

City of Evans, Colorado
MASTER SERVICE AGREEMENT
FOR PROFESSIONAL SERVICES BY
INDEPENDENT CONTRACTOR

THIS AGREEMENT is made and entered into this 2nd day of August, 2021, by and between the City of Evans, State of Colorado (hereinafter referred to as the "City"), and **Next Phase Engineering, LLC** (hereinafter referred to as "Consultant").

RECITALS:

A. The City requires professional services over multiple years for the completion of **Traffic Engineering Services** on a variety of City projects hereinafter referred to as "Project").

B. Consultant has held itself out to the City as having the requisite expertise and experience to perform the required services for the Project.

NOW, THEREFORE, it is hereby agreed, for the consideration hereinafter set forth, that Consultant shall provide to the City professional consulting services for the Project.

I. SCOPE OF SERVICES

Consultant shall furnish all labor and materials to perform the services required for the complete and prompt execution and performance of all duties, obligations and responsibilities for the Project, which are described or reasonably implied from **Exhibit A for On Call Traffic Engineering Services Scope**, which is attached hereto and incorporated herein by this reference.

II. THE CITY'S OBLIGATIONS/CONFIDENTIALITY

The City shall provide Consultant with reports and such other data as may be available to the City and reasonably required by Consultant to perform hereunder. No project information shall be disclosed by Consultant to third parties without prior written consent of the City or pursuant to a lawful court order directing such disclosure. All documents provided by the City to Consultant shall be returned to the City. Consultant is authorized by the City to retain copies of such data and materials at Consultant's expense.

III. OWNERSHIP OF INSTRUMENTS OF SERVICE

The City acknowledges that the Consultant's documents are an instrument of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the services. Any reuse of the Consultant's documents is at the City's own risk without liability to the consultant.

IV. COMPENSATION

A. The Consultant/ Contractor shall bill for services bases on the fee schedule shown in the attached proposal. Invoices will be itemized and include hourly breakdowns for all personnel and other charges. The maximum fee shall include all fees and expenses incurred by the Consultant for

the performance of each project and as negotiated and agreed to by the City and the Consultant in writing.

B. Consultant may submit monthly or periodic statements requesting payment. Such request shall be based upon the amount and value of the services performed by Consultant under this Agreement, except as otherwise supplemented or accompanied by such supporting data as may be required by the City.

1 Progress payments may be claimed on a monthly basis for reimbursable costs actually incurred to date as supported by detailed statements, including hourly breakdowns for all personnel and other charges. The amounts of all such monthly payments shall be paid within thirty (30) days after the timely receipt of invoice, as provided by this Agreement. No payment shall be due on the portion of any invoice for which the City has requested clarification unless and until 30 days after clarification satisfactory to the City has been provided by Consultant.

C. The City has the right to ask for clarification on any Consultant invoice after receipt of the invoice by the City.

D. In the event payment for services rendered has not been made within forty-five (45) days from the timely receipt of the invoice for any uncontested billing, interest will accrue at the rate of twelve percent (12%) per annum compounded annually. In the event payment has not been made within ninety (90) days from the receipt of the invoice for any uncontested billing, Consultant may, after giving seven (7) days' written notice and without penalty or liability of any nature, suspend all authorized services specified herein. In the event payment in full is not received within thirty (30) days of giving the seven (7) days' written notice, Consultant may terminate this Agreement. Upon receipt of payment in full for services rendered, Consultant will continue with all authorized services.

E. Final payment shall be made within sixty (60) calendar days after all data and reports (which are suitable for reproduction and distribution by the City) required by this Agreement have been turned over to and approved by the City and upon receipt by the City of Consultant's written notification that services required herein by Consultant have been fully completed in accordance with this Agreement and all data and reports for the Project.

V. COMMENCEMENT AND COMPLETION OF SERVICES

Within seven (7) days of receipt from the City of a Notice to Proceed, Consultant shall commence services on all its obligations as set forth in the Scope of Services or that portion of such obligations as is specified in said Notice. Except as may be changed in writing by the City, the Project shall be complete and Consultant shall furnish the City the specified deliverables, as provided in **Exhibit A**.

VI. CHANGES IN SCOPE OF SERVICES

A change in the Scope of Services shall constitute any material change or amendment of services which is different from or additional to the Scope of Services specified in Section I of this Agreement. No such change, including any additional compensation, shall be effective or paid, unless authorized by written amendment executed by the City. If Consultant proceeds without such written

authorization, then Consultant 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 City shall have the authority to enter into any changes or modifications, either directly or implied by a course of action, relating to the terms and scope of this Agreement.

VII. PROFESSIONAL RESPONSIBILITY

A. Consultant 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, as required by law.

B. The services performed by Consultant 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 services in the applicable community.

C. Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by Consultant under this Agreement. Consultant shall, without additional compensation, correct or resolve any errors or deficiencies in his designs, drawings, specifications, reports, and other services, which fall below the standard of professional practice, and reimburse the City for all costs caused by errors and omissions which fall below the standard of professional practice.

D. Approval by the City of drawings, designs, specifications, reports and incidental services or materials furnished hereunder shall not in any way relieve Consultant of responsibility for technical adequacy of the services. Neither the City's review, approval or acceptance of, nor payment for, any of the services shall 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, and Consultant shall be and remain liable in accordance with applicable performance of any of the services furnished under this Agreement.

E. The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies provided by law.

VIII. COMPLIANCE WITH LAW

The services to be performed by Consultant hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

IX. INDEMNIFICATION

A. INDEMNIFICATION – GENERAL: The City cannot and by this Agreement does not agree to indemnify, hold harmless, exonerate or assume the defense of the Consultant or any other person or entity whatsoever, for any purpose whatsoever. To the extent allowable under C.R.S. Section 13-50.5-102(8), the Consultant shall defend, indemnify and hold harmless the City, its mayor and City council, officials, officers, directors, agents and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including worker's compensation claims, to the extent resulting from the fault of, or negligent services rendered by the Consultant, its employees, agents or subconsultants, or others for whom the Consultant is legally liable, under this Agreement;

provided, however, that the Consultant need not indemnify or save harmless the City, its mayor and City council, its officers, agents and employees from damages resulting from the sole negligence of the City's mayor and City council, officials, officers, directors, agents and employees.

X. INSURANCE

A. Consultant 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 Consultant, pursuant to Section IX, Indemnification, above. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. Consultant shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to Section IX, Indemnification, above, by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

B. Consultant shall procure and maintain and shall cause any subconsultant of Consultant to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Consultant, pursuant to Section IX, Indemnification, above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Worker's compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of services under this Agreement, and Employer's Liability insurance with minimum limits of Five Hundred Thousand Dollars (\$500,000) each claim, Five Hundred Thousand Dollars (\$500,000) disease - policy limit, and Five Hundred Thousand Dollars (\$500,000) disease - each employee.
2. Commercial general liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products and completed operations. The policy shall contain a severability of interests provision.
3. Professional liability insurance with minimum limits of One Million Dollars (\$1,000,000) each claim and Two Million Dollars (\$2,000,000) annual aggregate, and Consultant shall maintain such coverage for at least three (3) years from the termination of this Agreement.
4. The policy required by Paragraph 2, above shall be endorsed to include the City and the City's officers, employees and consultants as additional insureds. Every policy required above shall be primary insurance, with the exception of Professional Liability and Worker's Compensation, and any insurance carried by the City, its officers, its employees or its consultants shall be excess and not contributory insurance to that provided by Consultant. No additional insured endorsement to the policy required by Paragraph 2, above shall contain any exclusion for bodily injury or property damage

arising from completed operations. Consultant shall be solely responsible for any deductible losses under any policy required above.

5. The certificate of insurance provided for the City shall be completed by Consultant's insurance agent as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect and shall be reviewed and approved by the City prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled or terminated until at least thirty (30) days' prior written notice has been given to the City. The completed certificate of insurance shall be sent to:

City of Evans
1100 37th Street
Evans, Colorado 80620-2036
Attn: Safety and Risk Management

6. Failure on the part of Consultant to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a material breach of agreement upon which the City may immediately terminate this Agreement or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the City.
7. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
8. The parties hereto understand and agree that the City, its officers and its employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently Three Hundred Fifty Thousand Dollars (\$350,000) per person and Nine Hundred Ninety Thousand Dollars (\$990,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Colo. Rev. Stat. §24-10-101, et seq., as from time to time amended, or otherwise available to the City, its officers or its employees.

XI. NONASSIGNABILITY

Neither this Agreement nor any of the rights or obligations of the parties hereto shall be assigned by either party without the written consent of the other.

XII. CONDITIONAL CONTRACT EXTENSION

The City and Consultant may extend the relationship arising this agreement by a future written agreement that is approved by City Council, subject to annual appropriation, and subject to agreed-upon unit pricing. **Such extensions, if any, shall not exceed a period of Five (5) consecutive**

years. The Consultant does not have a contractual right to an extension and the City expressly reserves all rights to cancel its relationship with Consultant.

XIII. TERMINATION

This Agreement shall terminate at such time as the services in Section I are completed and the requirements of this Agreement are satisfied, or upon the City's providing Consultant with seven (7) days' advance written notice, whichever occurs first. In the event the Agreement is terminated by the City's issuance of said written notice of intent to terminate, the City shall pay Consultant for all services previously authorized and completed prior to the date of termination. If, however, the Consultant has substantially or materially breached the standards and terms of this Agreement, the City shall have any remedy or right of set-off available at law and equity. If, however, the City has substantially or materially breached the standards and terms of this Agreement, the Contractor shall have any remedy or right of set-off available at law and equity. If the Agreement is terminated for any reason other than cause prior to completion of the Project, any use of documents by the City thereafter shall be at the City's sole risk, unless otherwise consented to by Consultant.

XIV. CONFLICT OF INTEREST

The Consultant shall disclose any personal or private interest related to property or business within the City. Upon disclosure of any such personal or private interest, the City shall determine if the interest constitutes a conflict of interest. If the City determines that a conflict of interest exists, the City may treat such conflict of interest as a default and terminate this Agreement.

XV. 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 the County of Weld, State of Colorado.

XVI. INDEPENDENT CONTRACTOR

A. Consultant is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Consultant to perform services under the terms of this Agreement shall be, and remain at all times, employees or agents of Consultant for all purposes. Consultant shall make no representation that it is the employee of the City for any purposes.

B. **Disclosure: Consultant is not entitled to workers' compensation benefits, unemployment insurance benefits unless unemployment compensation coverage is provided by the Consultant or some other entity, and Consultant is obligated to pay federal and state income tax on any moneys earned pursuant to this Agreement for Professional Services by Independent Contractor.**

XVII. NO WAIVER

Delays by the City in enforcement of this Agreement or the waiver by the City of any one or more defaults or breaches of this Agreement by the Consultant shall not constitute a waiver of any of the other terms or obligations of this Agreement.

XVIII. ENTIRE AGREEMENT

This Agreement and the attached **Exhibit A** are the entire Agreement between Consultant and the City, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified or changed, except as specified herein.

XIX. NOTICE

Any notice or communication between Consultant and the City which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class United States mail, addressed as follows:

The City: City of Evans
Attn: City Manager
1100 37th Street
Evans, Colorado 80620-2036

Consultant: Next Phase Engineering
3405 Harbor Way
Fort Collins, CO 80524

XX. EFFECTIVE DATE AND EXECUTION

This Agreement shall become effective following execution by both Consultant and City. This Agreement may be executed in counterparts, including by facsimile or electronically, each of which shall be considered an original, but all of which together shall constitute one instrument.

XXI. SPECIAL PROVISIONS

The "Special Provisions" attached hereto as **Exhibit C** and incorporated by this reference are made a part of this Agreement. For purposes of the Special Provisions, the Consultant shall be referred to as the "Contractor."

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in triplicate, as of the date first written above.

CITY OF EVANS, COLORADO

By: _____
Brian Rudy, Mayor

ATTEST:

Julie Kamka, City Clerk

APPROVED AS TO FORM:

Scott Krob, City Attorney

APPROVED AS TO CONTENT:

James L. Becklenberg, City Manager

CONSULTANT

By: Mato G Wilkner

Title: Principal

ATTEST:

By: Alisha Gessler
Title: witness

Exhibit A
Scope of Services

Exhibit A

On Call Traffic Engineering Services Scope

Project Scope

Evans is growing, and with that growth comes the need for additional transportation planning and traffic engineering services. In 2021, Evans will complete a Transportation Master Plan with Fehr & Peers that will help us plan how to manage growth. Within that big picture plan, though, are a couple of traffic engineering needs.

First, the City requires developers to provide traffic impact studies (TIS), showing how they will mitigate the traffic and road infrastructure impacts associated with their project. As development may have traffic impacts beyond the limits of a specific project, Evans needs a consultant to assist with TIS and plan review, including defining the scope for each project.

And second, as growth occurs and improvements are made, there is also a need for general traffic engineering expertise to aid with management, operations, and maintenance of the transportation system.

Anticipated services include:

- Development review services including Traffic Impact Study scoping, review, and comments,
- As needed support for traffic operations and traffic control devices including signal timing and operations, signing and striping recommendations, etc.,
- Transportation studies such as intersection review and traffic modeling for capital projects, warrant studies, access control recommendations, etc.,
- Roadway safety work including traffic calming and safety audits on traffic signals,
- Support for multi-jurisdictional efforts (such as CDOT coordination),
- Railroad coordination,
- Review of school zones for pedestrian safety improvements and coordination with Safe Routes to School,
- Review of intersections for pedestrian safety improvements, and
- Traffic 101 training for staff to improve staff's overall knowledge of traffic engineering.

Additionally, as Evans moves forward with road projects there may be a need to evaluate the need for and construction of traffic signals. As an example, Evans will complete the arterial section of 23rd Avenue from 37th Street to 49th Street in 2022. There is currently a traffic signal at 37th Street but not at 49th Street. We are planning to evaluate traffic patterns and see if the warrants are met requiring a traffic signal at 49th Street a year or so after construction is completed. Another possible location where a signal may be warranted is 34th Street and 23rd Avenue. The on-call consultant would be involved in the RFP process, consultant selection, and plan review for the City along with City engineering staff.

The selected Consultant will not be allowed to bid on private work that requires Evans review within Evans for the duration of the contract.

Evans will contact the selected consultant and negotiate a scope, fee, and schedule for the required work to complete each assigned task. All communication for development review will go through the Community Development Department. All communication for City projects will go through the Engineering Department.

**Exhibit B
Fee Schedule**

Section H. Current Rate Schedule

Next Phase Engineering's team for the City of Evans On-Call Traffic Engineering Services will utilize the rates shown below. They are fully burdened hourly labor rates by category / job title.



Rates

<u>Staff Member</u>	<u>Title</u>	<u>Hourly Rate</u>
Joe Olson, P.E.	Principal	\$ 175.-
Martina Wilkinson, P.E. PTOE	Principal	\$ 175.-
Technical Work	CADD	\$ 90.-
Clerical Work	Administrative	\$ 60.-

- Subconsultant charges billed at cost (0% markup)
- Direct Expenses billed at cost (0% markup)
- Mileage billed at current federal rate



Exhibit C

Special Provisions Required by §§ 8-17.5-101 et seq., C.R.S.

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 and that Contractor has participated or attempted to participate in the basic pilot program administered by the U.S. Department of Homeland Security in order to verify that it does not employ any illegal aliens. §

B. **Prohibited Acts.** Contractor shall not:

1. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

2. 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. Contractor has verified or attempted to verify through participation in the basic pilot program administered by the U.S. Department of Homeland Security that Contractor does not employ any illegal aliens and, if Contractor is not accepted into the basic pilot program prior to entering into this Agreement, that Contractor shall apply to participate in the basic pilot program every three (3) months until Contractor is accepted or this Agreement has been completed, whichever is earlier.

2. Contractor shall not use basic pilot 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, Contractor shall:

i. Notify the subcontractor and the City within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph i. hereof, the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

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.