

RESOLUTION NO. 23-59

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CASTLE PINES, COLORADO APPROVING A PROFESSIONAL
SERVICES AGREEMENT WITH LIGHTHOUSE TRANSPORTATION
GROUP, LLC FOR TRAFFIC AND PEDESTRIAN SIGNAL AND
STREET LIGHT MAINTENANCE**

WHEREAS, the City of Castle Pines (the “City”) is authorized to contract for performance of necessary public services including traffic signal maintenance for public rights-of-way; and

WHEREAS, Lighthouse Transportation Group, LLC, is qualified to perform traffic and pedestrian signal and street light maintenance (“Services”) for the City and has the necessary skill and expertise to perform such Services; and

WHEREAS, the City Council desires to enter into a Professional Services Agreement with Contractor, as a sole source provider per Section C.1.d of the City’s purchasing policy, for purposes of providing the Services (“Agreement”).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, THAT:

Section 1. The City Council hereby: (a) approves the Agreement with Contractor in substantially the same form as attached hereto and incorporated herein as **Exhibit 1**; (b) authorizes the City Attorney, in consultation with the City Manager, to make such changes as may be necessary to correct any non-material errors that do not increase the obligations of the City; and (c) authorizes the Mayor to execute the Agreement.

Section 2. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining issues of this Resolution.

Section 3. **Effective Date.** This Resolution shall take effect upon its approval by the City Council.

[Remainder of this page left intentionally blank.]

INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES BY A VOTE OF 7 IN FAVOR AND 7 AGAINST THIS 13TH DAY OF DECEMBER, 2023.



ATTEST:

Tobi Duffey, MMC, City Clerk

Tracy Engerman (Dec 27, 2023 22:02 MST)

Tracy Engerman, Mayor

APPROVED AS TO FORM:

Linda C. Michow, City Attorney

EXHIBIT 1

Professional Services Agreement Between Castle Pines and Lighthouse Transportation Group, LLC

[ATTACHED]

City of Castle Pines, Colorado
AGREEMENT FOR PROFESSIONAL SERVICES

Project/Services Name: Traffic and Pedestrian Signal and Street Light Maintenance

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”) is made and entered into by and between the City of Castle Pines, a home rule municipality of the State of Colorado, with offices at 7437 Village Square Drive, Suite 200, Castle Pines, Colorado 80108 (the “City”), and Lighthouse Transportation Group, LLC, a Colorado limited liability company with offices at 11861 Bradburn Blvd, Westminster, CO 80031 (“Contractor”) (each individually a “Party” and collectively the “Parties”).

RECITALS

WHEREAS, the City requires certain professional services as more fully described in **Exhibit A**; and

WHEREAS, Contractor represents that it has the requisite expertise and experience to perform the professional services; and

WHEREAS, the City desires to contract with the Contractor subject to the terms of this Agreement.

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. Services. 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 “Services” or “Scope of Services”). The Parties recognize and acknowledge that, although the City has requested certain general services to be performed or certain work product to be produced, the Contractor has offered to the City the process, procedures, terms, and conditions under which the Contractor plans and proposes to achieve or produce the services and/or work product(s) and the City, through this Agreement, has accepted such process, procedures, terms, and conditions as binding on the Parties.

B. Changes to Services. A change in the Scope of Services shall not be effective unless authorized through a written amendment to this Agreement signed by both Parties. 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 meruit or implied contract. Except as expressly provided herein or as otherwise provided in writing by the City, no agent, employee, or representative of the City is authorized to modify any term of this Agreement.

C. Duty to Inform. The Contractor shall perform the Services in accordance with this Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement.

D. Time of Performance. The Contractor shall perform all Services in accordance with this Agreement commencing on the Effective Date, as set forth in Section II of this Agreement, until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the City Council, City Manager, or a person expressly authorized in writing to direct the Contractor's services. Contractor agrees that failure to complete any of the Services during the term of this Agreement may be deemed a breach of this Agreement.

II. TERM AND TERMINATION

A. Term. This Agreement shall commence on the date of mutual execution of the Parties (the "Effective Date") and shall continue until December 31, 2024, or until terminated as provided herein ("Termination Date"). The Parties may mutually agree in writing to extend the term of this Agreement, subject to annual appropriation.

B. City Unilateral Termination. This Agreement may be terminated by the City for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. The City reserves the right to terminate this Agreement upon notice effective immediately in case of pandemic or other health crisis at any time after a declaration by the City in accordance with C.R.S. § 24-33.5-709. In the event of the City's exercise of the right of unilateral termination as provided by this paragraph. In the event, the City exercises its right of unilateral termination as provided by this paragraph:

1. Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after Contractor's receipt of a notice of termination; and

2. The Contractor shall deliver all finished or unfinished materials, documents, data, studies and reports prepared by the Contractor pursuant to this Agreement to the City and such materials, documents, data, studies, and reports shall become the property of the City; and

3. The Contractor shall submit to the City a final accounting and final invoice of charges for all outstanding and unpaid Services performed and reimbursable expenses incurred prior to the Contractor's receipt of notice of termination and for any services authorized to be performed by the notice of termination as provided by Section II.B of this Agreement. The Contractor shall deliver such final accounting and final invoice to the City within thirty (30) days of the date of termination; thereafter, the City shall not accept and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor.

C. Termination for Non-Performance. Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party. Such notice shall specify the non-performance, provide a demand to

cure the non-performance, state a reasonable time to cure the non-performance, and set a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this Section II.C, "reasonable time" shall not be less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and any reimbursable expenses authorized by this Agreement. Such final accounting and final invoice shall be delivered to the City within fifteen (15) days of the Termination Date contained in the written notice. Thereafter, the City shall not accept and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor. If the notice of non-performance is provided in accordance with this Section II.C, nothing in this Section II.C shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

D. Suspension of Services. The City may suspend the Contractor's performance of the Services at the City's discretion and for any reason by delivery of written notice of suspension to the Contractor, which notice shall state a specific date of suspension. Upon Contractor's receipt of such notice of suspension from the City, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or (2) for the submission of an invoice for Services performed in accordance with this Agreement prior to the date of suspension. Contractor shall not re-commence performance of the Services until it receives written notice of re-commencement from the City.

E. Delivery of Notices. Any notice required or permitted by this Section II and its subsections shall be addressed to the City Representative or the Contractor Representative at the address set forth in Section XII.D of this Agreement, or such other address as either Party may notify the other of, and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

III. REPRESENTATIVES AND SUPERVISION

A. City Representative. The City representative responsible for oversight of this Agreement and the Contractor's performance of Services hereunder shall be the City Manager or the City Manager's designee ("City Representative"). The City Representative shall act as the City's primary point of contact with the Contractor.

B. Contractor Representative. The Contractor representative under this Agreement shall be John Behan, Member/Manager ("Contractor Representative"). The Contractor Representative shall act as the Contractor's primary point of contact with the City. The Contractor shall not designate another person to be the Contractor Representative without prior written notice to the City.

C. City Supervision. The Contractor shall provide all Services with little or no daily supervision by City staff or other contractors. Inability or failure of the Contractor to perform the Services with little or no daily supervision which results in the City's need to allocate resources in time or expense for daily supervision shall constitute a material breach of this Agreement and be

subject to cure or remedy, including possible termination of the Agreement, as provided in this Agreement. Notwithstanding the foregoing, the City reserves the right to monitor and evaluate the progress and performance of the Contractor to ensure the terms of this Agreement are being satisfactorily met in accordance with the City's criteria and standards. Contractor shall cooperate with the City relating to such monitoring and evaluation.

IV. COMPENSATION

A. Not-to-Exceed Amount. Following execution of this Agreement by the Parties, the Contractor shall be authorized to and shall commence performance of the Services as described in **Exhibit A**, subject to the requirements and limitations on compensation as provided by this Section IV and its subsections. Compensation to be paid hereunder shall not exceed One Hundred Fifteen Thousand dollars and no/00 (\$115,000.00) ("Not-to-Exceed Amount") unless a different amount is agreed to by and between the Parties in accordance with the amendment requirements of this Agreement. Notwithstanding the amount specified in this Section, Contractor shall be paid only for work performed. Contractor shall not be paid until tasks identified in the Scope of Services are performed to the satisfaction of the City. In consideration for the completion of the Scope of Services by Contractor, the City shall pay Contractor as follows:

- If this box is checked, the City shall pay Contractor on a time and materials basis in accordance with the rate schedule shown in **Exhibit B**. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the City for such fees, costs and expenses. Final payment may be requested by the Contractor upon completion and the City's acceptance of all work or Services as set forth in **Exhibit A**.
- If this box is checked, the City shall pay the Contractor the Not-to-Exceed Amount in a single lump sum payment on [insert date here] .

B. Invoicing. The City shall make payments to Contractor in accordance with subsection A of this Section IV within thirty (30) days after receipt and approval of invoices submitted by Contractor. If payment is on a time and materials basis, Contractor shall submit invoices to the City no more frequently than monthly and shall identify the specific Services performed for which payment is requested.

C. Receipts. The City, before making any payment, may require the Contractor to furnish at no additional charge releases or receipts from any or all persons performing work under this Agreement and/or supplying material or services to the Contractor, or any subcontractor if this is deemed necessary to protect the City's interest. The City, however, may in its discretion make payment in part or full to the Contractor without requiring the furnishing of such releases or receipts.

D. Reimbursable Expenses.

1. If this Agreement is for lump sum compensation, there shall be no reimbursable expenses.

2. If the Agreement is for compensation based on a time and materials basis, the following shall be considered “reimbursable expenses” for purposes of this Agreement and may be billed to the City without administrative mark-up, which must be accounted for by the Contractor, and proof of payment shall be provided by the Contractor with the Contractor’s monthly invoices:

- None
- Vehicle Mileage (billed at not more than the prevailing per mile charge permitted by the IRS as a tax deductible business expense)
- Printing and Photocopying Related to the Services (billed at actual cost)
- Long Distance Telephone Charges Related to the Services
- Postage and Delivery Services
- Lodging and Meals (but only with prior written approval of the City as to dates and maximum amount)

3. Other Expenses. Any fee, cost, charge, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost that shall be borne by the Contractor, shall not be billed or invoiced to the City, and shall not be paid by the City.

E. No Waiver. The City'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. PROFESSIONAL RESPONSIBILITY

A. General. 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. Standard of Performance. 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. Subcontractors. The Parties recognize and agree that subcontractors may be utilized by the Contractor for the performance of certain Services if and as described more particularly in **Exhibit A**; however, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Agreement and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform Services hereunder shall perform such Services in accordance with all terms and conditions of this Agreement. If Contractor engages subcontractors to perform any part of the Services, Contractor shall require and confirm that the requirements of Section VII (Insurance) and Section VIII (Indemnification) of this Agreement are included in any such subcontract. Contractor shall be responsible and liable to the City for indemnification of the City on behalf of

a subcontractor if Contractor fails to confirm that the requirements of Section VIII are included in any subcontract between Contractor and a subcontractor related to this Agreement.

VI. INDEPENDENT CONTRACTOR

A. **General.** 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 and shall not be considered employees or agents of the City. Contractor shall make no representation that it is a City employee for any purposes.

B. **Liability for Employment-Related Rights and Compensation.** The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. The Contractor will comply with all laws, regulations, municipal codes, ordinances, and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. Accordingly, the City shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits, or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever, unless otherwise specifically provided herein.

C. **Insurance Coverage and Employment Benefits.** The City will not include the Contractor as an insured under any policy the City has for itself. The City shall not be obligated to secure nor provide any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, subcontractors, agents, or representatives, including but not limited to coverage or benefits related to: local, state, or federal income or other tax contributions, FICA, workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension or retirement account contributions, profit sharing, professional liability insurance, or errors and omissions insurance. The following disclosure is provided in accordance with Colorado law:

CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE CITY PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.

D. Employee Benefits Claims. To the maximum extent permitted by law, the Contractor waives all claims against the City for any Employee Benefits; the Contractor will defend the City from any claim and will indemnify the City against any liability for any Employee Benefits for the Contractor imposed on the City; and the Contractor will reimburse the City for any award, judgment, or fine against the City based on the position the Contractor was ever the City's employee, and all attorneys' fees and costs the City reasonably incurs defending itself against any such liability.

VII. INSURANCE

A. General. During the term of this Agreement, the Contractor shall obtain and shall continuously maintain, at the Contractor's expense, insurance of the kind and in the minimum amounts specified as follows by checking the appropriate boxes:

- The Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor's minimum statutory and legal obligations arising under this Agreement ("Contractor Insurance"); OR
- The Contractor shall secure and maintain the following ("Required Insurance"):
 - Worker's Compensation insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law.
 - Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) for each occurrence and of Two Million Dollars (\$2,000,000.00) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees, and agents as additional insured parties.
 - Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000.00) for each occurrence with respect to each of the Contractor's owned, hired, and non-owned vehicles assigned to or used in the performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Services, both on the work site and off the work

site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.

- Professional Liability (errors and omissions) insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000.00) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.

B. Additional Requirements. 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 thirty (30) days prior written notice to the City. 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 City, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by the Contractor. The contractor shall be solely responsible for any deductible losses under any policy. For any and all insurance policies required hereunder, the Contractor shall waive subrogation rights against the City.

C. Insurance Certificates. The contractor shall provide to the City a certificate of insurance and all endorsements required hereunder as evidence that the required policies are in full force and effect prior to the commencement of the Services. The certificate shall identify the Project/Services Name as set forth on the first page of this Agreement.

D. Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith. All monies so paid by the City, together with an additional five percent (5%) administrative fee, shall be repaid by the Contractor to the City immediately upon demand by the City. At the City's sole discretion, the City may offset the cost of the premiums against any monies due to the Contractor from the City pursuant to this Agreement.

VIII. INDEMNIFICATION

A. Contractor agrees to indemnify and hold harmless the City and its officers, insurers, volunteers, representatives, agents, employees, 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 City 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. RESERVED

X. REMEDIES

A. In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the City may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions by the Contractor. The remedial actions the City may take include:

1. Suspend the Contractor's performance pending necessary corrective action as specified by the City without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or
2. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
3. Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the City; and/or
4. Terminate this Agreement in accordance with this Agreement.

B. The foregoing remedies are cumulative and the City, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

XI. RECORDS AND OWNERSHIP

A. Retention and Open Records Act Compliance. Contractor hereby acknowledges that the City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-101 *et seq.* (“CORA”). As such, this Agreement may be subject to public disclosure under CORA. Furthermore, all records of the Contractor related to the provision of Services hereunder, including public records as defined in the CORA, and records produced or maintained in accordance with this Agreement, are to be retained and stored in accordance with the City’s records retention and disposal policies. Those records that constitute “public records” under CORA are to be at the City offices or accessible and opened for public inspection in accordance with CORA and City policies. Public records requests for such records shall be processed in accordance with City policies. The contractor agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. The Contractor’s willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the City. For purposes of CORA, the City Clerk is the custodian of all records produced or created as a result of this Agreement. Nothing contained herein shall limit the Contractor’s right to defend against disclosure of records alleged to be public.

B. City’s Right of Inspection. The City shall have the right to request that the Contractor provide to the City a list of all records of the Contractor related to the provision of Services hereunder retained by the Contractor in accordance with this subsection and the location and method of storage of such records. The contractor agrees to allow inspection at reasonable times by the City of all documents and records produced or maintained in accordance with this Agreement.

C. Ownership. Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become the property of the City of Castle Pines upon delivery and shall not be made subject to any copyright by the Contractor unless authorized by the City. Other materials, statistical data derived from other clients and other client projects, software, methodology and proprietary work used or provided by the Contractor to the City not specifically created and delivered pursuant to the Services outlined in this Agreement shall not be owned by the City and may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The City shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by City staff and/or employees; or (2) pursuant to a request under the CORA to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services. The Contractor may publicly state that it performs the Services for the City.

D. Return of Records to City. At the City’s request, upon expiration or termination of this Agreement, all records of the Contractor related to the provision of Services hereunder, including public records as defined in the CORA, and records produced or maintained in accordance with this Agreement, are to be returned to the City in a reasonable format and with an index as determined and requested by the City.

XII. 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 Douglas County, Colorado.

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

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

D. Notice. Unless otherwise provided in this Agreement, any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent via pre-paid, first class United States Mail, to the party at the address set forth below.

If to the City:

If to Contractor:

City of Castle Pines Attn: City Manager 7437 Village Square Drive, Suite 200 Castle Pines, CO 80108	Contractor's Name Attn: [John Behan] [11861 Bradburn Blvd, Westminster, CO 80031]
With Copy to: Castle Pines City Attorney Michow Guckenberger & McAskin LLP 5299 DTC Boulevard, Suite 300 Greenwood Village, Colorado 80111	With Copy to:

E. 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.

F. Modification. This Agreement may only be modified upon written agreement signed by the Parties.

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

H. Affirmative Action. The Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor warrants that it will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or

national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

I. Governmental Immunity. The City, its officers, and its 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 (“CGIA”), or otherwise available to the City and its officers or employees.

J. Rights and Remedies. In the event of a breach of this Agreement by Contractor, the City shall have the right, but not the obligation, to obtain specific performance of the Services. In addition, if the City terminates this Agreement, in whole or in part, due to a breach by Contractor, Contractor shall be liable for actual and consequential damages to the City. The rights and remedies of the City 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 City's legal or equitable remedies, or the period in which such remedies may be asserted.

K. Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the City not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

L. Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section XII shall not authorize assignment.

M. No Third-Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or subcontractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

N. Release of Information. The Contractor shall not, without the prior written approval of the City, release any privileged or confidential information obtained in connection with the Services or this Agreement.

O. Attorneys' Fees. If the Contractor breaches this Agreement, then it shall pay the City's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

P. Survival. The provisions of Sections VI (Independent Contractor), VII (Insurance), VIII (Indemnification) and XII (A) (Governing Law and Venue), (J) (Rights and Remedies), (K) Annual Appropriation), (N) (Release of Information) and (O) Attorneys' Fees, shall survive the expiration or termination of this Agreement. Any additional terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the

Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

Q. Agreement Controls. In the event a conflict exists between this Agreement and any term or provisions in any exhibit attached or incorporated into this Agreement, the terms and provisions in this Agreement shall supersede and control over the terms and provisions in such exhibit.

R. Force Majeure. Neither the Contractor nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by “force majeure.” As used in this Agreement, “force majeure” means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

S. Protection of Personal Identifying Information. In the event the Services include or require the City to disclose to Contractor any personal identifying information as defined in C.R.S. § 24-73-101, Contractor shall comply with the applicable requirements of C.R.S. §§ 24-73-101, et seq., relating to third-party services providers.

T. Authority. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the City of Castle Pines and the Contractor and to bind their respective entities.

U. Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGES FOLLOW

THIS AGREEMENT is executed and made effective as provided herein.

CITY OF CASTLE PINES, COLORADO:

By: _____

Printed Name: _____

Title: _____

Date of execution: _____

ATTEST:

Tobi Duffey, MMC, City Clerk

APPROVED AS TO FORM (*excluding exhibits*):

Linda Michow, City Attorney

CONTRACTOR:

By: _____

Printed Name: _____

Title: _____

Date of execution: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Agreement for Professional Services was subscribed, sworn to and acknowledged before me this ___ day of _____, 20___, by _____ (printed name) as _____ (title) of _____, a _____.

My commission expires: _____

(S E A L)

Notary Public
(Required for all contracts (C.R.S. § 8-40-202(2)(b)(IV)))

EXHIBIT A
SCOPE OF SERVICES

I. Generally

Contractor shall furnish complete pedestrian and traffic signal, and Castle Pines Parkway streetlights maintenance service, including preventive maintenance, including furnishing all labor, tools, equipment, and personnel necessary to provide the service in accordance with CDOT standards and technical specifications. More specifically, the services shall include:

1. Annual preventive maintenance procedures.
2. Quarterly preventive maintenance procedures.
3. Flasher and beacon maintenance.
4. Speed Radar Sign Maintenance; and
5. Unscheduled and emergency repairs.

II. Continuous Service

Continuous maintenance and emergency service shall be provided by the Contractor on a twenty-four (24) hour, three hundred sixty-five (365) day per year basis for the entire contract award period. The Contractor shall provide and maintain twenty-four (24) hour continuous, one number telephone answering service and the Contractor shall be considered notified when the information is given to the answering service. All changes in the telephone number shall be preceded by written notice to the City not less than one (1) week prior to the date of the change.

III. Additional Repairs

During the course of maintenance or surveillance, the Contractor is expected to watch for other signal repairs that may be needed. If a situation is observed that requires repairs, and may be billed to the City, approval by the City is required prior to beginning those repairs, except for repairs of an emergency nature. Repairs of an emergency nature shall be immediately performed by the Contractor, and Contractor shall provide notice of same to the City. The rates in Exhibit B of this Agreement shall apply.

IV. Traffic

All street detours, partial or complete, shall be approved in advance by the City. All construction and maintenance operations that may create hazards to vehicles, pedestrians, or workers shall require traffic control devices in accordance with Federal Highway Administration manuals.

V. Additional Traffic Signal Locations

As additional traffic signals and school zone flashers are included or added in the City's jurisdiction, those locations shall be added to this Agreement at prices pursuant to Exhibit B, not to exceed the amount specified in Section IV of this Agreement. An acceptance inspection of the location shall be performed by the Contractor prior to addition to this Agreement.

MAINTENANCE AND EXTRA WORK SPECIFICATIONS

TS-I ANNUAL PREVENTIVE MAINTENANCE CHECK (APM):

An Annual Preventive Maintenance Check shall be completed on an annual basis at each traffic signal location, unless otherwise instructed in writing by the City.

The following shall be completed:

1. **Documentation:**

The Contractor shall check for all documentation RS defined by the City. This documentation shall include, but not be limited to, the cabinet print(s), phasing diagram, intersection plans/as-built, controller data sheets(s), and log book. The City shall be notified of all missing, illegible, or damaged documentation.

2. **Cabinet:**

The Contractor shall check the general condition of the controller cabinet. Clean cabinet and components thoroughly, replace disposable filters, clean permanent filters, lubricate locks and hinges, check door seals, check condition of cabinet caulking at the cabinet base and re-caulk if necessary. Remove posters, tape, and graffiti from cabinet surfaces. Check the thermostat, fan, cabinet light, and convenience outlet for proper operation. Verify that the thermostat is set at 85 degrees as defined by the City. Verify that anchor bolts and ground rod clamp(s) are tight. Ensure that all field wiring is identified with tags, indicating phase and direction. Tag field wiring that is not identified. Check field wire connections. Tighten field wire connections as needed. Report problems and noted areas of concern to the City.

In cases of infestation by mice, etc., the Contractor shall notify the City, take appropriate safety precautions, and immediately remove nesting material and debris. Poison shall be placed in the cabinet. Required actions to limit the possibility of future infestation shall be noted and reported to the City.

3. **Cabinet Switches:**

The Contractor shall check all switches, in the police door and inside the cabinet, for proper operation. These switches include flash, on/off, stop time, detector test, manual control, etc. Flash transfer relays and associated contacts shall be inspected for wear. Report problems and noted areas of concern to the City.

4. **Controller:**

111c Contractor shall check all controller settings against what is stated on the controller data sheet(s). Check all indicator lamps, LEDs and LCDS for proper operation. Check one clearance interval with a stopwatch to verify the controller's reference to one second. Observe dynamic operation, ensuring all functions to be operating properly. Report problems, controller data sheet discrepancies, and noted areas of concern to the City.

5. Conflict Monitor/ MMU:

The Contractor shall check the voltage monitor operation by turning off or disconnecting the controller. Check red fail operation by removing a load switch or flash transfer relay. Check for conflicts and conformance to NEMA specifications. Report problems and noted areas of concern to the City..

Computerized testing using an ATSI-approved tester may be performed at the City's request and charged as per unit pricing. Computerized test results shall include monitor location, manufacturer, model, serial number, tests completed, and test date. The technician shall review these results and check for conformance with testing standards. Copies of the test results shall be left in the cabinet.

6. Coordination:

The Contractor shall check telephone lines, interconnect, and all associated equipment for proper operation. Check for proper controller manipulation by use of holds, force off, max 2, etc. Check all settings per data sheet. Check clock on coordination equipment and rest if necessary. Report problems and noted areas of concern to the City. +

7. Preempt:

The Contractor shall test railroad preempt for proper operation with a test switch or by removing or jumping input as required. The Contractor shall test emergency vehicle preemption by use of an emitter from a proper distance. Report problems and noted areas of concern to the City.

8. Detection:

The Contractor shall check for proper operation of all vehicle detection.

Inductance Loops – check vehicle detection for proper operation; re-tune detector amplifiers if necessary. Check loop splices, re-splice inductance loops if necessary and if the water valve boxes and/or pull boxes are readily accessible. Check detector amplifier settings, including extend/delay functions settings, and make setting adjustments as necessary to maximize detection operation based on the City's specifications. Make cursory checks regarding the general condition of the inductance loops, surrounding pavement, and water valve boxes. Report pavement failures related to existing or imminent loop failures to the City. Report damaged, missing, buried raised and/or sunken water valve boxes, water valve box lids, and/or pull boxes to the City. Report problems and noted areas of concern to the City.

Where vehicle detection fails, the contractor shall place the vehicle detection's associated vehicle phase on maximum recall and immediately notify the City.

Video Detection – Check vehicle detection for proper operation. Conduct a cursory check of the attachment hardware. Check video quality. Check cameras

for proper alignment. Clean camera lenses if necessary. Report problems and noted areas of concern to the City.

9. Signal Heads:

The Contractor shall check all signal heads for proper height and alignment, check for damaged housings, lenses, reflectors, visors, burned out bulbs, inoperable LEDs, and worn mounting hardware. Report problems and noted areas of concern to the City.

10. Poles:

The Contractor shall visually check the alignment and general condition of poles. Check poles for damage, rust, and need of paint. Check for missing or loose hand-hole covers, nut covers, and nuts. Conduct cursory visual inspection of signal caissons, bolts, welds, and attachment hardware. Tighten bolts where necessary. Document and report any deficiencies in the structure and/or hardware to the City.

11. Mast arms:

The Contractor shall visually check the alignment and general condition of mast arms. Check mast arms for damage, rust, and need of paint. Check for missing or loose hand-hole covers, bolts, and nuts. Conduct cursory visual inspection of bolts, welds, and attachment hardware. Tighten bolts where necessary. Document and report any deficiencies in the structure and/or hardware to the City.

When and where the Contractor observes a situation which is deemed critical by the Contractor, and/or poses a safety hazard to the public if not corrected, and when and where the corrective measure requires additional personnel, equipment, and/or materials, the Contractor shall immediately notify the City and shall take the required actions to correct, and/or make safe, the situation. In such a case, the City shall incur additional charges.

12. Span-wire:

The Contractor shall check all top and bottom span-wires for excessive slack, sag, damage, fraying, and proper height. Check all eyebolts, strand vices, hangers, hardware, signs, etc., for damage or excessive wear. Report problems and noted areas of concern to the City.

13. Pull-boxes:

The Contractor shall check all pull-boxes for damage. Check all pull boxes for missing, broken, and/or loose-fitting lids. Check for proper height and potential trip hazards. Check the condition of the wiring including, conductor insulation, cable insulation, and splices. Check grounding where present to ensure grounding wires are correctly fastened and tight. Tighten and/or reattach conduit grounds where necessary. Re-splice and/or re-seal connections requiring immediate attention. Report problems and noted areas of concern to the City.

14. Push-buttons:

The Contractor shall check pedestrian push buttons for proper and secure mounting, proper operation, and general condition. Verify pedestrian push button operation to ensure that the correct pedestrian phase is called. Check the presence and condition of pedestrian push button instructional signs. Report problems and noted areas of concern to the City.

15. Voltage and Current Readings:

Check and record the controller +24VDC, total intersection current, and the A.C. line voltage.

16. Annual Inventory:

A written copy of the inventory of each location shall be provided to the City. The Contractor shall provide the appropriate information regarding the items listed on the intersection of the inventory sheet.

17. Repair Report:

All hazardous conditions shall be corrected immediately at additional cost to the City. The Contractor shall supply the City with a detailed report of work done and work required for each location at which an Annual Preventive Maintenance has been completed.

18. Uninterruptible Power Supply (UPS):

The Contractor shall check the UPS for proper operation by disconnecting the power source. Where the UPS functions properly, the power source shall remain disconnected for a period of no less than 5 minutes. Where the UPS fails operation, the power source shall be reconnected with the signal restored to normal operation. Additional checks shall be made using a battery load tester. Report problems and noted areas of concern to the City.

TS-2 QUARTERLY PREVENTIVE MAINTENANCE CHECK (OPM):

One Quarterly Preventive Maintenance Check shall be completed on an annual basis at each traffic signal location unless otherwise instructed in writing by the City. As part of the Quarterly Preventive Maintenance Check, an operation check of the following components shall be performed.

- | | |
|--------------------------------|-------------------------------|
| 1. Cabinet Fan | 8. Signal Indication |
| 2. Controller/Coord Operation | 9. Signal Alignment |
| 3. Conflict Monitor Indication | 10. Pedestrian Push Buttons |
| 4. Flasher Circuits | 11. Remove Graffiti/Tape |
| 5. Signal Timing | 12. Remove Unauthorized Signs |
| 6. Time Base Clocks | |
| 7. Vehicle Detectors | |

REPAIRS/REPORT:

All Hazardous conditions shall be corrected immediately at additional cost to the City. The Contractor shall supply the City with a detailed report of work done and work required for each location at which a Quarterly Preventive Maintenance Check has been completed.

TS 3 FLASHER AND BEACON PREVENTIVE MAINTENANCE CHECK:

A Flasher and Beacon Preventive Maintenance Check shall be performed on each flasher/beacon pole prior to the beginning of each school year, and/or at other times designated by the City. The following checks shall be performed at that time:

1. Check the condition of signs, poles, signals heads, and cabinet.
2. Clean lenses, reflectors, signs, and cabinets as necessary.
3. Check the operation of the clock, flasher, and signals.
4. Check for obstruction by trees, bushes, etc.
5. Check signals and signs for proper alignment, realign, and secure as necessary.
6. Replace incandescent bulbs as required.

PROGRAMMING:

Programming of school flashers is not included as part of the Flasher and Beacon Preventive Maintenance Check. Programming of the school flashers shall only be completed at the request of the City. When programming is completed, additional costs shall apply.

TS-4 SPEED RADAR SIGN PREVENTIVE MAINTENANCE CHECK:

A Speed Radar Sign Preventive Maintenance Check shall only be completed at the request of the City. When requested by the City, and unless directed otherwise by the City, a Speed Radar Sign Preventive Maintenance Check shall be performed at each speed radar sign on a yearly basis with the following checks being performed at that time:

1. Check display operation.
2. Check the accuracy of the speed display with the use of the manufacturer-supplied tuning fork.
3. Check limit settings based on posted speeds and City specifications.

TS-5 ANNUAL LIGHT BULB CHANGE:

Annual light bulb changes shall only be completed at the request of the City. When requested, the Contractor shall replace all signal light bulbs at each traffic signal City-wide, at per unit cost. All burned-out bulbs will be replaced by the Contractor at no cost to the City for the duration of the Agreement. Reported burned-out bulbs will be replaced within twelve (12) hours.

TS-6 UNSCHEDULED AND EMERGENCY REPAIRS:

All malfunctions of a controller and its auxiliary equipment shall be considered an emergency unless otherwise identified by the City. Equipment malfunctions, and/or damage, which in the opinion of the City, constitutes a serious hazard or inconvenience to the public shall be considered an emergency. Such malfunctions or damage may include, but not necessarily be limited to, situations where:

1. All red indications are out including bulbs, lenses or LEDs, for any one traffic movement;
2. Signal heads give conflicting indications to any intersection approach or;
3. A signal has been knocked down.

TS-7 SYSTEM MONITORING:

System monitoring of traffic signals on the City's system for which remote communications has been established, for which the City makes available a communications link to the Contractor, and for which the Contractor has in place the required hardware and software to complete the communications link, and obtain a reliable remote connection to the City's system, shall be completed as specified below, and as part of the monthly costs as defined in the contract. System monitoring, as defined, shall be completed through the remote communications link when features are available and enabled through existing hardware and software.

1. Daily: Reset Master Controller Clocks to WWV;
2. Daily: Compare system controller program in the field against the system controller program stored in the Contractor's database;
3. Daily: Automatic notification, for immediate response by the Contractor, of the traffic signal fault flash condition; and
4. Each Workday: Review system controller program comparison logs. Notify the City via email of the communication failures and recoded database inconsistencies.

INTERSECTIONS

TRAFFIC SIGNALS:

1. Castle Pines Pkwy and Village Square Lane
2. Castle Pines Pkwy and Debbie Lane
3. Castle Pines Pkwy and Lagae
4. Castle Pines Pkwy and Yorkshire
5. Castle Pines Pkwy and Monarch
6. Castle Pines Pkwy and Timber Trail Elementary

FIRE SIGNALS:

None

SCHOOL FLASHERS:

1. Buffalo Ridge Elementary (Two on Monarch Blvd., one on Oxford and one on Tenby Way)
2. DCS Montessori Charter School (Two on Castle Pines Parkway)
3. Timber Trail Elementary School (Two on Castle Pines Parkway)

PEDESTRIAN SIGNALS:

1. Castle Pines Pkwy and Forest Park Drive
2. Grigg's Road and W of Turquoise Terrace Street
3. Monarch Blvd. and Brambleridge Lane
4. Monarch Blvd. and Bristolwood Lane
5. Monarch Blvd. and Shoreham Circle
6. Monarch Blvd. and Stonedale
7. Monarch Blvd. and Yorkshire
8. Monarch Blvd. and Daniels Gate Dr.
9. Monarch Blvd. and Glenn Oaks Dr.
10. Monarch Blvd. and Hidden Point Blvd.
11. Monarch Blvd. and Bergonot Tr.
12. Monarch Blvd. and Shoreham Dr.

STREET LIGHTS

19 Street Lights on Castle Pines Parkway

WARRANTY:

The contractor warrants all work performed for one (1) year from the date of acceptance by the City. Materials warranties shall be through the manufacturer and shall neither be limited nor extended by the Contractor.

EXHIBIT B
COMPENSATION

EQUIPMENT	HOURLY RATE
Bucket Truck	\$50
Boom/Digger Truck	\$150
Dump Truck	\$50
Trencher	\$50
Compressor	\$25
Saw Truck	\$50
Pickup truck	\$50
Maintenance Van	\$50
Computer	\$0

(NORMAL BUSINESS HOURS / 7:00 AM – 5:00 PM) Mon-Fri

PERSONNEL	HOURLY RATE
Supervisor	\$100
Foreman	\$100
Tech III	\$100
Tech II	\$100
Tech I	\$100
Operator	\$100
Laborer	\$(1EA included with all positions as needed)
Consultant	\$Cost + 15%
Master Electrician	\$100

(AFTER HOURS RATES / 3:30 PM – 7:00 AM & HOLIDAYS)

All Personnel	\$125
---------------	-------

MISCELLANEOUS FEES

Optional Services	N/A
Bored Conduit 2” (Per LF (Minimum 5 LF)	N/A
Atsi Conflict Monitor Testing	\$275.00
Material Markup	15%