

Construction Agreement

THIS AGREEMENT is made and entered into this 28th day of August, 2018, by and between TOWN OF ERIE, COLORADO, whose address is 645 Holbrook Street, PO Box 750, Erie, Colorado 80516 (hereinafter called the "TOWN") and American West Construction, LLC (hereinafter called "CONTRACTOR"), whose address is 275 E 64th Avenue, Denver, Colorado 80221.

The Town and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents, or which may be reasonably inferred as necessary to produce the results intended by the Contract Documents. The Work is generally described as follows:

- Installation of approximately 1,192 lineal feet of 30-inch diameter PVC water transmission pipeline, including one 30-inch diameter butterfly valve
- Reconnection to existing 30-inch diameter steel water transmission pipeline

PROJECT: **Erie Parkway 30" Waterline Relocation**

PROJECT NUMBER: **P18-266**

ARTICLE 2. CONTRACT TIMES.

2.1 The Work shall be substantially completed within **75** Calendar Days after the date when the Contract Time commences to run. The Work shall be completed and ready for final payment, in accordance with the General Conditions, within **90** Calendar Days after the date when the Contract Times commence to run. The Contract Times shall commence to run on the day indicated in the Notice to Proceed.

ARTICLE 3. CONTRACT PRICE.

3.2 The TOWN shall pay in current funds, and the CONTRACTOR agrees to accept in full payment for performance of the Work, subject to additions and deductions from extra and/or omitted work and determinations of actual quantities as provided in the Contract Documents, the Contract Price of **Five Hundred Twenty Eight Thousand Two Hundred Forty** dollars (\$528,240) as set forth in the Bid Form of the CONTRACTOR dated August 15, 2018.

3.3 As provided in the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by the Project Manager as provided in the General Conditions. Unit prices have been computed as provided in the General Conditions.

ARTICLE 4. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with the General Conditions. Applications for Payment will be processed by the TOWN as provided in the General Conditions.

4.1 **Progress Payments.** The TOWN shall make progress payments on the basis of CONTRACTOR's Applications for Payment as recommended by the Project Manager, on or about every 30 days

during construction as provided below and in the General Conditions. Payment will be made by the TOWN on the next billing cycle following approval for payment. All progress payments will be on the basis of the progress of the Unit Price Work based on the number of units completed as provided in the General Conditions.

- 4.1.1 Prior to Substantial Completion, progress payments will be made in the amount equal to 95 percent of the completed Work, and/or 95 percent of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to the TOWN as provided in the General Conditions), but in each case, less the aggregate of payments previously made and such less amounts as the Project Manager shall determine, or the TOWN may withhold, in accordance with the General Conditions.
- 4.2 **Final payment.** Upon final completion and acceptance of the Work in accordance with the General Conditions, the TOWN shall pay the remainder of the Contract Price as provided in said General Conditions. Upon no receipt of claims toward the CONTRACTOR, per the Notice of Final Settlement advertisement, the TOWN shall pay the retainage withheld to the Contractor upon signature by the CONTRACTOR of a Claim Release for the TOWN.
- 4.3 **Payment of interest.** In the event that any payment of interest is to be made pursuant to any provision of the contract documents, interest shall be paid at the average rate earned by the TOWN on its invested funds during the quarterly fiscal period prior to the period during which the interest was accrued.

ARTICLE 5. CONTRACTOR'S REPRESENTATIONS.

In order to induce the TOWN to enter into this Agreement CONTRACTOR makes the following representations and commitments:

- 5.1 CONTRACTOR has examined and carefully studied the Contract Documents, (including any and all Addenda) and the other related data identified in the Bidding Documents including "technical".
- 5.2 CONTRACTOR has inspected the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.
- 5.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and furnishing of the Work.
- 5.4 CONTRACTOR has carefully studied all reports of exploration and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions relating to surface or subsurface structures (except Underground Facilities) at or contiguous to the site which have been identified in the General Conditions. CONTRACTOR accepts the determination set forth in said General Conditions. CONTRACTOR acknowledges that such reports and drawings are not CONTRACT DOCUMENTS and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that the TOWN and the Project Manager do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to such reports, drawings or to Underground Facilities at or contiguous to the site. CONTRACTOR has conducted, obtained and carefully studied (or assumes responsibility for having done so) all necessary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which

relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

- 5.5 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the General Conditions.
- 5.6 CONTRACTOR is aware of the general nature of work to be performed by the TOWN and others at the site that relates to the Work as indicated in the Contract Documents.
- 5.7 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests studies and data with the Contract Documents.
- 5.8 CONTRACTOR has given the Project Manager written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by the Project Manager is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing the Work.
- 5.9 CONTRACTOR will use its best skill and workmanship to provide Work of the highest quality.

ARTICLE 6. CONTRACT DOCUMENTS

The Contract Documents which constitute the entire agreement between the TOWN and CONTRACTOR concerning the Work are all written documents which define the Work and the obligations of the Contractor in performing the Work and the TOWN in providing compensation for the Work. The Contract Documents shall consist of those listed below, and there are no Contract Documents other than as listed:

- 6.1 Invitation to Bid.
- 6.2 Instruction to Bidders.
- 6.3 Bid Form and Attachments Thereto.
- 6.4 This Agreement.
- 6.5 General Conditions.
- 6.6 Special Conditions if any.

- 6.7 Technical Specifications.
- 6.8 Change Orders, Addenda and other documents which may be required or specified including, but not limited to:
 - 6.8.1 Addenda numbers 1 to 4, inclusive.
 - 6.8.2 Documentation submitted by CONTRACTOR prior to Notice of Award.
 - 6.8.3 Notice of Award
 - 6.8.4 Performance Bond and Payment Bond
 - 6.8.5 Warranty Bond
 - 6.8.6 Certificates of Insurance
 - 6.8.7 Notice to Proceed
 - 6.8.8 Field Order
 - 6.8.9 Work Change Directive
 - 6.8.10 Change Order
 - 6.8.11 Application for Payment
 - 6.8.12 Certificate of Substantial Completion
 - 6.8.13 Claim Release
 - 6.8.14 Final Inspection Report
 - 6.8.15 Certificate of Final Completion
 - 6.8.16 Guarantee Period Inspection Report
 - 6.8.17 Notice of Final Settlement
- 6.9 The following which may be delivered or issued after the Effective Date of the Agreement and are attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.
- 6.10 In the event of conflict between the above documents, the prevailing document shall be as follows:
 - 1. Permits from other agencies as may be required.
 - 2. Special Provisions and Detail Drawings.

3. Technical Specifications and Drawings. Drawings and Technical Specifications are intended to be complementary. Anything shown or called for in one and omitted in another is binding as if called for or shown by both.
 4. Special Conditions.
 5. General Conditions.
 6. Town Standards and Specification for Design and Construction of Public Improvements.
 7. Reference Specifications.
- 6.11 In case of conflict between prevailing references above, the one having the more stringent requirements shall govern.
- 6.12 There are no Contract Documents other than those listed above in this Article 6. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.

ARTICLE 7. MISCELLANEOUS.

- 7.1 Terms used in this Agreement which are defined in the General Conditions shall have the meanings indicated in said General Conditions.
- 7.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge that assignor from any duty or responsibility under the Contract Documents.
- 7.3 The TOWN and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 7.4 CONTRACTOR agrees to comply with all federal, state and city non-discrimination rules and regulations so long as CONTRACTOR is under contract with the TOWN.
- 7.5 By executing this agreement, CONTRACTOR warrants that:
1. CONTRACTOR has not allowed any competing bidder or employee or agent thereof to see CONTRACTOR's bid or to know of its content.
 2. CONTRACTOR has not discussed the contents of its bid with any competing bidder, or any other person who a reasonably prudent person would believe would be likely to transmit information to a competing bidder.
- 7.6 **No Discrimination in Employment** In connection with the performance of work under this Agreement, CONTRACTOR agrees not to refuse to hire, discharge, promote or demote, or to

discriminate in matters of compensation against any person otherwise qualified on the basis of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability and further agrees to insert the foregoing provision in all subcontracts hereunder

Failure to abide by the above provisions relating to collusion shall render the contractor liable to the TOWN for damages, including, without limitations, payment of the bid bond as liquidated damages. In addition, the TOWN may void any contract entered into with a bidder guilty of collusion.

ARTICLE 8. OTHER PROVISIONS.

- 8.1 **Third party beneficiaries.** The contract is not intended to create any right for the public or any member thereof, any subcontractor or supplier, or any other third party, or to authorize anyone not a party to the contract to maintain a suit to enforce its terms. The duties, obligations, and responsibilities of the parties to the contract, with respect to third parties, shall remain as imposed by law. This section shall not apply to any surety to the extent it is acting under any labor and materials bond or performance bond entered into by the CONTRACTOR.
- 8.2 **Integration.** The contract documents represent the entire integrated agreement between the TOWN and the CONTRACTOR and supersede all prior negotiations, representations, or agreement, whether written or oral. No modification, amendment, waiver or novation shall be valid unless incorporated in a written amendment or change order properly executed by both parties.
- 8.3 **Severability.** To the extent that the performance of the parties' obligations may be accomplished within the intent of the contract, the terms of the contract are severable, and should any term or provision of the contract be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other contract term or provision.
- 8.4 **Waiver.** If the TOWN fails to enforce any term of the contract for any period, this shall not act as a waiver. No waiver of any breach of any term thereof shall be effective unless set forth in a writing signed by both the Project Manager and CONTRACTOR. The waiver of any breach of a term thereof shall not be construed as waiver of any other term.
- 8.5 **Compliance with laws.** At all times during the performance of the contract, CONTRACTOR shall strictly adhere to all applicable federal, state and Town laws that have been or may hereafter be established. This shall include, without limitation, the United States Department of Labor, Occupational Safety and Health Administration (OSHA) standards for excavating and trenching operations. As used in this section, and hereafter, the term "laws" shall include, without limitation, all federal, state and Town codes, charters, ordinances, laws, standards, rules and regulations.
- 8.6 **Choice of law.** In all litigation arising out of the contract, the statutory and common law of the State of Colorado shall be controlling, and venue shall be in the District Court of Weld County, Colorado.

ARTICLE 9. PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS.

- 9.1 By its signature on this Agreement, CONTRACTOR certifies that, as of the time of its signature, it does not knowingly employ or contract with an illegal alien and that, in order to verify that it does not employ any illegal aliens, the CONTRACTOR will participate in the E-Verify Program created in Public Law 104-208, as amended, and expanded in Public Law 108-156, as amended, administered by the United States Department of Homeland Security and the Social Security

Administration.

- 9.2 CONTRACTOR agrees that it shall not knowingly employ or contract with an illegal alien to perform work under this Agreement; and that it shall not enter into a contract with a subcontractor that fails to certify to the CONTRACTOR that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.
- 9.3 CONTRACTOR has verified or attempted to verify through participation in the Basic Pilot Program that the CONTRACTOR does not employ any illegal aliens. If CONTRACTOR has not been accepted into the Basic Pilot Program prior to entering into this Agreement, CONTRACTOR shall apply to participate in the Basic Pilot Program every three months until the CONTRACTOR is accepted or work under this Agreement has been completed, whichever is earlier. This requirement shall not apply if the Basic Pilot Program is discontinued.
- 9.4 CONTRACTOR shall not use Basic Pilot Program procedures to undertake preemployment screening of job applicants while work under this Agreement is being performed.
- 9.5 If CONTRACTOR obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the CONTRACTOR shall: (1) notify the subcontractor and the TOWN within three days that the CONTRACTOR has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (2) terminate the subcontract with the subcontractor if, within three days of receiving the notice required herein, the subcontractor does not stop employing or contracting with the illegal alien; except that the CONTRACTOR shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- 9.6 The CONTRACTOR shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. section 8-17.5-101(5).
- 9.7 If CONTRACTOR violates a provision of this Illegal Alien Addendum, the TOWN may terminate this Agreement for breach of contract. If the Agreement is so terminated, the CONTRACTOR shall be liable for actual and consequential damages to the TOWN. CONTRACTOR understands that, in the event of such a termination, TOWN is required to notify the office of the Colorado Secretary of State.

IN WITNESS WHEREOF, the TOWN and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to the TOWN and CONTRACTOR. All portions of the Contract Document have been signed, initialed or identified by the TOWN and CONTRACTOR.

This Agreement is effective as of August 28, 2018.

TOWN:

CONTRACTOR:

TOWN OF ERIE

By: _____

By: _____

(CORPORATE SEAL)

(CORPORATE SEAL)

Attest: _____

Attest: _____

Address for giving notices:

