

## AGREEMENT FOR SERVICES

This Agreement is entered into as of this 17<sup>th</sup> day of April, 2024, by and between the City of Litchfield Park, an Arizona municipal corporation, hereinafter referred to as "Litchfield Park" and Jon Froke hereinafter referred to as the "Contractor." Litchfield Park and Contractor may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

FOR THE PURPOSE of providing Planning and Zoning and Project Management Consultant Services for the City of Litchfield Park, Litchfield Park and Contractor do hereby mutually agree to the following:

### 1. SERVICES AND RESPONSIBILITIES

1.1 Retention of the Contractor. In consideration of the mutual promises contained in this Agreement, Litchfield Park engages the Contractor to render services set forth herein, in accordance with all the terms and conditions contained in this Agreement.

1.2 Scope of Services. The Contractor shall do, perform, and carry out in a satisfactory and proper manner, as determined by Litchfield Park, the services set forth in this Agreement, including all exhibits ("Services"). The specific scope of work is set forth in Exhibit "A."

### 1.3 Responsibility of the Contractor.

1.3.2 Contractor shall designate Jon Froke as his Contractor Representative and all communications shall be directed to him. Key Contractor Personnel are set forth in Exhibit B. "Key Personnel" includes the Contractor employee who will have significant responsibilities regarding the Services and Project. Prior to changing such designation Contractor shall first obtain the written approval of Litchfield Park.

1.3.3 Contractor shall obtain its own legal, insurance and financial advice regarding Contractor's legal, insurance and financial obligations under this Agreement.

1.3.4 Contractor shall coordinate its activities with Litchfield Park's Representative and submit its reports to the City Manager or representative.

1.3.5 Contractor shall provide, pay for, and insure under the requisite laws and regulations all labor, materials, equipment, and transportation, and other facilities and services necessary for the proper execution and completion of the Services. Contractor shall provide and pay for and insure all equipment necessary for the Services.

1.3.6 Contractor shall obtain and pay for all business registrations, licenses, permits, governmental inspections and governmental fees necessary and customarily required for the proper execution and completion of Services. Contractor shall pay all applicable taxes. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and

lawful orders of any public authority bearing on the performance of the Services.

#### 1.4 Responsibility of Litchfield Park.

1.4.1 Litchfield Park shall cooperate with the Contractor by placing at his disposal all available information concerning the Services. City agrees to obtain its own legal, insurance and financial advice City may require for the Project.

1.4.2 Litchfield Park designates the City Manager as its Representative. All communications to Litchfield Park shall be through its Litchfield Park Representative.

#### 1.5 Contract Term.

1.5.1 This Contract commences on July 1, 2024 and may be terminated in accordance with Paragraph 6.

### 2. COMPENSATION AND METHOD OF PAYMENT

2.1 Compensation. Contractor shall be paid an hourly rate of \$80.00 per hour for the Services as negotiated with the City Manager for the various assignments. Statements shall be issued monthly, are due and payable upon receipt and are delinquent thirty (30) days after the date on the initial statement. Contractor reserves the right to terminate this Agreement or suspend all work for Litchfield Park until the default is cured. Contractor shall prepare monthly invoices and progress reports which clearly indicate the progress to date and the amount of compensation due by virtue of that progress. All invoices shall be for services completed. Litchfield Park shall promptly review invoices and notify Contractor of any objections thereto. Absent such objection in writing within fifteen (15) working days of the date of the invoice, the invoice shall be deemed proper and acceptable.

2.2 Reimbursable Expenses. Litchfield Park shall pay the cost for all reimbursable items such as delivery charges, toll telephone calls, reproduction and any other incidental charges and expenses not specifically covered by the terms of this Agreement. Typical copy costs of regular sized (8.5"x 11" documents) are excluded. Mileage fees will be reimbursable by the annual IRS mileage rate. Contractor shall notify Litchfield Park of any reimbursable charges before they are incurred, to the extent possible, for prior approval by Litchfield Park. Reimbursable expenses must include receipts for reimbursement.

2.3 W-9 Forms. The Contractor shall provide to Litchfield Park its completed W-9 form prior to receipt of any compensation.

### 3. CHANGES TO THE SCOPE OF SERVICES

3.1 Change Orders. Litchfield Park may, at any time, and by written change order, make changes in the services to be performed under this Agreement. A form of change order is attached hereto as Exhibit C. If such changes cause an increase or decrease in the

Contractor's cost or time required for performance of any services under this Agreement, an equitable adjustment shall be made, and the Agreement shall be modified in writing accordingly. Any claim of the Contractor for adjustment under this clause must be submitted in writing within thirty (30) days from the date of receipt by the Contractor of the notification of change. It is distinctly understood and agreed by the parties that no claim for extra services provided, or materials furnished by Contractor will be allowed by Litchfield Park except as provided herein, nor shall Contractor provide any services or furnish any materials not covered by this Agreement unless Litchfield Park first approves in writing.

#### 4. REPRESENTATIONS

4.1 Consultant makes no representation or warranty, either expressed or implied, as to its findings, recommendations or professional advice provided hereunder, except that the same will be promulgated and prepared in accordance with local standards for such services. The role of Consultant is solely to assist in the management of those items listed under "Scope of Work" and provide professional services for Litchfield Park.

#### 5. TERMINATION OF THIS AGREEMENT

5.1 Termination. Litchfield Park may, by written notice to the Contractor, terminate this Agreement in whole or in part with seven (7) days' notice, either for Litchfield Park's convenience or because of the failure of the Contractor to fulfill his contract obligations. Upon receipt of such notice, the Contractor shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to Litchfield Park copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor in performing this Agreement, whether completed or in process. This Agreement may be terminated in whole or in part by the Contractor in the event of substantial failure by Litchfield Park to fulfill its obligations.

5.2 Payment to Contractor Upon Termination. If the Agreement is terminated, Litchfield Park shall pay the Contractor for the services rendered prior thereto in accordance with percent completion at the time work is suspended minus previous payments.

#### 6. ASSURANCES

6.1 Examination of Records. The Contractor agrees that duly authorized representatives of Litchfield Park shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Agreement.

6.2 Ownership of Documents and Other Data. Original documents and other data prepared or obtained under the terms of this Agreement, or any change order are and will remain the property of Litchfield Park unless otherwise agreed to by both parties. Litchfield Park may use such documents for other purposes without further compensation to the

Contractor; however, any reuse without written verification or adaptation by Contractor for the specific purpose intended will be at Litchfield Park's sole risk and without liability or legal exposure to Contractor. Any verification or adaptation of the documents by Contractor for other purposes than contemplated herein will entitle Contractor to further compensation as agreed upon between the parties.

6.3 Litigation. Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any damages claimed or portion of the amount payable under this Agreement, all litigation and collection expenses, witness fees, court costs, and reasonable attorneys' fees incurred shall be paid to the prevailing party.

6.4 Independent Contractor. This Contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor will be an independent contractor and not Litchfield Park's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the Internal Revenue Code, the Immigration and Naturalization Act, Arizona revenue and taxation laws, Arizona Workers' Compensation Law, and Arizona Unemployment Insurance Law. The Contractor agrees that it is a separate and independent enterprise from Litchfield Park, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Contract shall not be construed as creating any joint employment relationship between the Contractor and Litchfield Park, and Litchfield Park will not be liable for any obligation incurred by the Contractor, including, but not limited to, unpaid minimum wages and/or overtime premiums.

6.5 Immigration Law Compliance Warranty. As required by A.R.S. § 41-4401, Contractor hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Contractor further warrants that after hiring an employee, Contractor verifies the employment eligibility of the employee through the E-Verify program. If Contractor uses any subcontractors in performance of the Work, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. Contractor is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. Litchfield Park, at its option, may terminate the Contract after the third violation. Contractor shall not be deemed in material breach of this Contract if the Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). Litchfield Park retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the Contract to ensure that the Contractor or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the parties may modify

this paragraph consistent with state law.

6.6 Sole Agreement. There are no understandings or agreements except as herein expressly stated.

6.7 Notices. Any notice to be given under this Agreement shall be in writing, shall be deemed to have been given when personally served or when mailed by certified or registered mail, addressed as follows:

**LITCHFIELD PARK:**

Matthew C. Williams, City Manager  
City of Litchfield Park  
214 West Wigwam Blvd  
Litchfield Park, Arizona 85340

**CONTRACTOR:**

Jon M. Froke  
1001 Clear Lake Drive  
Waseca, Minnesota 56093

The address may be changed from time to time by either party by serving notices as provided above.

6.9 Controlling Law. This Agreement is to be governed by the laws of the State of Arizona.

7. SUSPENSION OF WORK

7.1 Order to Suspend. Litchfield Park may order the Contractor, in writing, to suspend all or any part of the Services for such period of time as he may determine to be appropriate for the convenience of Litchfield Park.

7.2 Adjustment to Contract Fee. If the performance of all or any part of the Services is, for any unreasonable period of time, suspended or delayed by an act of Litchfield Park in the administration of this Agreement, or by its failure to act within the time specified in this Agreement (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this Agreement necessarily caused by such unreasonable suspension or modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension or delay to the extent (1) that performance was suspended or delayed for any other cause, including the fault or negligence of the Contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Agreement.

8. INTERESTS AND BENEFITS

8.1 Interest of Contractor. The Contractor covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

8.2 Interest of Litchfield Park Members and Others. No officer, member or employee of Litchfield Park and no member of its governing body, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the services to be performed under this Agreement, shall participate in any decision relating to this Agreement which affects his personal interest or have any personal or pecuniary interest, direct or indirect, in this Agreement or the process thereof.

8.3 Notice Regarding A.R.S. § 38-511. This Contract is subject to cancellation under Section 38-511, Arizona Revised Statutes.

9. ASSIGNABILITY

The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of Litchfield Park thereto.

IN WITNESS WHEREOF, Litchfield Park and the Contractor have executed this Agreement as of the date first written.

CITY OF LITCHFIELD PARK

By: \_\_\_\_\_  
Thomas L. Schoaf, Mayor

**ATTEST:**

\_\_\_\_\_  
Terri Roth, MMC, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Joseph D. Estes, City Attorney  
Pierce Coleman, PLC,

Jon M. Froke

By: \_\_\_\_\_  
Jon M. Froke, Principal

## **EXHIBIT A SCOPE OF WORK**

The planning & zoning consulting services shall include the following:

- Providing institutional knowledge in regard to Litchfield Park general plan and zoning code as well as Boards and Commissions as well as advising on special projects as requested by the City Manager or the City Manager's designee.

Any other necessary coordination as requested by Litchfield Park on a time and materials basis.

**EXHIBIT B**  
**CONTRACTOR'S KEY PERSONNEL AND SUBCONTRACTORS**

KEY PERSONNEL: Jon Froke

Jon M. Froke  
1001 Clear Lake Drive  
Waseca, MN 56093

SUBCONTRACTORS: Contractor shall not engage any consultants or subconsultants without the prior written approval of Litchfield Park. Unless otherwise authorized, Litchfield Park shall contract directly with all third-party consultants and Consultant is not responsible for payments to such consultants.



**EXHIBIT C CHANGE ORDER**

CHANGE ORDER NO. \_\_\_\_\_

Distribution: LITCHFIELD PARK  
CONTRACTOR  
OTHER

PROJECT: \_\_\_\_\_

DATE: \_\_\_\_\_

OWNER: City of Litchfield Park

CONTRACTOR: \_\_\_\_\_

AGREEMENT DATED: \_\_\_\_\_

CHANGES: The Agreement is changed as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Not valid until signed by both Litchfield Park and Contractor.  
Signature of Contractor indicates acceptance.

Change Orders \_\_\_\_\_

The compensation prior to this Change Order was \_\_\_\_\_

The compensation will be increased by this Change Order in the amount of:  
\_\_\_\_\_

The new compensation under the Agreement including this Change Order will be  
\_\_\_\_\_

The Contract Time will increase by \_\_\_\_\_

ACCEPTANCE STATUS:

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
City of Litchfield Park

By \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_