

Agreement for Professional Services
(Sheridan Parkway and Ridgeview Drive Traffic Signal Project)

This Agreement for Professional Services (the "Agreement") is made and entered into this ____ day of _____, 2023 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation with an address of 645 Holbrook Street, P.O. Box 750, Erie, CO 80516, (the "Town"), and Kimley Horn and Associates, Inc. an independent contractor with a principal place of business at 6200 S. Syracuse Way, Suite 300, Greenwood Village, CO 80111 ("Contractor") (each a "Party" and collectively the "Parties").

Whereas, the Town requires professional services; and

Whereas, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required professional services.

Now Therefore, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. Scope of Services

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference, and known as: Sheridan Parkway and Ridgeview Drive Traffic Signal Project.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

II. Term and Termination

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor completes the Scope of Services to the satisfaction of the Town, or until terminated as provided herein.

B. Either Party may terminate this Agreement upon 30 days advance written notice. The Town shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

III. Compensation

In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor \$132,441. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the Town for such fees, costs and expenses. Contractor may submit periodic invoices, which shall be paid by the Town within 30 days of receipt.

IV. Professional Responsibility

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

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

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

D. Contractor shall at all times comply with all applicable law, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act, 42 U.S.C. § 7401, *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. § 651, *et seq.*; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

V. Ownership

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

VI. Independent Contractor

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

VII. Insurance

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

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

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

VIII. Indemnification

A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including reasonable attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor; provided that Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

IX. Miscellaneous

A. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

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

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

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

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

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

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

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

I. *Governmental Immunity.* The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

J. *Rights and Remedies.* The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

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

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

Exhibit A Scope of Services

Contractor's Duties

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

Task 1: Project Meetings and Coordination

Contractor shall participate in and attend up to 6 virtual and up to 2 in person project meetings with the Town and other stakeholders.

Contractor shall provide project management and project administration services for this project for up to 20 hours.

Task 2: Data Collection

Topographic Survey and Subsurface Utility Engineering

Contractor shall, through its subcontractor Baseline Engineering, provide topographic survey and subsurface utility engineering services.

Contractor understands the project limits extend 250' from the project intersection on all four legs. Contractor shall locate relevant improvements, within the project limits in accordance with recognized standards and local practice, including:

- Control Work – Horizontal datum will be based on Colorado State Plane Coordinates, NAD83, North Zone 0501, scaled to ground. Vertical datum will be based on NAVD 88.
- Improvement – Above Ground features will be surveyed including
 - Top back of curb
 - Curb flowline
 - Back of Walkways
 - Centerline of roadway
- Utility – Survey locates, markings, and visible appurtenances will be surveyed within the project limits.
- Right-of-Way – Right-of-Way will be established/defined by the existing roadway features, GIS, and found survey monumentation.

Contractor shall provide survey of utility locates within the project limits and combine the field data with mapping information to prepare SUE plans noting the existing utilities. The depiction of existing underground facilities within the limits will meet the ASCE 38-22 standard and be shown to QL-B SUE plans.

Contractor shall provide 4 caisson investigations and 1 Controller Pad investigation at locations to be determined as part of the conceptual design process, to identify conflicts with existing utilities. Utilities within the test holes shall be located and identify to QL-A. Test holes will be backfilled with squeegee, and non-shrink grout to match the existing surface material.

Geotechnical Investigation

Contractor shall, through its subcontractor Vivid Engineering, provide geotechnical engineering services.

Under observation of a qualified representative of the geotechnical engineer, Contractor shall drill 2 borings to a maximum depth of 30' or refusal. The borings shall be located near the proposed location of the anticipated signal poles foundation, with consideration to existing structures and utilities. Upon completion of drilling, the borings shall be backfilled with cuttings from the borings, and patched to match the existing ground surface, as applicable.

Contractor shall perform laboratory testing on selected soil samples in accordance with recognized standards and local practice and will include the following, subject to change based on the subsurface conditions encountered.

- Gradation Analysis/Atterberg Limits
- Moisture Content/Unit Weight
- Unconfined Compressive Strength
- Swell Test
- pH, Resistivity, Redox, Soluble Sulfates, Soluble Chlorides, Sulfides

Contractor shall perform an engineering analysis and evaluation of the resulting field and laboratory data for use in preparing geotechnical engineering recommendations for the proposed project. Contractor shall prepare a geotechnical report for the site, summarizing the findings, conclusions, and geotechnical recommendations. The report shall contain the following, as determined by the project team:

- A description of the proposed project, including a description of the surface and subsurface site conditions encountered during the field investigation.
- A Boring Location Plan showing the approximate boring locations.
- Boring logs that provide visual and laboratory soil classifications, relative density information, select laboratory testing, major changes in the soil type, and groundwater elevation, as applicable.
- Laboratory test results.
- Conclusions pertaining to feasibility of the proposed construction, impacts of geotechnical and geologic features on the proposed construction, and opinions on management of groundwater.

- Recommendations related to the geotechnical aspects of site preparation and earthwork.
- Seismic design coefficients in accordance with International Building Code.
- Recommendations for lateral earth pressures.
- Recommendations for foundation design, including recommended foundation type, allowable bearing capacities, embedment depths, and anticipated collapse/swelling soil or bedrock mitigation, as needed. Appendices that summarize the field investigation and laboratory testing programs.

Task 3: Intersection Modification Memo

Contractor shall prepare an intersection modification memorandum for the intersection of Ridgeview Drive and Sheridan Parkway. The memorandum shall include an interim intersection condition, a signal timing plan for the intersection when signalized, and future intersection geometry and control recommendations.

Interim Condition Analysis

Contractor shall analyze the traffic levels at the Ridgeview Drive and Sheridan Parkway intersection based on existing conditions and existing traffic volumes provided in the Fox Tuttle signal warrant analysis. Recommendations to the existing geometry shall be provided if needed.

Signal Timing Plans

Contractor shall provide signal timing and phasing plans for use when the Ridgeview Drive and Sheridan Parkway intersection is signalized. The signal timing plan shall account for coordination with the signalized SH-7 (168th Avenue) and Sheridan Parkway intersection to the south, if needed. Signal timing plan shall account for the morning, midday, and afternoon time of day.

Interim Intersection Configuration

Contractor shall include with the intersection modification memo a conceptual interim intersection layout exhibit displaying the recommended improvements associated with this project. This exhibit shall display recommended multimodal improvements and signage enhancements at the intersection. In addition to the traffic signal and multimodal improvements, Contractor anticipates that curb access ramp improvements will be required on the northwest and southwest corners of the intersection.

Ultimate Intersection Configuration

Contractor shall obtain future traffic projections for the remaining undeveloped parcels within the Vista Highlands area from traffic studies previously prepared. These volumes shall be used to estimate future traffic projections at the Ridgeview Drive and Sheridan Parkway intersection. The buildout of each remaining development will determine when intersection geometry

improvements are needed based on the remaining undeveloped parcels and estimated background growth.

Based on the recommendation of the updated traffic analysis, Contractor shall prepare an exhibit displaying the ultimate build out of the intersection. This exhibit shall include recommendations for additional vehicle lanes, if needed, to accommodate future traffic volumes as well as anticipated multimodal improvements such as bike lanes and sidewalks. The ultimate improvements exhibit shall display the proposed traffic signal design to demonstrate how the signal will function with the full build-out.

Contractor shall provide this draft memorandum to the Town for review and comments, and also to the City and County of Broomfield. Contractor shall revise the draft report as appropriate and prepare the final report for use.

Task 4: 60% Construction Documents

Contractor shall prepare a 60% preliminary construction plan based on the improvements identified in the conceptual interim intersection layout exhibit prepared as part of the intersection modification memo.

60% construction plans shall consist of the following sheets, as determined by the project team:

- Title Sheet
- General Notes (Up to 2 Sheets)
- Summary of Approximate Quantities (Up to 2 Sheets)
- Removal and Reset Plan (Up to 1 Sheets)
- Roadway and Paving Plan (Up to 1 Sheets)
- ADA Ramp grading details (Up to 1 Sheets)
- Construction Details (Up to 2 Sheets)
- Traffic Signal Plan (Up to 2 Sheets)
- Signage and Striping Plan (Up to 2 Sheets)

Contractor shall prepare an engineer's opinion of probable cost (OPC) based on the construction documents. The OPC shall be submitted with the 60% construction plans.

Task 5: 90% Construction Documents

Contractor shall review the 60% construction plans and OPC and incorporate up to one round of comments and prepare 90% construction documents.

Contractor shall prepare technical specifications for the proposed improvements. Contractor assumes specifications for civil improvements will be based on Town of Erie standard specifications. Technical specifications shall be submitted with the 90% construction plans.

Task 6: Final Construction Documents

Contractor shall review the 90% construction plans, specifications and OPC and incorporate up to one round of comments in a final deliverable sealed plan set.

Task 7: Bidding And Construction Phase Services

Contractor shall assist the Town during the bidding and construction phases of the project as requested by the Town, for up to 50 hours.

Bidding and construction phase service shall include the services below, as requested by the Town:

Bid Document Preparation and Contractor Notification. Contractor shall support the Town in assembling a bid package and attend a pre-bid meeting with potential bidders. If requested, Contractor shall tabulate the bids received and evaluate general compliance of bids with the bidding documents. Contractor shall provide a summary of this tabulation and evaluation. If requested, Contractor shall notify the selected construction contractor.

Pre-Construction Conference. Contractor shall attend a Pre-Construction Conference with the Town and other relevant stakeholders before the start of construction.

Construction Meetings. Contractor shall attend additional construction meetings on site as requested by the Town.

Clarifications and Interpretations. Contractor shall respond to reasonable and appropriate construction contractor requests for information made in accordance with the Contract Documents and issue necessary clarifications and interpretations. Any orders authorizing variations from the Contract Documents may be made only by the Town.

Shop Drawings and Samples. Contractor shall review Shop Drawings and Samples and other data which construction contractor is required to submit, but only for general conformance with the Contract Documents. Such review and any action taken in response will not extend to means, methods, techniques, equipment choice and usage, schedules, or procedures of construction or to related safety programs. Any action in response to a shop drawing will not constitute a change in the Contract Documents, which can be changed only through the Change Orders.

Applications for Payment. Based on observations and on review of applications for payment and supporting documentation, Contractor shall recommend amounts that construction contractor be paid.

Record Drawings. Contractor shall prepare a record drawing for the project showing significant changes reported by the construction contractor or made to the design. Record drawings are not guaranteed to be as-built, but will be based on information made available.

Contractor will not supervise, direct, or control construction contractor's work, and will not have authority to stop the Work or responsibility for the means, methods, techniques, equipment choice and use, schedules, or procedures of construction selected by construction contractor, for safety programs incident to construction contractor's work, or for failure of the construction contractor to comply with laws. Contractor does not guarantee the construction contractor's performance and has no responsibility for the construction contractor's failure to perform in accordance with the construction contract documents.

Contractor's Deliverables

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

Contractor shall provide 4 caisson investigations and 1 Controller Pad investigation at locations to be determined as part of the conceptual design process, to identify conflicts with existing utilities.

Contractor shall prepare a geotechnical report for the site, summarizing the findings, conclusions, and geotechnical recommendations.

Contractor shall prepare an intersection modification memorandum for the intersection of Ridgeview Drive and Sheridan Parkway. The memorandum shall include an interim intersection condition, a signal timing plan for the intersection when signalized, and future intersection geometry and control recommendations.

Deliverables:

- Draft Intersection Modification Memo
- Final Intersection Modification Memo

Contractor shall prepare a 60% preliminary construction plan based on the improvements identified in the conceptual interim intersection layout exhibit prepared as part of the intersection modification memo.

Deliverables:

- 60% Preliminary Plans
- 60% Engineer's Opinion of Probable Cost

Contractor shall prepare technical specifications for the proposed improvements based on the Town's standard specifications. Technical specifications shall be submitted with the 90% construction plans

Deliverables:

- Final Construction Plans
- Final Technical Specifications
- Final Engineer's Opinion of Probable Cost