
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 FIRESTONE**, a Colorado municipal corporation with an address of 151 Grant Avenue, P.O. Box 100, Firestone, Colorado 80520 (the "Town"), and **BOHANNAN HUSTON, INC.**, an independent contractor with a principal place of business at 9785 Maroon Circle, Englewood, Colorado 80112 ("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: **Colorado Blvd & Oak Meadows Blvd HAWK Signal Design and Construction Management (S2022-9230)**.

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 in an amount not to exceed \$30,000. 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 except as expressly set forth in the Scope of Services.

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 such work without providing notice to or receiving consent from Contractor.

If the Town reuses or makes any modification to Consultant's designs, documents or work product without the prior written authorization of Consultant, the Town agrees, to the fullest extent permitted by law, to release the Consultant, its officers, directors, employees and sub-consultants from all claims and causes of action arising from such uses, and shall indemnify and hold them harmless from all costs and expenses, including the cost of defense, related to claims and causes of action to the extent such costs and expenses arise from the Town's modification or reuse of the documents.

The Town expressly acknowledges and agrees that the documents and data to be provided by Consultant under the Agreement may contain certain design details, features and concepts from the Consultant's own practice detail library, which collectively may form portions of the design for the Project, but which separately, are, and shall remain, the sole and exclusive property of Consultant. Nothing herein shall be construed as a limitation on the Consultant's right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients.

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 attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with

this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the 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. ILLEGAL ALIENS

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. If Contractor has employees, Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Contractor shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that Contractor shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under this Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. Affidavits. If Contractor does not have employees, Contractor shall sign the "No Employee Affidavit" attached hereto. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the "Department Program Affidavit" attached hereto.

X. 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 Weld 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 United States 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. Representative Authority. Each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF FIRESTONE, COLORADO

Bobbi Sindelar, Mayor

ATTEST:

Jessica Koenig, Town Clerk

APPROVED AS TO FORM:

William P. Hayashi, Town Attorney

CONTRACTOR: BOHANNAN HUSTON, INC.

By: _____

Jared M. Lee, Senior Vice President

EXHIBIT A

SCOPE OF SERVICES

March 1, 2022

Matt Wiederspahn, P.E.
Town of Firestone, Town Engineer
151 Grant Avenue, Firestone, CO 80520
mwiederspahn@firestoneco.gov

**Re: Town of Firestone Traffic Engineering On-Call
Oak Meadows Blvd Pedestrian Crossing**

Dear Mr. Wiederspahn,

Per your request, Bohannon Huston, Inc. (BHI) has prepared the following scope and fee for design of pedestrian crossing at the intersection of Oak Meadows Blvd and Colorado Blvd based on the recommendation of the recently completed warrant analysis completed by BHI.

Task 1: Pedestrian Crossing Signal Design – Oak Meadows Blvd

BHI will prepare design and construction documents for a new High-Intensity Activated crosswalk (HAWK) pedestrian crossing signal at the intersection of Oak Meadows Blvd and Colorado Blvd, including:

1. Project Initiation
 - a. Kick-off meeting
 - b. Base file set-up
 - c. Subsurface Utility Locating (sub-consultant)
2. Design Layout
 - a. Crossing analysis and layout determination
3. Construction Plans (Preliminary and Final Plans)
 - a. Title Sheet, General Notes and Overall Site Plans
 - b. HAWK Signal Plan Layout
 - c. Signage and Striping Plans
 - d. Construction Details
4. Engineer's Estimate of Construction Cost (Preliminary and Final)
5. Review Meeting (Preliminary and Final)

Task 2: Bidding and Construction Management Support

BHI will assist City staff on an on-call basis to provide bidding and construction management support, including:

1. Pre-bid meeting attendance
2. Addenda/Clarifications to contract documents intent
3. Bid Tabulation/Recommendation
4. Pre-construction meeting attendance
5. Submittal, Shop Drawing Review

Engineering ▲

Spatial Data ▲

Advanced Technologies ▲

6. RFI's, CO, Design Modification
7. Progress meetings (assumes 4 meetings)
8. Record Drawings (based on contractor as-builts)

Assumptions:

- Existing available LiDAR/Imagery will be the basis of design
- Work will occur within existing City ROW
- Assumes crossing will be located at the intersection and will not require modifications to the existing roadway, sidewalk, medians, or pedestrian ramps.
- Initial Subsurface Utility Locating will include Quality Level 'B' (mapping) and up to two (2) Quality Level 'A' test holes. Additional potholing determined to be needed during design phase can be provided as an additional service.
- City traffic signal standard details and specifications will be referenced were applicable
- Deliverables will be digital files (.DOC, DWG, or .PDF).
- Kick-off and review meetings will be held virtually
- City will be responsible for coordination with local power company for service connection and agreements.
- City will be responsible for overall procurement process, construction management, and full time-inspection

Exclusions:

- Topographic or Boundary Survey
- Title Work, vesting documents, Right-of-way appraisal, negotiations and acquisition
- Geotechnical engineering or pavement design
- Environmental investigation or documentation
- Drainage Improvements
- Intersection or roadway reconfiguration or redesign
- ADA ramp improvements
- Traffic Control or Construction Phasing Plans
- Structural Design - standard details will be used for signal foundation design, etc.
- Photometrics or Electrical Engineering
- Permitting or associated fees
- Providing any services requiring the preparation of multiple construction plan sets for multiple phases of development is not included.
- Full time construction management or observation.
- Performing construction staking, or materials testing is not included.

Fee:

The table below contains the estimated fees to provide these services:

Task 1: Signal Design

SUE – QL "B" and up to two (2) potholes (Lump Sum)	\$ 4,770.00
Construction Documents (Lump Sum)	\$ 16,180.00

Sub-Total **\$ 20,950.00**

Task 2: Bidding and Construction Management Support

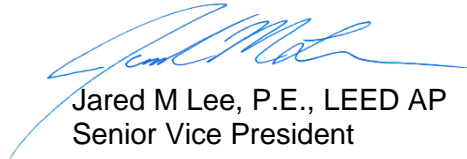
Bidding Assistance (T&M)	\$ 3,000.00
<u>Post Construction Award Services (PCAS): (T&M)</u>	<u>\$ 5,000.00</u>

**Time and Materials (T&M) phases will be billed at hourly rates per attached fee schedule

Matt Wiederspahn, P.E.
Town of Firestone, Town Engineer
March 1, 2022
Page 3

We look forward to continuing to work with the Town of Firestone. Thank you again for the opportunity to provide these services. Should you have any questions around the scope and fee above, please do not hesitate to contact me.

Sincerely,



Jared M Lee, P.E., LEED AP
Senior Vice President

cc: Denise Aten, AICP, BHI