

## SERVICES CONTRACT

This Contract is entered into this 24<sup>th</sup> day of February, 2015 by and between the **City of Gunnison, Colorado a Colorado home rule municipality** (“City”) and Fox Tuttle Hernandez Transportation Group, LLC. (“Contractor”).

Whereas, the parties desire to contract with one another to complete the following project: *Complete Streets*.

Now, therefore, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Services. The Contractor shall perform the services set forth in Exhibit A, attached hereto and incorporated herein by reference (“Services”). The Contractor represents that it has the authority, capacity, experience, and expertise to perform the Services in compliance with the provisions of this Contract and all applicable laws. The City reserves the right to remove any of the Services from Exhibit A upon written notice to Contractor. In the event of any conflict between this Contract and Exhibit A, the provisions of this Contract shall prevail.

2. Price. The City shall pay the Contractor a sum not to exceed \$64,000.00. The City shall make payment within thirty days of receipt and approval of monthly invoices, which shall identify the specific Services performed for which payment is requested.

3. Term. This Contract shall be effective from February 24, 2015 through December 31, 2015. This Contract may be extended or renewed by written agreement of the parties.

4. Appropriation. This Contract is subject to annual appropriation by the City Council of the City of Gunnison. The City shall have no obligation to continue this Contract in any fiscal year in which no such appropriation is made.

5. Independent Contractor. The parties agree that the Contractor is an independent contractor and is not an employee of the City. **The Contractor is not entitled to workers’ compensation benefits from the City and is obligated to pay federal and state income tax on any money earned pursuant to this Contract.**

6. Insurance Requirements.

a. Policies. The Contractor and its subcontractors, if any, shall procure and keep in force during the duration of this Contract the following insurance policies and shall provide the City with a certificate of insurance evidencing upon execution of this Contract:

(i) Comprehensive general liability insurance insuring the Contractor and naming the City as an additional insured with minimum combined single limits of \$1,000,000 each occurrence and \$1,000,000 aggregate. The policy shall be applicable to all premises and operations. 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.

(ii) Comprehensive automobile liability insurance insuring the Contractor and naming the City as an additional insured against any liability for personal injury, bodily injury, or death arising out of the use of motor vehicles and covering operations on or off the site of all motor vehicles controlled by the Contractor which are used in connection with this Contract, whether the motor vehicles are owned, non-owned, or hired, with a combined single limit of at least \$1,000,000.

(iii) Professional liability insurance insuring the Contractor against any professional liability with a limit of at least \$1,000,000 per claim and annual aggregate. *(Note: this policy shall only be required if the Contractor is an architect, engineer, surveyor, appraiser, physician, attorney, accountant, or other licensed professional.)*

(iv) Workers' Compensation Insurance and all other insurance required by any applicable law. *(Note: if under Colorado law the Contractor is not required to carry workers' compensation insurance, the Contractor shall execute a Certificate of Exemption and Waiver, attached hereto as Exhibit B and incorporated herein by reference.)*

b. Requirements. Required insurance policies shall be with companies qualified to do business in Colorado with a general policyholder's financial rating acceptable to the City. Said policies shall not be cancelable or subject to reduction in coverage limits or other modification except after thirty days prior written notice to the City. The Contractor shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal the Contractor changes to "occurrence," the Contractor shall carry a six-month tail. Comprehensive general and automobile policies shall be for the mutual and joint benefit and protection of the Contractor and the City. Such policies shall provide that the City, although named as an additional insured, shall nevertheless be entitled to recover under said policies for any loss occasioned to it, its officers, employees, and agents by reason of negligence of the Contractor, its officers, employees, agents, subcontractors, or business invitees. Such policies shall be written as primary policies not contributing to and not in excess of coverage the City may carry.

7. Indemnification. The Contractor agrees to indemnify and hold harmless the City, its officers, employees, and agents from and against all liability, claims, and demands on account

of any injury, loss, or damage arising out of or connected with the Services, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the Contractor or any subcontractor of the Contractor, or any officer, employee, or agent of the Contractor or any subcontractor, or any other person for whom the Contractor is responsible. The Contractor shall investigate, handle, respond to, and defend against any such liability, claims, and demands, and shall bear all other costs and expenses related thereto, including court costs and attorneys' fees. The Contractor's indemnification obligation shall not be construed to extend to any injury, loss, or damage to the extent caused by the act, omission, or other fault of the City. This paragraph shall survive the termination or expiration of this Contract.

8. Governmental Immunity Act. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, and other provisions of the Colorado Governmental Immunity Act, C.R.S. §24-10-101 *et seq.* and under any other applicable law.

9. Compliance with Applicable Laws.

a. Generally. The Contractor shall comply with all applicable federal, state, and local laws, including the ordinances, resolutions, rules, and regulations of the City. The Contractor shall solely be responsible for payment of all applicable taxes and for obtaining and keeping in force all applicable permits and approvals.

b. C.R.S. Article 17.5, Title 8. The Contractor hereby certifies that, as of the date of this Contract, it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and that the Contractor will participate in the e-verify program or Colorado Department of Labor and Employment ("Department") program as defined in C.R.S. § 8-17.5-101 in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. The Contractor certifies that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either the e-verify program or the Department program. The Contractor is prohibited from using either the e-verify program or the Department program procedures to undertake pre-employment screening of job applicants while this Contract is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall be required to: (i) notify the subcontractor and City within three days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (ii) terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides

information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor shall comply with any reasonable request by the Department made in the course of an investigation that it is undertaking pursuant to the authority established in C.R.S. Article 17.5, Title 8. If the Contractor violates this paragraph, the City may terminate this Contract for default in accordance with "Termination," below. If this Contract is so terminated, the Contractor shall be liable for actual and consequential damages to the City. *(Note: this paragraph shall not apply to contracts: (i) for Services involving the delivery of a specific end product (other than reports that are merely incidental to the performance of said work); or (ii) for information technology services and/or products.)*

c. C.R.S. § 24-76.5-103. If the Contractor is a natural person (*i.e.*, not a corporation, partnership, or other legally-created entity), he/she must complete the affidavit attached hereto as Exhibit C and attach a photocopy of a valid form of identification. If the Contractor states that he/she is an alien lawfully present in the United States, the City will verify his/her lawful presence through the SAVE Program or successor program operated by the U.S. Department of Homeland Security. In the event the City determines that the Contractor is not lawfully present in the United States, the City shall terminate this Contract for default in accordance with "Termination," below.

10. Termination.

a. Without Cause. Either party may terminate this Contract without cause upon thirty days prior written notice to the other. The City shall be liable to pay the Contractor for Services performed as of the effective date of termination, but shall not be liable to the Contractor for anticipated profits.

b. For Default. Each and every term and condition hereof shall be deemed to be a material element of this Contract. In the event either party fails to perform according to the terms of this Contract, such party may be declared in default. If the defaulting party does not cure said breach within ten days of written notice thereof, the non-defaulting party may terminate this Contract immediately upon written notice of termination to the other. In the event of such termination by the City, the City shall be liable to pay the Contractor for Services performed as of the effective date of termination, but shall not be liable to Contractor for anticipated profits; provided, however, that the Contractor shall not be relieved of liability to the City for any damages sustained by the City by virtue of any default under this Contract, and the City may withhold payment to the Contractor for the purposes of setoff until such time as the exact amount of damages is determined.

11. Notices. Written notices shall be directed as follows and shall be deemed received when hand-delivered or emailed, or three days after being sent by certified mail, return receipt requested:

To the City:

City of Gunnison  
PO Box 239  
Gunnison, CO 81230

Email: [swestbay@cityofgunnison-co.gov](mailto:swestbay@cityofgunnison-co.gov)

To the Contractor:

Fox Tuttle Hernandez Transportation Group, LLC  
PO Box 19768  
Boulder, CO 80308

Email: [fox@foxtuttle.com](mailto:fox@foxtuttle.com)

12. Special Provisions.

13. Time of the Essence. Time is of the essence in performance of the Services and is a significant and material term of this Contract.

14. Miscellaneous. This Contract contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties. In the event a court of competent jurisdiction holds any provision of this Contract invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Contract. The Contractor shall not assign this Contract without the City's prior written consent. This Contract shall be governed by the laws of the State of Colorado, and venue shall be in the County of Larimer, State of Colorado.

15. Electronic Signature. This Contract may be executed by electronic signature in accordance with C.R.S 24-71.3-101 *et seq.*

Signed by the parties on the date written above.

**City of Gunnison a Colorado home rule municipality**

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

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**Contractor**

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

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
20\_\_\_ by \_\_\_\_\_.  
(Insert name of individual signing on behalf of the Contractor)

S E A L

\_\_\_\_\_  
Notary's official signature

\_\_\_\_\_  
Commission expiration date

## EXHIBIT A – SERVICES

### Task 1.

The first step, which is underway, involves completing the scope of work, defining project costs, and initiating the contract with Fox/Tuttle/Hernandez Transportation LLC (FTH) and MIG.  
February 24, 2015

### Task 2. (\$7,500 FTH & \$4,800 FTH traffic count sub)

A review of existing and anticipated future conditions of the highway system will be completed using the available data sources and forecasts prepared during previous planning efforts. City Staff will complete AM, noon and PM peak hour pedestrian counts. FTH will coordinate traffic counts that will be completed by a sub-contractor at 8 major intersections along the Tomichi and Main Street corridors. FTH will prepare one draft and one final presentation (20 slides) and technical appendix (as a PDF) of existing multimodal safety issues and needs. FTH will host one webinar with CDOT Region 3 staff to address the conditions identified in the multimodal safety assessment. This task will conclude with city staff presenting findings to the City Council. FTH will not attend the City Council presentation. **(FTH work will be prepared & coordinated electronically, March 2015)**

### Task 3. \$10,000 FTH \$9,000 MIG

The multimodal safety audit will be used by FTH and MIG to prepare conceptual alternatives for addressing the character and safety along the Tomichi and Main Street corridors. The conceptual alternatives will consist of cross-section drawings, character images, and conceptual design prepared at a schematic level for the circulation adjustments (FTH) and concept streetscape treatments (MIG). After brainstorming with FTH, MIG will develop 2 alternative concepts, in 3D model form, for sample sections (an expanded cross section) of: Main/Tomichi, Main Street, a secondary intersection, and a gateway concept for west Tomichi. Final work products will be .pdf and/or .jpg files of up to 2 views of the concept alternatives. City Staff will present the concepts to city leaders, the BPAC, Comprehensive Plan Advisory Committee and interested citizens. The conceptual alternatives will be shared with CDOT Region 3 in a webinar to gain input on their feasibility. FTH will participate in the webinar. FTH will prepare a summary presentation to be used at a public input process occurring in Task 4. **(FTH work will be prepared & coordinated electronically, May 1 2015)**

### Task 4. (\$5,000 FTH)

A one day charrette will be organized, promoted, hosted, and documented by the City Staff. Two members of FTH will attend the event to co-present the conceptual alternatives. City staff will plan and organize a series of group exercises and facilitated conversations focused on design of the conceptual alternatives in the urban arterial system. The conceptual alternatives developed in Task 3 will help set the stage for the public dialog. City staff will assemble and

organize the feedback from the charrette. **(FTH Site Visit and participation during the one day charrette on May 20, 2015)**

**Task 5. (\$4,000 FTH) \$4000 MIG**

Based on input from the charrette, FTH and MIG will develop a preferred alternative design illustration. MIG will consolidate the alternatives of the four alternative locations into a preferred 3D concept for each. The work product will be .pdf and/or .jpg files of up to 3 views of the preferred concept for each location, and the digital SketchUp files (convertible to AutoCAD by others). City Staff will present the preferred design to city leaders, CDOT staff, the BPAC, Comprehensive Plan Advisory Committee and interested citizens. FTH will participate in one webinar with CDOT Region 3 staff to review the preferred conceptual plan. **(FTH work will be prepared & coordinated electronically June 15, 2015)**

**Task 6. \$22,700 FTH**

For this task, Tomichi Avenue and Main Street have been divided into the segments, with each segment identified as having either conceptual level design or more detailed 30% engineering level design as follows:

Conceptual: Highway 50/Tomichi Ave. from the Gunnison River bridge to 11<sup>th</sup> St.

30%: Tomichi Ave. from 11<sup>th</sup> St. to Teller St.

30%: Tomichi Ave. from Teller St. to east of Adams (new pedestrian underpass)

30%: Main St. from New York Ave. to Ohio Ave.

Conceptual: Main St. from Ohio Ave. to Denver Ave.

30%: Main St. from Denver Ave. to city limit north of Spencer Ave.

For the 30% design segments listed above, FTH will prepare multimodal design drawings (approximately 30% engineer design using CAD over aerial photos) depicting lane geometry, medians, curb lines, and other related features using existing City AutoCad data sets and/or other sources. The design drawings will address the character and safety of the segment. FTH will include 30% plans, street section illustrations, conceptual landscape designs provided by MIG in prior tasks, sidewalk layout concept, signage recommendations, including those provided by MIG in prior tasks, traffic signal sequencing recommendations, and a 20 slide summary presentation. In conjunction with the consultant's designs the city engineer and/or consulting engineer will develop a feasibility report and initial civil engineer plans based on the 30% plans prepared by FTH. FTH will host one webinar with CDOT Region 3 staff to review the draft 30% plans. The 30 percent plans will contain narrative details for efficient transition into construction level drawings to be prepared by others. FTH will provide one set of draft 30%

plans to city staff for review, one revised set for the CDOT Region 3 webinar, and a final set with design adjustments (up to 8 hours) after the CDOT review.

For the Conceptual segments listed above, FTH will prepare conceptual level plan view drawings that indicate the key multimodal components of the corridor and recommended improvements at the conceptual level, without geometric specificity. FTH will also develop one illustrative cross-section drawing (drawn to scale) for each conceptual segment that illustrates the key cross-sectional elements at an exemplary location in the segment. These cross-sections will build on the alternative designs prepared in Tasks 3 and 4.

**(FTH work will be prepared & coordinated electronically July 10, 2015)**

**Task 7. \$18,000 City design expenses, \$5,000 FTH**

Civil engineer plans (preliminary) will be developed by the City Engineer. The preliminary design set will be survey quality and include utility, grading and drainage, lane geometry, curb and sidewalk details, and other technical notes and illustrations. Additionally, a preliminary streetscape plan will be developed by the City Engineer and elaborate upon the pedestrian facility needs. Preliminary design drawing sets will be of sufficient detail to initiate permitting with CDOT. The completed design work will be presented to stakeholders and City Council. FTH will provide technical review and support as needed during this Task in an amount not to exceed 30 hours of staff time. **(FTH work will be prepared & coordinated electronically August 14, 2015)**

**Task 8. \$0**

The Capital Improvement Plan will be amended to include the programming for the complete streets highway improvements.

**Task 9. 5,000 FTH**

FTH will correspond with CDOT Region 3 staff to review multimodal improvement opportunities that may be implemented using the defined 2015/2016 budget revenues. FTH will help facilitate permitting which will likely follow a phased improvement program. FTH will provide technical support during this Task in an amount not to exceed 32 hours. **(FTH telephone and e-mail correspondence with CDOT September 2015)**

**EXPENSE SUMMARY**

\$59,200 FTH

\$4,800 Traffic Counts

\$18,000 City Civil Design

\$13,000 MIG

**\$95,000 TOTAL**