

## **Agreement for Professional Services**

This Agreement for Professional Services (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 (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 Consor North America, Inc., an independent contractor with a principal place of business at 1157 W. Century Drive, #220, Louisville, Colorado 80027, ("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: **Preliminary and Final Design, Bid and Construction Support Services for 111th and Arapahoe Road Intersection Improvements (P22-453) 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 an amount not to exceed \$128,943, which includes a base amount of \$114,616 and a contingency of \$14,327. The contingency amount will only be paid upon the Town's approval. The not-to-exceed amount shall include all fees, costs and expenses incurred by Contractor. 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

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

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

# Town of Erie, Colorado

Justin Brooks, Mayor

Attest:

Debbie Stamp, Town Clerk

## Contractor

DocuSigned by:  
Joel Price  
E3C057CBEF9A4C3...

By:

Joel Price, Principal Engineer

State of Colorado )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

My commission expires:

(Seal)

Notary Public

## **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:

1. Communicate regularly with Town staff regarding project issues via telephone, electronic mail, and mail.
2. Schedule and attend meetings as needed, and present at or facilitate all meetings.
  - a. Schedule and conduct a Project kick-off meeting within one (1) week of NTP to discuss Project details, establish goals, review the Project schedule, and coordinate efforts.
  - b. Within one (1) week of the kick-off meeting provide project baseline schedule, indicating milestones, major activities, and deliverables necessary to complete the project. Update the Project Schedule as required and include each design submittal date.
  - c. Schedule and manage all design review meetings with Town.
3. Prepare agendas, exhibits, handouts, conduct and write summaries including action items and decisions for above mentioned meetings. Minutes will be completed within 7 days of the meetings.
4. Be prepared to provide when requested project updates in an editable format and/or Adobe Acrobat .PDF format and may include aerial photography, AutoCAD/digital planimetrics, digital photographs, as well as verbiage. Contractor shall also be ready when requested to prepare presentation materials including *Power Point* presentations to support project outreach and communications efforts.
5. As needed, contact and coordinate utility locates with all utility providers within the Project area during design. Support the Town's efforts to obtain utility clearances. Prepare utility clearance applications as requested by the Town.
6. All design shall be in conformance with the Town Engineering Standards and Specifications (on the Town website), as well as the Erie Municipal Code, Uniform Development Code, Storm water Regulations.

The design shall comply with applicable requirements of the Americans With Disabilities Act (ADA), and applicable federal, state, and local regulations and standards.

7. Prepare and submit record documents in accordance with Town of Erie User Guide Digital Record Drawing Submittal Requirements Index.
8. Provide services for the Preliminary and Final Design and Construction Support through the following sub-consultants:
  - a. Recon - Subsurface utility engineering
  - b. Topographic Land Surveying - Field and right-of-way surveying
  - c. Terracon – Geotechnical soils and materials testing
  - d. Pinyon Environmental, Inc. -
9. Conceptual and Preliminary Engineering Phase
  - a. The goal of this Phase is to develop conceptual design options and preliminary engineering design for the intersection improvements described above. This will require assessment of existing available information necessary to define alignments, right-of-way and easement issues, utility issues, property ownership and acquisition requirements, and environmental and permitting issues and requirements that will have to be studied and further developed in the final design phase of the project.
  - b. The Contractor will provide (approximately 20 to 30%) level plans and specifications for Town of Erie and City of Lafayette review and approval.
  - c. Permission to Enter: The Contractor will prepare a Permission to Enter form, and obtain private property owner signature prior to performing any work on private property.
  - d. Right of Way Permit: The Contractor shall obtain a Work in the Right of Way (ROW) permit from the Town of Erie or City of Lafayette for all work in the public right-of-way. This includes, but is not limited to surveying, geotechnical borings, potholing, etc. Town of Erie and City of Lafayette will waive the ROW permit fees. Provide traffic control in accordance with the Manual on Uniform Traffic Control Devices. A Method of Handling Traffic plan shall be submitted with the ROW permit application.
  - e. Design Survey: The Contractor shall provide a survey as needed. The Town will make available data that may be used to produce digital topography for planning purposes. The data is not adequate for final design purposes.

If determined necessary for conceptual and preliminary engineering, the Contractor shall provide a recon survey to establish control, locate utilities, verify existing topography and planimetrics, and identify existing monumentation. The survey coverage should extend to a sufficient distance either side of the existing roadway centerline and north and south of



Arapahoe Road to provide adequate data for the proposed improvements. Provide base mapping from recon survey and to include a one (1) foot contour interval for topography. The mapping shall utilize ground coordinates and the NAD88 vertical datum.

- f. Field Inspection of intersection: The Contractor shall perform field inspection to confirm the existing conditions and utilities. The findings shall be used to assess and determine the components of the intersection improvements.
- g. Materials Testing and Subsurface Investigation Report: The Contractor shall identify soil, asphalt, concrete and etc. subsurface information requirements necessary to advance the design of the road, pedestrian safety, and utility relocation improvements. Develop a detailed material investigation and testing plan for obtaining the information. Prepare a materials and subsurface investigation report that summarizes the findings and establishes the design parameters for the various project elements.
- h. Utility Coordination: The improvements may impact existing utilities. All existing utility systems must be considered in the design of the intersection improvements. The Contractor shall contact and coordinate with utility companies during conceptual design and preliminary engineering.
- i. Exhibits/plans shall clearly identify the existing location and proposed relocation of the utilities. The Consultant shall determine utility corridor requirements within the roadway right-of-way.
- j. Environmental Clearances / Permitting: The Contractor shall investigate conditions within the project area and identify any required environmental permitting or environmental clearance requirements necessary to advance the project. All Work shall be in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA), as applicable.
- k. Stormwater and Water Quality: The Contractor shall analyze and address all stormwater and water quality requirements to ensure that the Project is compliant with the Town of Erie and City of Lafayette Stormwater Quality Permit and MS4 Regulations. Two checklists shall be completed by the Contractor to determine the need/lack of need for a CDPHE-CDPS permit and the need/lack of need for water quality.
- l. Conceptual Property Impacts: The Contractor shall provide a list and exhibit(s) to the Town identifying all properties that are likely to be impacted by the project, as applicable. Applicable information will be

included in the conceptual design package and preliminary plans.

- m. **Conceptual Design Package:** The Contractor shall develop conceptual designs, as required that are incorporated into a conceptual design package that defines the improvements that would be advanced into the preliminary design and incorporate the findings from the investigations identified in the above items. The conceptual design package shall include for each alternative: the design criteria, conceptual construction drawings, phasing, cost estimates, and a construction schedule. At a minimum, the conceptual drawings shall include base mapping and plan drawings (at an appropriate scale) showing existing conditions, proposed improvements, existing and future utility lines, existing and proposed ROW and/or easements, environmentally sensitive lands that are affected by the improvements, preliminary vertical alignment information, as well as, typical cross-sections showing road lane widths, shoulders, curb & gutter, sidewalk, slopes, and utility corridors, as appropriate. Design shall include sidewalks, ADA ramps, curb returns, and intersection layout with approximate locations of traffic signal poles shown. Standard plan sheet size shall be 11"x17". The Consultant shall provide a recommendation on each component of the project to move forward.
- n. **Erosion Control/Stormwater Management/Water Quality:** The Contractor shall assess the need and to what extent a preliminary design and report will be needed, that defines the best management practices (BMPs) that should be incorporated into the design for managing construction and post-construction stormwater quality. The Contractor shall fill out the Town of Erie and/or the City of Lafayette Stormwater Checklists, as applicable, to determine water quality applicability and stormwater permitting applicability. Make recommendation on what if any construction and post-construction stormwater quality components should be incorporated into the preliminary design.
- o. **Preliminary Construction Documents:** The Contractor shall prepare preliminary construction plans to include, at a minimum: roadway plans and profiles, existing and proposed ROW and easements, typical roadway sections and details, existing and proposed utilities and relocations, drainage improvements, construction and post-construction stormwater quality BMPs. A detailed outline of anticipated project specifications shall be provided based on the preliminary plans.
- p. **Staging Plans/Traffic Control:** The Contractor shall provide recommendations and prepare preliminary staging plans for the improvements including lane closures, detours, and maintenance of traffic provisions that will be required during each phase of construction.

- q. Cost Estimate and Schedule: A preliminary construction cost estimate and construction schedule shall be provided based upon the preliminary construction drawings. The estimate and schedule will include all elements that will impact the project, including, but not limited to: utility relocations, construction, and contingencies.

## 10. Final Design

- a. Survey: As necessary prepare:
  - Topography
  - Identifying all surface features
  - Locate underground utilities.
  - A Subsurface Utility Engineering report (SUE) in compliance with SB 18- 167 shall be prepared for this project.
  - Preparation of permanent and temporary construction easements.
- b. Prepare final design in accordance with Town of Erie and City of Lafayette comments received on the Preliminary design.
- c. Prepare Final Construction Plans in full-size sets, and 11 x 17 sets as required by Town.
- d. Prepare an updated cost estimate based on each stage of design completion and for the final design.
- e. Finalize geotechnical information and finalize report for pavement design.
- f. Obtain pothole information, as required, for all underground utilities. Confirm all utility clearances obtained.
- g. Updated yellow and all red for turning movements and through movements, and estimated pedestrian crossing times. Updated through vehicle maxes if needed, coordinated with existing corridor timing plans
- h. After final design approval, prepare a complete set of bid documents including the following, without limitation:
  - Construction plans
  - Construction specifications
  - Review and edit of Town of Erie's Standard Contract Documents
  - Utility relocation Plans
  - Itemized quantities for bid documents
  - Measurement and payment description for each bid item
  - Documentation necessary for permits required for construction
  - Geotechnical report prepared for the design as reference only in the contract documents
  - Final cost estimate

## 11. Bid assistance shall include the following at a minimum:

- a. Attend pre-bid meeting, and take notes on questions and answers during the meeting
- b. Address all questions during bidding phase and prepare all addenda
- c. Review all bids, and prepare recommendation for award.
- d. Prepare conformed to construction document set.

## 12. Construction Support Services

- a. Pre-Construction Meeting
- b. Construction Observation (assume 5 site visits)
- c. Submittal Review (assume 5 submittal reviews)
- d. Request for Information (assume 5 RFIs)
- e. Construction Plan Changes
- f. Conforming to Construction Record Drawings

### 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:

1. Concept/Preliminary Deliverables: All deliverables shall be provided hard copy and electronically. They shall be clearly organized and indexed for easy access and retrieval. The Contractor shall schedule work efforts and resources to produce the required reports and documents identified for this task immediately following Notice to Proceed. Prior to document submission, provide draft and/or progress documents in sufficient time to allow Town of Erie and City of Lafayette review and incorporation of comments into the final document submittal. For scheduling purposes, the Contractor should allow 5 to 10 working days for reviews, depending on the size and complexity of the report/document submission.
2. Informal progress plans/specifications/reports (as applicable) will be provided by the Contractor for discussion at all progress meetings. Hardcopy or electronic format will be dependent upon the type of meeting (i.e. telecom or face to face).
3. Deliverables shall conform to the Town User Guide for Digital Record Drawing Submittal Requirements.
4. Conceptual Deliverables include:
  - Materials and Subsurface Investigation Report
  - Utility and Permitting Memorandum
  - Environmental Impacts, Clearance Requirements, and Permit Requirements Memorandum
  - Storm water and Water Quality Evaluation Memorandum
  - Property Impacts Memorandum
  - Design Criteria & Conceptual Design Drawings (11x17 sets)

- Conceptual Phasing Recommendation, Cost Estimate, and Construction Schedule

5. Preliminary Deliverables include:

- Cover Sheet
- Existing Conditions and Demo Plan
- Design Layout with right-of-way and easements, if needed
- Grading and Erosion Control Plans
- Utility Plan
- Utility Relocation
- Utility Locates Sheets
- Geotechnical and Pavement Design
- Structural Selection
- Preliminary Environmental Reports
- Preliminary Grading and Erosion Control Plan
- Stormwater Checklists
- Drainage Design Report
- Preliminary Construction Drawings (11x17 sets)
- Preliminary Project Specifications and Standard Special Provisions Outline
- Preliminary Staging Plans
- Preliminary Traffic Control Plan (11x17 sets)
- Preliminary Design Cost Estimate and Construction
- Written response to Town comments on Preliminary Design

6. Final Design Plans and Bid Documents, including without limitation the following:

- Cover Sheet and Notes
- Details
- Summary Tabs and Quantities
- Existing Conditions and Demo Plan
- Grading Plan and Erosion Control Plans
- Grading details
- Roadway Improvement Plans
- Curb Plan and Profile
- Pedestrian safety and access plans
- Storm Plan and Profile
- SUE Plans
- Traffic Signal Improvement & Timing Plans
- Utility Relocation Plans
- Landscape Notes
- Irrigation Plans
- Landscape Plans and Details
- Lighting Plans
- Traffic Control Plans
- Engineers Estimate of Construction Costs

- Review and Edit of Town's Standard Contract Documents
- Bid Documents and Specifications
- Geotechnical Report
- Written response to Town comments on Final Design

7. Final Design Bid Support

- Pre-bid meeting question and notes
- Response to pre-bid questions
- Response to Addendum items
- Bids Review and Recommendations for Award
- Conformed Drawings and Specifications for Construction

8. Construction Support

- Pre-Construction meeting notes
- Construction Observation Reports
- Response to Submittal Review
- Construction Record Drawings

Contractor's Schedule

Contractor shall complete the scope of work within 260 calendar days from the Town's issuance of a Notice to Proceed in accordance with the following schedule:

Concept & Preliminary Design:	41 days
Final Design:	54 days
Bid Support:	45 days
Construction Support:	120 days