggregate.

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

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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 omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor; provided that Contractor's liability 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. Workers Without Authorization

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 a worker without authorization who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. 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 a worker without authorization 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 a worker without authorization 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 a worker without authorization 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 a worker without authorization 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 worker without authorization 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 a worker without authorization 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.

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B. *No Waiver.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. *Integration.* This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

E. *Notice.* Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

F. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. *Modification.* This Agreement may only be modified upon written agreement of the Parties.

H. *Assignment.* Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. *Governmental Immunity.* The Town and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, 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.

L. *Force Majeure.* No Party shall be in breach of this Agreement if such Party's failure to perform any of the duties under this Agreement is due to Force Majeure, which shall be defined as the inability to undertake or perform any of the duties under this

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Agreement due to acts of God, floods, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government or pandemics.

In Witness Whereof, the Parties have executed this Agreement as of the Effective Date.

Town of Erie, Colorado

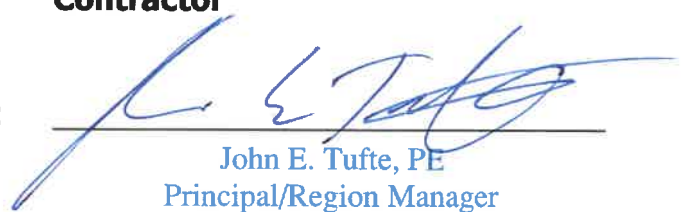
Jennifer Carroll, Town Mayor

Attest:

Heidi Leatherwood, Town Clerk

Contractor

By:



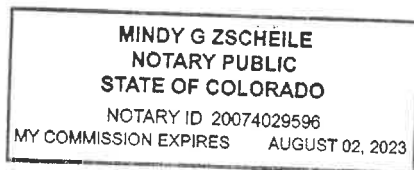
John E. Tufte, PE
Principal/Region Manager
Sanderson Stewart

State of Colorado)
County of Larimer) ss.

The foregoing instrument was subscribed, sworn to and acknowledged before me this 14 day of September, 2021, by John E. Tufte as Principal of Sanderson Stewart

My commission expires: Aug 2, 2023

(Seal)





Mindy G Zscheile
Notary Public

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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, John E. Tufte, 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

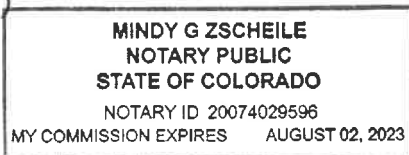
2021/09/14
John E. Tufte, PE
Principal/Region Manager
Sanderson Stewart

State of Colorado)
County of Larimer) ss.

The foregoing instrument was subscribed, sworn to and acknowledged before me this 14 day of September, 2021, by John E. Tufte as Principal of Sanderson Stewart

My commission expires: Aug 2, 2023

(Seal)



Mindy G Zscheile
Notary Public

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Exhibit A Scope of Services

Contractor's Duties

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

- Contractor shall provide Phase 1: Project Kick-Off and Scoping services, including but not limited to; Project management and coordination, kick off meeting, project schedule development and progress meetings
- Contractor shall provide Phase 2: Public Engagement services, including but not limited to; Project management and coordination, project website development, public electronic open house outreach for conceptual, preliminary and final designs including feedback on community comments.
- Contractor shall provide Phase 3: Conceptual Design services, including but not limited to; project management and coordination, gather/evaluate existing property & traffic information about corridor, collect traffic data for corridor using Miovision for 5 intersections, develop two conceptual designs, and present conceptual designs to Town of Erie Board of Trustees meeting.
- Contractor shall provide Phase 4: Preliminary Design (FIR) services, including but not limited to; Project management and coordination, survey and SUE maps of corridor, geotechnical evaluation, right-of-way, TCE analysis/preparation, develop preliminary design plans, utility coordination report, preliminary drainage report, preliminary utility plans and CDOT FIR meeting
- Contractor shall provide Phase 5: Environmental Clearances services, including but not limited to; project management and coordination, prepare environmental summary memorandum.
- Contractor shall provide Phase 6: Final Design (FOR) services, including but not limited to; Project management and coordination, prepare 90% design plans, 90% utility report, 90% drainage report, 90% opinion of probable cost, CDOT FOR documents and meeting, and finalize 100% plans and specifications
- Contractor shall provide Phase 7: Bidding services, including but not limited to; Project Management and Coordination, Project manual development, opinion of probable cost, construction bidding assistance, prepare schedule of unit prices, review Town's bidding contract documents, attend and conduct pre-bid meeting, prepare addenda during bidding, review bids and make recommendations for BOT/CDOT award, revise construction plans

and specs based on addenda and provide AutoCAD files for construction layout.

- Contractor shall provide Phase 8: Construction Phase services, including but not limited to; Project management and coordination, review submittals and shop drawings, prepare as-built plans/record plans for Town records and AutoCAD files for Town's GIS system.

Contractor's Deliverables

In performance of the duties described above, Contractor shall deliver the following items to the Town, during the timeframes established by the Town:

- Phase 1: Project schedule, weekly status updates, and project progress meeting minutes
- Phase 2: Project website, summary of public comments, creation of virtual open house via website for conceptual, 30% and 90% design. Project website will be updated throughout the project.
- Phase 3: Traffic data collection for 5 intersections, two conceptual design plans, presentation to Board of Trustees.
- Phase 4: Site survey, SUE maps, geotechnical report, ROW/TCE plans, preliminary plans, utility report, preliminary drainage report, preliminary utility plans, response to CDOT and Town review comments
- Phase 5: Environmental summary memorandum.
- Phase 6: 90% plans, utility report, drainage report, opinion of probable cost, response to FOR meeting, final (100%) plans, and specifications.
- Phase 7: Complete bid documents, preparation of addenda, provide a review of the bids, update construction plans for award, provide updated AutoCAD files.
- Phase 8: Provide review of submittals and shop drawings, provide as-built plans, provide AutoCAD files for GIS system

Exhibit B Compensation

Contractor shall be paid on an hourly basis for the time spent by Contractor's employees performing the work described in the 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 are as follows:

Expert Witness/Special Consultant	\$ 275.00 /hour
Principal	\$ 220.00 /hour
Senior Engineer II	\$ 190.00 /hour
Senior Engineer I	\$ 165.00 /hour
Project Engineer II	\$ 135.00 /hour
Project Engineer I	\$ 120.00 /hour
Staff Engineer II	\$ 115.00 /hour
Staff Engineer I	\$ 105.00 /hour
Engineer Intern	\$ 65.00 /hour
Engineer Assistant	\$ 55.00 /hour
Senior Land Planner	\$ 155.00 /hour
Land Planner	\$ 130.00 /hour
Right-of-Way Agent	\$ 150.00 /hour
Senior Landscape Architect II	\$ 150.00 /hour
Senior Landscape Architect I	\$ 140.00 /hour
Landscape Architect I	\$ 120.00 /hour
Landscape Designer II	\$ 100.00 /hour
Landscape Designer I	\$ 95.00 /hour
Senior Professional Land Surveyor	\$ 160.00 /hour
Professional Land Surveyor	\$ 120.00 /hour
Staff Surveyor II	\$ 110.00 /hour
Staff Surveyor I	\$ 100.00 /hour
Field Survey Technician II	\$ 85.00 /hour
Field Survey Technician I	\$ 75.00 /hour

Marketing Director	\$ 140.00 /hour
Graphic Artist	\$ 95.00 /hour
Photographer	\$ 180.00 /hour
Web Developer	\$ 100.00 /hour
Senior Designer II	\$ 120.00 /hour
Senior Designer I	\$ 110.00 /hour
Designer II	\$ 100.00 /hour
Designer I	\$ 95.00 /hour
CADD Technician II	\$ 85.00 /hour
CADD Technician I	\$ 80.00 /hour
Senior Construction Engineering Technician	\$ 125.00 /hour
Construction Engineering Technician	\$ 90.00 /hour
Construction Inspector	\$ 85.00 /hour
Project Administrator	\$ 95.00 /hour
Administrative/Clerical	\$ 80.00 /hour

Sub- Consultants

1) CTL Geotechnical	\$9,052
2) Kinetic Industries	\$2,900
3) Miovision Data Processing	\$1,442
4) CLT Environmental	\$3,500

The total annual compensation under this Agreement **shall not exceed \$182,800**. This amount includes a **contract cost of \$162,489** and **contingency funds up to \$20,311** as approved by the Town. This amount shall include all fees, costs and expenses.