### AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN EAGLE COUNTY, COLORADO AND TRUE NORTH STEEL

THIS AGREEMENT ("Agreement") is effective as of  $\frac{2/6}{2024}$  by and between True North Steel a North Dakota corporation (hereinafter "Contractor" or "Contractor") and Eagle County, Colorado, a body corporate and politic (hereinafter "County").

#### RECITALS

WHEREAS, the County issued a request for proposals ("RFP") for services of a contractor to design, fabricate and deliver a modular vehicular bridge for installation within Eagle County right-of-way and Eagle County easements on West Lake Creek Road over the Lake Creek in Eagle County, Colorado (the "Project"); and

WHEREAS, in response to the County's RFP, the Contractor submitted a proposal, scope, and fee, and was selected as the successful respondent. The Contractor's scope and fee is attached as <u>Exhibit A</u> and incorporated herein by this reference; and

WHEREAS, Contractor is authorized to do business in the State of Colorado and has the time, skill, expertise, and experience necessary to provide the Services as defined below in paragraph 1 hereof; and

WHEREAS, this Agreement shall govern the relationship between Contractor and County in connection with the Services.

#### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the following promises Contractor and County agree as follows:

1. <u>Services</u>. Contractor agrees to diligently provide all services, labor, personnel and materials necessary to perform and complete the services described in this Section 1 and in <u>Exhibit A</u> ("Services") which is attached hereto and incorporated herein by reference. The Services include the design, fabrication, and delivery of a steel modular vehicular bridge structure (the "Bridge"). The Services also include the design, fabrication, and delivery of the necessary substructure (footings or abutments) for the Bridge. Contractor shall incorporate a heavy-duty girder mounted steel guardrail system meeting AASHTO standards into the design, fabrication, and delivery. The Bridge system will need to accommodate the application of hot mix asphalt (4" thickness) post construction of the Bridge. The Bridge decking is to be heavy-duty galvanized steel decking that provides positive drainage. The Contractor will participate in the Project's pre-construction meeting and provide on-site erection support. The Bridge shall be designed by a Professional Engineer to be 36 feet in width and 50 feet in length, and the plans for the Bridge shall be stamped by said Professional Engineer. The Bridge design will also consider

the recommendations of the site-specific Geotechnical Report by Ground Engineering, dated December 7, 2023, attached hereto **Exhibit B**, and incorporated herein by this reference. Eagle County accepts all risks as outlined in the Geotechnical Report, including any revisions. Contractor has no involvement with the design and improvement of site soils, including any site inspections.

a. Contractor will commence with Bridge design drawings and calculations upon receipt of signed Agreement, required 25% deposit, and receipt of all necessary documents from County. Contractor is dependent upon County for supplying complete and accurate site information and design parameters. Designs supplied by Contractor are based upon information provided by County. County's Representative is responsible for confirming that all information supplied to Contractor is current, accurate and applicable. Scope of Contractor's design is limited only to the Bridge supplied unless additional design features are specifically requested by County and agreed to by Contractor.

b. Contractor shall provide the following deliverables and documents as part of its Services under this Agreement:

- i. Final stamped design for the Bridge, including Title Sheet, General Notes, Detail Sheets, Typical Footing Details, and Quantities
- ii. Construction Specifications
- iii. Project Special Provisions

c. Contractor agrees to furnish the Services and to deliver the Bridge to County no later than August 12, 2024, based on receiving an unconditional approval within one week of original submittal, and in accordance with the schedule established in <u>Exhibit A</u>. If no completion date is specified in <u>Exhibit A</u>, then Contractor agrees to furnish the Services in a timely and expeditious manner consistent with the applicable standard of care. By signing below Contractor represents that it has the expertise and personnel necessary to properly and timely perform the Services.

d. In the event of any conflict or inconsistency between the terms and conditions set forth in **Exhibit A** and the terms and conditions set forth in this Agreement, the terms and conditions set forth in this Agreement shall prevail.

e. Delivery of Bridge: Site must be safely and reasonably accessible for an over-the-road truck under its own power. County is responsible for providing safe means for off-loading on-site and for all rigging equipment, connection of rigging to Bridge and lifting and placement of the Bridge. Two (2) hours of off-load time is included in the delivery/freight cost per truck. Additional off-load time is provided at \$150/hour, per hour.

2. <u>County's Representative</u>. The Engineering Department's designee shall be Contractor's contact with respect to this Agreement and performance of the Services.

3. <u>Term of the Agreement.</u> This Agreement shall commence upon the date first written above, and subject to the provisions of paragraph 12 hereof, shall continue in full force and effect through the 15<sup>th</sup> day of November, 2024.

4. <u>Extension or Modification</u>. This Agreement may not be amended or supplemented, nor may any obligations hereunder be waived, except by agreement signed by both parties. No additional services or work performed by Contractor shall be the basis for additional compensation unless and until Contractor has obtained written authorization and acknowledgement by County for such additional services in accordance with County's internal policies. Accordingly, no course of conduct or dealings between the parties, nor verbal change orders, express or implied acceptance of alterations or additions to the Services, and no claim that County has been unjustly enriched by any additional services, whether or not there is in fact any such unjust enrichment, shall be the basis of any increase in the compensation payable hereunder. In the event that written authorization and acknowledgment by County for such additional services is not timely executed and issued in strict accordance with this Agreement, Contractor's rights with respect to such additional services shall be deemed waived and such failure shall result in non-payment for such additional services or work performed.

5. <u>Compensation.</u> County shall compensate Contractor for the performance of the Services in a sum computed and payable as a lump sum as set forth in <u>Exhibit A</u>. The performance of the Services under this Agreement shall not exceed \$XXX,XXX. Contractor shall not be entitled to bill at overtime and/or double time rates for work done outside of normal business hours unless specifically authorized in writing by County.

a. County will pay Contractor a deposit of \$XX,XXX.XX, or 25% of the not to exceed sum upon execution of this Agreement. Payment for the remaining balance of \$XXX,XXX.XX will be paid for Services satisfactorily performed within thirty (30) days of receipt of a proper and accurate invoice from Contractor.

b. Any out-of-pocket expenses to be incurred by Contractor and reimbursed by County shall be identified on **Exhibit A**. Out-of-pocket expenses will be reimbursed without any additional mark-up thereon and are included in the not to exceed contract amount set forth above. Out-of-pocket expenses shall not include any payment of salaries, bonuses or other compensation to personnel of Contractor. Contractor shall not be reimbursed for expenses that are not set forth on **Exhibit A** unless specifically approved in writing by County.

c. If, at any time during the term or after termination or expiration of this Agreement, County reasonably determines that any payment made by County to Contractor was improper because the Services for which payment was made were not performed as set forth in this Agreement, then upon written notice of such determination and request for reimbursement from County, Contractor shall forthwith return such payment(s) to County. Upon termination or expiration of this Agreement, unexpended funds advanced by County, if any, shall forthwith be returned to County.

d. County will not withhold any taxes from monies paid to the Contractor hereunder and Contractor agrees to be solely responsible for the accurate reporting and payment of any taxes related to payments made pursuant to the terms of this Agreement.

e. Notwithstanding anything to the contrary contained in this Agreement, County shall have no obligations under this Agreement after, nor shall any payments be made to Contractor in respect of any period after December 31 of any year, without an appropriation therefor by County in accordance with a budget adopted by the Board of County Commissioners in compliance with Article 25, title 30 of the Colorado Revised Statutes, the Local Government Budget Law (C.R.S. 29-1-101 et. seq.) and the TABOR Amendment (Colorado Constitution, Article X, Sec. 20).

6. <u>Sub-Contractors</u>. Contractor acknowledges that County has entered into this Agreement in reliance upon the particular reputation and expertise of Contractor. Contractor shall not enter into any sub-Contractor agreements for the performance of any of the Services or additional services without County's prior written consent, which may be withheld in County's sole discretion. County shall have the right in its reasonable discretion to approve all personnel assigned to the subject Project during the performance of this Agreement and no personnel to whom County has an objection, in its reasonable discretion, shall be assigned to the Project. Contractor shall require each sub-Contractor, as approved by County and to the extent of the Services to be performed by the sub-Contractor, to be bound to Contractor by the terms of this Agreement, and to assume toward County. County shall have the right (but not the obligation) to enforce the provisions of this Agreement against any sub-Contractor hired by Contractor and Contractor shall cooperate in such process. The Contractor shall be responsible for the acts and omissions of its agents, employees and sub-Contractors or sub-contractors.

7. <u>Insurance</u>. Contractor agrees to provide and maintain at Contractor's sole cost and expense, the following insurance coverage with limits of liability not less than those stated below:

a. Types of Insurance.

i. Workers' Compensation insurance as required by law.

ii. Auto coverage with limits of liability not less than \$1,000,000 each accident combined bodily injury and property damage liability insurance, including coverage for owned, hired, and non-owned vehicles.

iii. Commercial General Liability coverage to include premises and operations, personal/advertising injury, products/completed operations, broad form property damage with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate limits.

iv. Professional liability insurance with prior acts coverage for all Services required hereunder, in a form and with an insurer or insurers satisfactory to County, with limits of liability of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate. In the event the professional liability insurance is on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Agreement. Continuous coverage will be maintained during any applicable statute of limitations for the Services and Project.

b. Other Requirements.

i. The automobile and commercial general liability coverage shall be endorsed to include Eagle County, its associated or affiliated entities, its successors and assigns, elected officials, employees, agents and volunteers as additional insureds.

ii. Contractor's certificates of insurance shall include sub-Contractors as additional insureds under its policies or Contractor shall furnish to County separate certificates and endorsements for each sub-Contractor. All coverage(s) for sub-Contractors shall be subject to the same minimum requirements identified above. Contractor and sub-Contractors, if any, shall maintain the foregoing coverage in effect until the Services are completed. In addition, all such policies shall be kept in force by Contractor and its sub-Contractors until the applicable statute of limitations for the Project and the Services has expired.

iii. Insurance shall be placed with insurers duly licensed or authorized to do business in the State of Colorado and with an "A.M. Best" rating of not less than A-VII.

iv. Contractor's insurance coverage shall be primary and non-contributory with respect to all other available sources. Contractor's policy shall contain a waiver of subrogation against Eagle County.

v. All policies must contain an endorsement affording an unqualified thirty (30) days notice of cancellation to County in the event of cancellation of coverage.

vi. All insurers must be licensed or approved to do business within the State of Colorado and all policies must be written on a per occurrence basis unless otherwise provided herein.

vii. Contractor's certificate of insurance evidencing all required coverage(s) is attached hereto as **Exhibit C**. Upon request, Contractor shall provide a copy of the actual insurance policy and/or required endorsements required under this Agreement within five (5) business days of a written request from County, and hereby authorizes Contractor's broker, without further notice or authorization by Contractor, to immediately comply with any written request of County for a complete copy of the policy.

viii. Contractor shall advise County in the event the general aggregate or other aggregate limits are reduced below the required per occurrence limit. Contractor, at its own expense, will reinstate the aggregate limits to comply with the minimum limits and shall furnish County a new certificate of insurance showing such coverage.

ix. If Contractor fails to secure and maintain the insurance required by this Agreement and provide satisfactory evidence thereof to County, County shall be entitled to immediately terminate this Agreement.

x. The insurance provisions of this Agreement shall survive expiration or termination hereof.

xi. The parties hereto understand and agree that the County is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or rights, immunities and protections provided by the Colorado Governmental Immunity Act, as from time to time amended, or otherwise available to County, its affiliated entities, successors or assigns, its elected officials, employees, agents and volunteers.

xii. Contractor is not entitled to workers' compensation benefits except as provided by the Contractor, nor to unemployment insurance benefits unless unemployment compensation coverage is provided by Contractor or some other entity. The Contractor is obligated to pay all federal and state income tax on any moneys paid pursuant to this Agreement.

8. <u>Indemnification</u>. The Contractor shall indemnify and hold harmless County, and any of its officers, agents and employees against any losses, claims, damages or liabilities for which County may become subject to insofar as any such losses, claims, damages or liabilities arise out of this Agreement, or are based upon any performance or nonperformance by Contractor or any of its sub-Contractors hereunder; and Contractor shall reimburse County for reasonable attorney fees and costs, legal and other expenses incurred by County in connection with investigating or defending any such loss, claim, damage, liability or action. This indemnification shall not apply to claims by third parties against the County to the extent that County is liable to such third party for such claims without regard to the involvement of the Contractor. In addition, this indemnification shall not apply in the event there is any movement or settling of site soils, during construction or anytime afterwards to the extent there is no involvement of the Contractor. This paragraph shall survive expiration or termination hereof.

9. <u>Ownership of Documents</u>. All documents prepared by Contractor in connection with the Services shall become property of County. Contractor shall execute written assignments to County of all rights (including common law, statutory, and other rights, including copyrights) to the same as County shall from time to time request. For purposes of this paragraph, the term "documents" shall mean and include all reports, plans, studies, tape or other electronic recordings, drawings, sketches, estimates, data sheets, maps and work sheets produced, or prepared by or for Contractor (including any employee or subcontractor in connection with the performance of the Services and additional services under this Agreement). All documents shall be delivered to the County in the original electronic format. With respect to the Bridge, Contractor shall execute any bill of sale or other documents required by County to transfer title of the Bridge to County. Contractor shall provide copies of any instructions or operations manuals and shall further provide copies of any manufacturer's warranties associated with the Bridge.

10. <u>Notice</u>. Any notice required by this Agreement shall be deemed properly delivered when (i) personally delivered, or (ii) when mailed in the United States mail, first class postage prepaid, or (iii) when delivered by FedEx or other comparable courier service, charges prepaid, to the parties at their respective addresses listed below, or (iv) when transmitted via e-mail with confirmation of receipt. Either party may change its address for purposes of this paragraph by giving five (5) days prior written notice of such change to the other party.

COUNTY: Eagle County, Colorado Attention: Rickie Davies 500 Broadway Post Office Box 850 Eagle, CO 81631 Telephone: 970-328-3567 E-Mail: richard.davies@eaglecounty.us

With a copy to: Eagle County Attorney 500 Broadway Post Office Box 850 Eagle, Co 81631 Telephone: 970-328-8685 E-Mail: atty@eaglecounty.us

CONTRACTOR: TRUE NORTH STEEL Attention: Tom Viall 5405 Monont Road Missoula, MT 59808 Telephone: 406.698.5234 Email: tom.viall@truenorthsteel.com

11. <u>Coordination</u>. Contractor acknowledges that the development and processing of the Services for the Project may require close coordination between various Contractors and contractors. Contractor shall coordinate the Services required hereunder with the other Contractors and contractors that are identified by County to Contractor from time to time, and Contractor shall immediately notify such other Contractors or contractors, in writing, of any changes or revisions to Contractor's work product that might affect the work of others providing services for the Project and concurrently provide County with a copy of such notification. Contractor shall not knowingly cause other Contractors or contractors extra work without obtaining prior written approval from County. If such prior approval is not obtained, Contractor shall be subject to any offset for the costs of such extra work.

12. <u>Termination</u>. County may terminate this Agreement, in whole or in part, at any time and for any reason, with or without cause, and without penalty therefor with seven (7) calendar days' prior written notice to the Contractor. Upon termination of this Agreement, Contractor shall immediately provide County with all documents as defined in paragraph 9 hereof, in such format as County shall direct and shall return all County owned materials and documents. County shall pay Contractor for Services satisfactorily performed to the date of termination.

13. <u>Venue, Jurisdiction and Applicable Law</u>. Any and all claims, disputes or controversies related to this Agreement, or breach thereof, shall be litigated in the District Court for Eagle County, Colorado,

which shall be the sole and exclusive forum for such litigation. This Agreement shall be construed and interpreted under and shall be governed by the laws of the State of Colorado.

14. <u>Execution by Counterparts; Electronic Signatures.</u> This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The parties approve the use of electronic signatures for execution of this Agreement. Only the following two forms of electronic signatures shall be permitted to bind the parties to this Agreement: (i) Electronic or facsimile delivery of a fully executed copy of the signature page; (ii) the image of the signature of an authorized signer inserted onto PDF format documents. All documents must be properly notarized, if applicable. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. 24-71.3-101 to 121.

### 15. Other Contract Requirements.

a. Contractor shall be responsible for the completeness and accuracy of the Services, including all supporting data or other documents prepared or compiled in performance of the Services, and shall correct, at its sole expense, all significant errors and omissions therein. Contractor has familiarized itself with the intended purpose and use of the Bridge Structure to be provided hereunder, the intended use of such Bridge Structure by County, and with all local conditions, federal, state and local laws, ordinances, rules and regulations that in any manner affect cost, progress, or the Bridge Structure. The fact that the County has accepted or approved the Services shall not relieve Contractor of any of its responsibilities. Contractor shall perform the Services in a skillful, professional and competent manner and in accordance with the standard of care, skill and diligence applicable to Contractors performing similar services. Contractor represents and warrants that it has the expertise and personnel necessary to properly perform the Services and covenants that its professional personnel are duly licensed to perform the Services within Colorado. This paragraph shall survive termination of this Agreement.

b. Contractor warrants merchantability and fitness of the Bridge for its intended use and purpose based on design parameters and information provided by County.

c. Contractor hereby represents and warrants that the materials incorporated into the Bridge will be new and guarantees the Bridge against defects for a period of eighteen (18) months from the date of delivery to County.

d. All guarantees and warranties furnished to Contractor by any manufacturer or supplier are for the benefit of County. If any manufacturer or supplier furnishes a guarantee or warranty for a period longer than one (1) year, then Contractor's guarantee or warranty shall extend for a like period.

e. Contractor warrants that title to the Bridge shall pass to County either by incorporation into West Lake Creek Road or upon receipt by Contractor of final payment from County (whichever occurs first) free and clear of all liens, claims, security interests or encumbrances. Contractor further warrants that Contractor (or any other person performing the Services) purchased all materials for the Bridge free and clear of all liens, claims, security interests or encumbrances. Notwithstanding the

foregoing, Contractor assumes all risk of loss with respect to the Bridge until County has inspected and approved the same.

f. Within a reasonable time after receipt of written notice, Contractor shall correct at its own expense, without cost to County, and without interruption to County:

i. Any defects in the Bridge which existed prior to or during the period of any guarantee or warranty provided in this Agreement, and any damage to any property caused by such defects or the repairing of such defects; or

ii. replace the Bridge with a bridge of approximately the same size, design, quality of material and workmanship specified for the original Bridge.

Contractor will repair or replace the Bridge within a reasonable time period agreed upon by Contractor and County. If the Contractor is unable to repair or replace the Bridge, it will refund the original purchase price of the Bridge.

g. Guarantees and warranties shall not be construed to modify or limit any rights or actions County may otherwise have against Contractor in law or in equity.

h. Contractor agrees to work in an expeditious manner, within the sound exercise of its judgment and professional standards, in the performance of this Agreement.

## Contractor

i. This Agreement constitutes an agreement for performance of the Services by Contractor as an independent contractor and not as an employee of County. Nothing contained in this Agreement shall be deemed to create a relationship of employer-employee, master-servant, partnership, joint venture or any other relationship between County and Contractor except that of independent contractor. Contractor shall have no authority to bind County.

j. Contractor represents and warrants that at all times in the performance of the Services, Contractor shall comply with any and all applicable laws, codes, rules and regulations.

k. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all other agreements or understanding between the parties with respect thereto.

1 Contractor shall not assign any portion of this Agreement without the prior written consent of the County. Any attempt to assign this Agreement without such consent shall be void.

m. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted assigns and successors in interest. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely for the parties, and not to any third party. n. No failure or delay by either party in the exercise of any right hereunder shall constitute a waiver thereof. No waiver of any breach shall be deemed a waiver of any preceding or succeeding breach.

o. The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof.

p. Contractor shall maintain for a minimum of three years, adequate financial and other records for reporting to County. Contractor shall be subject to financial audit by federal, state or county auditors or their designees. Contractor authorizes such audits and inspections of records during normal business hours, upon 48 hours' notice to Contractor. Contractor shall fully cooperate during such audit or inspections.

q. The signatories to this Agreement aver to their knowledge, no employee of the County has any personal or beneficial interest whatsoever in the Services or Property described in this Agreement. The Contractor has no beneficial interest, direct or indirect, that would conflict in any manner or degree with the performance of the Services and Contractor shall not employ any person having such known interests.

r. Force Majeure. Seller does not assume the risk of and shall not be liable for failure to perform any obligation caused by civil insurrection, war, riot quarantine, terrorism, fire, strike, labor stoppages or other labor disturbances, acts of God, acts or omissions of Buyer, acts or omissions of any government body or entity, floods, epidemics, pandemics, freight embargoes, shortages of labor, fuel, energy or materials, failure of suppliers or subcontractors to satisfactorily meet scheduled deliveries, accidents to machinery, delays in transportation or any other cause beyond the reasonable commercial control of Seller. Upon the occurrence of any such event, Seller may terminate this Contract without liability. In no event shall Seller be liable to Buyer for any consequential damages or claims for labor resulting from failure or delay in delivery.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first set forth above.

COUNTY OF EAGLE, STATE OF COLORADO, By and Through Its COUNTY MANAGER

By:

DocuSigned by: 16

Jeff Shroll, County Manager

CONTRACTOR

# TRUE NORTH STEEL

Print Name: Steve Henley

Title: \_\_\_\_\_\_ Director Of Bridge Sales

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