

## **CONSTRUCTION CONTRACT**

THIS CONSTRUCTION CONTRACT (the “Contract”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 (the “Effective Date”), by and between the Town of Erie, 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516, a Colorado municipal corporation (the “Town”), and Roche Constructors, Inc., an independent contractor with a principal place of business at 361 71<sup>st</sup> Avenue, Greeley, CO 80634 (“Contractor”) (each a “Party” and collectively the “Parties”).

For the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Scope of Work.** Contractor shall perform the following described work (the “Work”), in accordance with this Contract and the Contract Documents, attached hereto and incorporated herein by this reference:

Construction management and general contractor services for the construction of Clayton Park, located in the Erie Highlands Neighborhood on the southeast corner of Highland Blvd. and Highland Circle, including: open turf green space; two baseball/softball fields; concrete walks and pedestrian trails; playgrounds; a basketball half court; utilities, including water, sewer and electrical; site grading and drainage; landscaping and irrigation system; a shade and picnic structure; and site furnishings.

2. **Bonds.** Within 10 days of the date of this Contract, Contractor shall provide the payment and performance bond and certificate of insurance required by the Contract Documents.

3. **Commencement and Completion of Work.** Contractor shall commence the Work within 10 days of date of the Notice to Proceed. Substantial Completion of the Work shall be accomplished within 232 days of the Notice to Proceed unless the period for Substantial Completion is extended otherwise in accordance with the Contract Documents. Final Completion of the Work shall be accomplished within 365 days of the date of Substantial Completion.

4. **Compensation/Contract Price.** The Town agrees to pay Contractor, subject to all of the terms and conditions of the Contract Documents, for the Work, an amount not to exceed \$1,850,700. The Town shall pay Contractor in the manner and at such times as set forth in the General Provisions such amounts as required by the Contract Documents.

5. **Illegal Aliens.**

A. **Certification.** By entering into this Contract, 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 Contract 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 in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract.

B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract 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 Contract.

C. Verification.

1. If Contractor has employees, Contractor has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either the E-Verify Program or the Department Program.
2. Contractor shall not use the E-Verify or Department Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.
3. If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien who is performing work under this Contract, 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 Contract; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection a hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Contract; except that Contractor shall not terminate the contract with the subcontractor 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 Contract.

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 Contract.

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

6. Keep Jobs In Colorado Act. Pursuant to the Keep Jobs in Colorado Act, C.R.S. § 8-17-101, et seq. (the “Act”), and the rules adopted by the Division of Labor of the Colorado Department of Labor and Employment implementing the Act (the “Rules”), Contractor shall employ Colorado labor to perform at least 80% of the work under this Contract and shall obtain and maintain the records required by the Act and the Rules. For purposes of this Section, “Colorado labor” means a person who is a resident of the state of Colorado at the time of this Contract, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide qualification. A resident of the state of Colorado is a person with a valid Colorado driver’s license, a valid Colorado state-issued

photo identification, or documentation that he or she has resided in Colorado for the last 30 days. Contractor represents that it is familiar with the requirements of the Act and the Rules and will fully comply with same. This Section shall not apply to any project for which appropriation or expenditure of moneys may be reasonably expected not to exceed \$500,000 in the aggregate for any fiscal year.

7. Governing Law and Venue. This Contract shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in [Boulder or Weld] County, Colorado.

8. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Contract by the Town shall not constitute a waiver of any of the other terms or obligation of this Contract.

9. Integration. This Contract and any attached exhibits constitute the entire Contract between Contractor and the Town, superseding all prior oral or written communications.

10. Third Parties. There are no intended third-party beneficiaries to this Contract.

11. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

12. Severability. If any provision of this Contract 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.

13. Modification. This Contract may only be modified upon written agreement of the Parties.

14. Assignment. Neither this Contract nor any of the rights or obligations of the Parties shall be assigned by either party without the written consent of the other.

15. 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 Contract, the monetary limitations or any other rights, immunities, and 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.

16. Rights and Remedies. The rights and remedies of the Town under this Contract are in addition to any other rights and remedies provided by law. The expiration of this Contract 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.

17. 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 or liability beyond the current fiscal year.

IN WITNESS WHEREOF, this Construction Contract has been executed by the Parties as of the Effective Date.

**TOWN OF ERIE, COLORADO**

\_\_\_\_\_  
Jennifer Carroll, Mayor

ATTEST:

\_\_\_\_\_  
Jessica Koenig, Town Clerk

**CONTRACTOR**

By: \_\_\_\_\_

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

My commission expires:

(S E A L)

\_\_\_\_\_  
Notary Public

## NO EMPLOYEE AFFIDAVIT

*[To be completed only if Contractor has no employees]*

### 1. Check and complete one:

☐ I, \_\_\_\_\_, am a sole proprietor doing business as \_\_\_\_\_. I do not currently employ any individuals. Should I employ any employees during the term of my Contract with the Town of Erie (the “Town”), I certify that I will comply with the lawful presence verification requirements outlined in that Contract.

OR

☐ I, \_\_\_\_\_, am the sole owner/member/shareholder of \_\_\_\_\_, a \_\_\_\_\_ [specify type of entity – i.e., corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Contract with the Town, I certify that I will comply with the lawful presence verification requirements outlined in that Contract.

### 2. Check one.

☐ I am a United States citizen or legal permanent resident.

*The Town must verify this statement by reviewing one of the following items:*

- *A valid Colorado driver’s license or a Colorado identification card;*
- *A United States military card or a military dependent’s identification card;*
- *A United States Coast Guard Merchant Mariner card;*
- *A Native American tribal document;*
- *In the case of a resident of another state, the driver’s license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card; or*
- *Any other documents or combination of documents listed in the Town’s “Acceptable Documents for Lawful Presence Verification” chart that prove both Contractor’s citizenship/lawful presence and identity.*

OR

☐ I am otherwise lawfully present in the United States pursuant to federal law.

*Contractor must verify this statement through the federal Systematic Alien Verification of Entitlement (“SAVE”) program, and provide such verification to the Town.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**DEPARTMENT PROGRAM AFFIDAVIT**

*[To be completed only if Contractor participates in the  
Department of Labor Lawful Presence Verification Program]*

I, \_\_\_\_\_, as a public contractor under contract with the Town of Erie  
(the "Town"), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are  
newly hired for employment to perform work under this public contract for services (the  
"Contract") with the Town within 20 days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. §  
1324a which verify the employment eligibility and identity of newly hired employees who perform  
work under the Contract; and

3. I have not and will not alter or falsify the identification documents for my newly  
hired employees who perform work under the Contract.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_  
day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of  
\_\_\_\_\_.

My commission expires:

(S E A L)

\_\_\_\_\_  
Notary Public

**CERTIFICATE OF INSURANCE**

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, being first duly sworn, state and affirm, under penalty of law, that I am familiar with the insurance coverages maintained by the Insured, \_\_\_\_\_, and the coverage requirements set forth in the foregoing Certificate of Insurance, that I have completed or caused to be completed and subsequently reviewed the foregoing Certificate of Insurance and that the information provided contained therein is true and correct to the best of my knowledge. I further understand that the Town of Erie shall rely on the information provided.

This information is provided for the Town of Erie, Work No. \_\_\_\_\_.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Agency: \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_  
day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as  
\_\_\_\_\_ of \_\_\_\_\_.

My commission expires:

(S E A L)

\_\_\_\_\_  
Notary Public

## **NOTICE OF AWARD**

Date: \_\_\_\_\_

Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Clayton Park Construction – PR-19-08

Dear \_\_\_\_\_:

Thank you for submitting a Bid. Your firm submitted the most qualified Bid and you have been selected as the successful Contractor. Accordingly, this is your Notice of Award for the above-mentioned project.

Attached please find the Construction Contract. Please review and sign and, within 10 days of receipt of this letter, return along with your certification of insurance and payment and performance bond, if applicable, each in the full amount of the Contract Price, and appropriate powers of attorney. When dating the above documents, please make sure that all dates, on all documents, are the same and that the insurance policy reflects the requirements of the Contract Documents. Please return all of the documents at the same time.

Upon receipt of the signed Contracts, the Town will execute and return one fully executed version to you.

Should you have any questions, please call me at \_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
\_\_\_\_\_, Project Manager



## **NOTICE TO PROCEED**

Date: \_\_\_\_\_

Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Clayton Park Construction – PR-19-08

Dear \_\_\_\_\_:

This letter is your Notice to Proceed, effective as of the date cited below. This notice is in reference to the Construction Contract between you and the Town of Erie concerning the above-mentioned project.

Please note that in accordance with the Construction Contract, Work must commence within ten days of the date of this Notice, and all Work must be substantially completed within \_\_\_\_\_ (\_\_\_\_\_) days of the date of this Notice, which shall be the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and finally completed within \_\_\_\_\_ days of the date of this Notice, which shall be the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

If you have any questions, please call me at \_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
\_\_\_\_\_, Project Manager

### ACKNOWLEDGEMENT

Receipt of the above Notice to Proceed is hereby acknowledged.

### CONTRACTOR

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**BID BOND**

**KNOW ALL MEN BY THESE PRESENTS**

THAT \_\_\_\_\_, as PRINCIPAL, and \_\_\_\_\_ as SURETY, are held and firmly bound unto the Town of Erie, Colorado, hereinafter called OWNER, as Obligee, in the penal sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_), for the payment of which sum in lawful money of the United States, well and truly to be made, said PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the PRINCIPAL has submitted a Bid to OWNER for certain Work or services generally described as follows: \_\_\_\_\_

NOW, THEREFORE, (a) if said Bid shall be rejected, or (b) if said Bid shall be accepted and the PRINCIPAL is awarded the Contract and, within the time and manner specified in the Contract Documents, enters into a written Contract in the prescribed form and shall give such bond or bonds as may be specified in the Contract Documents to guarantee faithful performance of such Contract and to guarantee prompt payment of labor and materials furnished in the prosecution thereof, and shall provide to OWNER a Certificate of Insurance as required by the Contract Documents, and shall in all other respects perform the Contract created by the acceptance of said Bid, or (c) in the event of the failure of the PRINCIPAL to enter such Contract and to give such bond or bonds, and Certificate of Insurance, if the PRINCIPAL shall pay to OWNER the difference not to exceed the penalty hereof between the amount specified in said Bid and such larger amount for which the OWNER may in good faith contract with another party to perform the Work covered by said Bid, then this obligation shall be null and void, otherwise it shall be and remain in full force and effect.

The SURETY, for value received, hereby stipulates and agrees that the obligations of said SURETY hereunder shall be in no way impaired or affected by any alteration or irregularities in the bid or in the bidding procedure or by any extension of time within which OWNER may accept such Bid, and does hereby waive notice of same.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(SURETY)

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
(PRINCIPAL)

By: \_\_\_\_\_

Title: \_\_\_\_\_

(ACKNOWLEDGMENTS AND POWER OF ATTORNEY TO BE ATTACHED)  
CORPORATE SEAL MUST BE AFFIXED IF PRINCIPAL IS A CORPORATION.

**PAYMENT AND PERFORMANCE BOND**

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: that

(Firm) \_\_\_\_\_

(Address) \_\_\_\_\_

(an Individual), (a Partnership), (a Corporation), hereinafter referred to as “the Principal”, and

(Firm) \_\_\_\_\_

(Address) \_\_\_\_\_

hereinafter referred to as “the Surety”, are held and firmly bound unto the Town of Erie, Colorado, a Municipal Corporation, hereinafter referred to as “the Owner”, in the penal sum of \_\_\_\_\_ Dollars in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION are such that whereas the Principal entered into a certain Contract with the Owner, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is hereto attached and made a part hereof for the performance of the Work, \_\_\_\_\_.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without Notice to the Surety and during the life of the guaranty or warranty period, and shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the Owner from all cost and damages which it may suffer by the Principal’s failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, and make payment to all persons, firms, subcontractors and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such Contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, repairs on machinery, equipment and tools, consumed, rented or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor performed in such work, whether by subcontractor or otherwise, then this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Principal shall abridge the right of any beneficiary hereunder whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in 5 counterparts, each one of which shall be deemed an original, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

ATTEST:

PRINCIPAL

By: \_\_\_\_\_

By:\_\_\_\_\_

Title:\_\_\_\_\_

Title:\_\_\_\_\_

Address:\_\_\_\_\_

\_\_\_\_\_

(Corporate Seal)

SURETY

ATTEST:

Surety:\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Attorney-in-Fact: \_\_\_\_\_

Title:

\_\_\_\_\_

Address:\_\_\_\_\_

\_\_\_\_\_

(Surety Seal)

NOTE:      Date of Bond must not be prior to date of Contract and Surety must be authorized to transact business in the State of Colorado and be acceptable to the Town.

## **CERTIFICATE OF FINAL PAYMENT**

With reference to Contract Number PR-19-08 dated \_\_\_\_\_, 20\_\_, between the undersigned Contractor and the Town of Erie, for: Clayton Park Construction at Erie, Colorado.

The undersigned hereby certifies that all costs, charges and expenses incurred by it on its behalf for work, labor, services, materials and equipment supplied to the foregoing premises, and/or used in connection with its Work under the Contract have been duly paid.

The undersigned further certifies that to its best knowledge and belief (based upon reasonable investigation) each of its subcontractors and material men have duly paid all costs, charges and expenses incurred by them or on their behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by them in connection with the Undersigned's Work under the Contract.

In consideration of \_\_\_\_\_ dollars (\$\_\_\_\_\_) representing final payment under the Contract, the undersigned hereby releases and discharges the Owner and Owner's property from all claims, liens and obligations of every nature arising out of or in connection with the performance of the Work.

As additional consideration for the final payment, and to the fullest extent permitted by law, the undersigned agrees to indemnify and hold harmless Owner from and against all costs, losses, damages, claims, causes of action, judgments and expenses arising out of or in connection with claims against Owner which may be asserted by the undersigned or any suppliers, subcontractors of any tier or any of their representatives, officers, agents and employees for the costs, losses, damages, claims, causes of action, judgments and expenses and expenses that are attributable to the act, omission, error, professional error, mistake, negligence or other fault of the undersigned.

The foregoing shall not relieve the Undersigned of its obligations under the provisions of the Contract as amended, which by their nature survive completion of the Work including, without limitation, warranties, guarantees and indemnities.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Contractor

**CERTIFICATE OF FINAL ACCEPTANCE**

TO: \_\_\_\_\_ Date: \_\_\_\_\_  
Project No.: \_\_\_\_\_  
Project Title: \_\_\_\_\_

This is to advise you that a final inspection of the referenced Work has been made and all work and material was found to be satisfactory. Therefore, the Work is considered to be complete in accordance with the approved plans, specifications and contract documents.

In accordance with the Contract, all Warranty periods shall begin as of the date of this letter.

TOWN OF ERIE

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## **GENERAL PROVISIONS**

### **PART 1. DEFINITIONS**

#### **1.01 CONTRACT DOCUMENTS:**

- A. Bid Form (Including Bid Summary);
- B. Bid Schedule;
- C. Bidder's Qualification Statement;
- D. Construction Contract;
- E. General Provisions
- F. Special Provisions;
- G. Technical Specifications;
- H. Construction Drawings;
- I. Certificate of Insurance Verification;
- J. Notice of Award;
- K. Notice to Proceed;
- L. Bid Bond;
- M. Payment and Performance Bond;
- N. Certificate of Final Payment;
- O. Final Acceptance Form;
- P. Documentation submitted by Contractor prior to Notice of Award; and
- Q. Addenda

#### **1.02 CHANGE ORDER:**

A written order issued by the Town after execution of the Contract authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time.

#### **1.03 TOWN:**

The Town of Erie, Colorado.

#### **1.04 CONTRACT:**

The entire written agreement covering the performance of the Work described in the Contract Documents including all supplemental agreements thereto and all general and special provisions pertaining to the Work and materials therefor.

#### **1.05 CONTRACT PRICE:**

The amount set forth in Paragraph 4 of the Construction Contract.

#### **1.06 CONTRACT TIME:**

The time for completion of the Work as set forth in Paragraph 3 of the Construction Contract.

#### **1.07 DAY:**

Calendar day, unless otherwise specified. When the last day for the occurrence of an event falls on a Saturday, Sunday or legal holiday as recognized by the Town, the time for performance shall be automatically extended to the next business day.

### **1.08 FINAL COMPLETION:**

The date as certified by the Project Manager when all of the Work is completed and final payment may be made.

### **1.09 PROJECT MANAGER:**

The Town's duly authorized representative in connection with the Work.

### **1.10 SUBCONTRACTOR:**

Any person, firm or corporation with a direct contract with Contractor who acts for or in behalf of Contractor in executing any part of the Contract, excluding one who merely furnishes material.

### **1.11 SUBSTANTIAL COMPLETION:**

The date as certified by the Project Manager when the Town occupies or takes possession of all or substantially all of the Work, or when the Town may occupy or take possession of all or substantially all of the Work and put it to beneficial use for its intended purposes.

### **1.12 WORK:**

All the work specified, indicated, shown or contemplated in the Contract Documents, including all alterations, amendments or extensions thereto made by supplemental agreements or written orders of the Project Manager.

## **PART 2. TIME**

### **2.01 TIME OF THE ESSENCE:**

All times stated in the Contract Documents are of the essence.

### **2.02 FINAL ACCEPTANCE:**

Upon Final Completion, the Project Manager will issue final acceptance.

### **2.03 CHANGES IN THE WORK:**

The Town reserves the right to order changes in the Work, in the nature of additions, deletions or modifications, without invalidating the Contract, and to make corresponding adjustments in the Contract Price and the Contract Time. All changes shall be authorized by a written Change Order signed by the Project Manager. The Change Order shall include appropriate changes in the Contract Documents and the Contract Time. The Work shall be changed and the Contract Price and Contract Time modified only as set forth in the written Change Order. Any adjustment in the Contract Price resulting in a credit or a charge to the Town shall be determined by mutual agreement of the parties before the work set forth in the Change Order is commenced. If a Change Order results in an increase in the Contract Price, approval of the Erie Board of Trustees shall be required, and if such approval is not obtained, the Town shall have no payment obligation regardless of whether the Work pursuant to the Change Order has been performed.

### **2.04 DELAYS:**

- A. If Contractor is delayed in the progress of the Work by fire, unusual delay in transportation, unanticipated adverse weather conditions, or other unavoidable casualties beyond Contractor's control, the Contract Time shall be extended for a reasonable period of time. "Weather" means precipitation, temperature, or wind, and an "adverse weather condition" means weather that on any calendar day can be deemed unsafe or impede progress as approved by Project Manager. The term "unanticipated adverse weather conditions" means



the number of days in excess of the anticipated adverse weather days per month as set forth below:

**MONTHLY ANTICIPATED ADVERSE WEATHER DAYS**

<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUN</u>	<u>JUL</u>	<u>AUG</u>	<u>SEP</u>	<u>OCT</u>	<u>NOV</u>	<u>DEC</u>
7	4	4	4	6	3	4	2	3	3	2	5

*By reason of example only*, if in March there are 2 days of adverse weather conditions, Contractor may not request an additional time extension as anticipated adverse weather days are included in the schedule. However, if in March there are 5 days of adverse weather conditions, Contractor shall be entitled to request a time extension of one additional day.

- B. Any request for extension of the Contract Time shall be made in writing to the Project Manager not more than 7 days after commencement of the delay; otherwise it shall be waived. Any such request shall contain an estimate of the probable effect of such delay on the progress of the Work.
- C. Contractor shall not be entitled to any increase in the Contract Price, or to damages, or to additional compensation as a consequence of any such delays.

**2.05 NO DAMAGES FOR DELAY:**

In strict accordance with C.R.S. § 24-91-103.5, the Town shall not amend the Contract Price to provide for additional compensation for any delays in performance which are not the result of acts or omissions of the Town or persons acting on behalf of the Town.

**PART 3. CONTRACTOR'S RESPONSIBILITIES**

**3.01 COMPLETION/SUPERVISION OF WORK:**

Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and licenses in good standing. The services performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by others in the same or similar type of work, and in compliance with applicable laws, ordinances, rules and regulations. Contractor shall be responsible for completion of all Work in a timely and workmanlike manner in accordance with the terms and specifications of the Contract Documents, including the techniques, sequences, procedures and means. Contractor shall be responsible for the coordination of all Work. Contractor shall supervise and direct the Work and give it all attention necessary for proper supervision and direction. Contractor shall maintain a supervisor on site at all times when Contractor or any subcontractor is performing Work.

**3.02 DUTY TO INSPECT:**

Contractor shall inspect all Contract Documents, tests and reports, including soil tests and engineering tests, if applicable, and shall conduct a site or field review prior to executing the Contract. Contractor assumes the risk of all conditions which are disclosed, or which are reasonably suggested by any such tests or reports, or which would be disclosed by a field or site review. Contractor shall have the affirmative duty to advise the Town of any concerns which Contractor may have regarding construction conditions prior to executing the Contract.

**3.03 FURNISHING OF LABOR AND MATERIALS:**

- A. Contractor shall provide and pay for all labor, materials and equipment, including: tools; construction equipment and machinery; utilities, including water; transportation; and all other facilities and services necessary for the proper completion of the Work.
- B. In all purchases of supplies, materials and provisions to be incorporated or otherwise used by Contractor in the Work, Contractor shall use supplies, materials and provisions produced, manufactured or grown in Colorado if such supplies, materials and provisions are not of inferior quality to those offered by competitors outside of Colorado.
- C. While engaged in the performance of the Work, Contractor shall maintain employment practices that do not violate the provisions of the Colorado Antidiscrimination Act of 1957, C.R.S. § 24-34-301, et seq.

### **3.04 EMPLOYEE SAFETY AND CONDUCT:**

- A. Contractor shall maintain at all times strict discipline of its employees, and Contractor shall not employ on the Work any person unfit or without sufficient knowledge, skill, and experience to perform properly the job for which the employee was hired.
- B. Contractor shall be responsible to the Town for the acts, negligence and omissions of all direct and indirect employees and subcontractors. The Contract Documents shall not be construed as creating any contractual relation between any subcontractor and the Town.
- C. Contractor shall provide for and oversee all safety orders and precautions necessary for the safe performance of the Work. Contractor shall take reasonable precautions for the safety of all employees and others whom the Work might affect, all work and materials incorporated into the Work, and all property and improvements on the work site and adjacent property.
- D. Contractor and its employees, and employees of the Contractor's suppliers, agents, and subcontractors shall at all times treat local residents and the public with respect and courtesy. Contractor shall conduct his work in such a manner as to cause the least inconvenience to local residents and the public. The Project Manager may demand dismissal of workers for any of the following:
  - 1. Being discourteous or disrespectful to local residents or the public.
  - 2. Abuse or taunting of pets.
  - 3. Disposing of rubbish in locations other than approved receptacles.
  - 4. Use of vulgar, abusive, or harassing language or gestures.
  - 5. Use or possession of alcoholic beverages or drugs other than over-the-counter and prescription drugs.
  - 6. Elimination of body waste in locations other than approved sanitation facilities.
  - 7. Damage or defacement of private property outside of street right-of-way and not necessary for the completion of the Work.
  - 8. Trespassing on private property.
  - 9. Use of water from private residences without permission from the resident.

### **3.05 CLEANUP:**

- A. Contractor shall keep the work site and adjoining ways free of waste material and rubbish caused by its employees or subcontractors. Contractor shall remove all such waste material and rubbish daily during construction, together with all tools, equipment, machinery and surplus materials. Contractor shall, upon termination of its Work, conduct general cleanup operations on the work site, including the cleaning of all surfaces, paved streets and walks, and steps. Contractor shall also conduct such general cleanup operations on adjacent properties which were disturbed by the Work.
- B. If Contractor fails to perform the cleanup required by this Section, after written notice, the Town may cause the cleanup to be performed at Contractor's expense. Upon receipt of a statement for such cleanup, Contractor shall pay to the Town the costs incurred by the Town for such cleanup, or the Town shall have the right to withhold said amount from any final payment due to Contractor.

### **3.06 PAYMENT OF ROYALTIES AND LICENSE FEES:**

Contractor agrees to pay all royalties and license fees necessary for the Work, and to defend against all actions for infringement of copyright or patent rights, and to save and hold the Town harmless from such actions.

### **3.07 TAXES, LICENSES AND PERMITS:**

Contractor shall pay all taxes imposed by law in connection with the Work, except the Town of Erie Sales Tax, for purchases within the Town, and shall procure all permits and licenses necessary for the prosecution of the Work. Contractor shall obtain a Town tax-exempt number for the sales tax exemption.

### **3.08 SAMPLES AND SHOP DRAWINGS:**

Contractor shall furnish, upon the request of the Project Manager, samples and shop drawings to the Project Manager, who shall review them for conformance with the Contract Documents. All Work shall comply with approved samples and drawings.

### **3.09 COMPLIANCE WITH LAWS AND REGULATIONS:**

Contractor shall comply with all federal, state and local laws, ordinances, rules, regulations and orders in any manner relating to the Work. If any provision of the Contract Documents is at variance therewith, Contractor shall notify the Project Manager promptly.

### **3.10 SUBCONTRACTORS:**

- A. Contractor shall furnish to the Project Manager at the time the Construction Contract is executed, a list of names of subcontractors to whom Contractor proposes to award the portions of the Work to be subcontracted by Contractor.
- B. Contractor shall not employ a subcontractor to whose employment the Town reasonably objects, nor shall Contractor be required to hire a subcontractor to whose employment Contractor reasonably objects.
- C. All contracts between Contractor and subcontractor shall conform to the provisions of the Contract Documents, and shall incorporate the relevant provisions of the Contract Documents.

### **3.11 CORRECTIVE WORK:**

When any Work does not conform to the Contract Documents, Contractor shall make the necessary corrections so that the Work will so conform. Such corrections shall be accomplished within the time period approved by the Project Manager. Failure to complete such required corrections within the time period required shall constitute a breach of the Contract. The Town's review, approval or acceptance of, or payment for any work shall not be construed as a waiver of any rights under this Contract or any cause of action arising out of the performance of this Contract.

### **3.12 OTHER CONTRACTS:**

The Town reserves the right to let other contracts in connection with the Work. Contractor shall cooperate with all other contractors so that their work is not impeded by the Work, and Contractor shall give other contractors access to the work site necessary to perform their contracts.

### **3.13 COMMUNICATION:**

Contractor shall direct all communications to the Town regarding the Work to the attention of the Project Manager.

## **PART 4. TERMINATION**

### **4.01 LABOR DISPUTES:**

Notwithstanding any other provision contained in this Contract, in the event of any picket or other form of labor dispute at the construction site, Contractor shall continue to perform the Work without interruption or delay. If Contractor ceases performance of the Work because of such picket or other form of labor dispute, the Town may terminate the services of Contractor after giving 48 hours' written notice of its intent to do so.

### **4.02 DEFAULT:**

The Town may terminate this Contract upon thirty days' written notice to Contractor if Contractor defaults in the timely performance of any provision of the Contract Documents, or otherwise fails to perform the Work, or any part thereof, in accordance with the Contract Documents. Termination of the Contract by the Town shall not be the Town's exclusive remedy, and the Town may pursue such other remedies and actions lawfully available to the Town including, but not limited to, an action at law for damages against Contractor or any bonding agency issuing a bond hereunder, or an action in equity for injunctive relief.

## **PART 5. WARRANTIES:**

### **5.01 WARRANTY OF FITNESS OF EQUIPMENT AND MATERIALS:**

Contractor represents and warrants to the Town that all equipment and materials used in the Work, and made a part of the Work, or placed permanently in the Work, shall be new unless otherwise specified in the Contract Documents. All equipment and materials used shall be of good quality, free of defects and in conformity with the Contract Documents. All equipment and materials not in conformity with the Contract Documents shall be considered defective.

### **5.02 GENERAL WARRANTY:**

Contractor shall warrant and guarantee all material furnished and work performed by Contractor for a period of two years from the date of final acceptance of the Work by the Project Manager. Under this warranty, Contractor agrees to repair or replace, at its own expense and under the direction of the Project Manager, any portion of the Work which fails or is defective, unsound, unsatisfactory because of materials or workmanship, or which is not in conformity with the

provisions of the Contract. Should Contractor fail to perform any such work within the warranty period after a request by the Town, the Town may withdraw from the Payment and Performance Bond any and all amounts necessary to complete the required work. The expiration of the warranty period 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.

## **PART 6. BONDS, INSURANCE AND INDEMNIFICATION**

### **6.01 INDEMNIFICATION:**

- A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representatives, 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 Contract or the Contract Documents, to the extent that such injury, loss or damage is attributable to 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 of any subcontractor of Contractor, or which arise out of any worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor.
- B. Contractor, to the fullest extent permitted by law, shall defend, investigate, handle, respond and provide defense for and defend against any such liability, claims, damages, losses, expenses or demands at the sole expense of Contractor, or at the option of the Town, Contractor agrees to pay the Town or reimburse the Town for defense costs incurred by the Town in connection with any such liability, claims, damages, losses, expenses or demands. Contractor, to the fullest extent permitted by law, shall defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not such liability, claims or demands alleged are groundless, false or fraudulent.
- C. This indemnification provision is intended to comply with C.R.S. § 13-21-111.5(6) and shall be read as broadly as permitted to satisfy that intent. Contractor's liability under this 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. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to defend, 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 of the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

### **6.02 NOTICE OF CLAIM:**

If Contractor receives any claim arising from the performance of the Work, Contractor shall notify the Town in writing of the nature of the claim within 24 hours of receipt of the claim by Contractor. In this notice, Contractor shall provide evidence that Contractor has notified Contractor's insurer of the claim. Contractor shall keep the Town apprised of the disposition of the claim, and

Contractor shall take all necessary action to resolve the claim and make restitution, if required, as quickly as possible.

### **6.03 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 Contract. 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.
- 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 Contract.

### **6.04 PERFORMANCE AND PAYMENT BOND:**

Contractor shall furnish a Payment and Performance Bond in the full amount of the Contract Price, as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents, including the warranty. This bond shall remain in effect at least until two years after the date of Final Completion.

## **PART 7. PAYMENT**

### **7.01 PROGRESS PAYMENTS:**

- A. The Town shall make periodic progress payments to Contractor within 30 days following the Project Manager's approval of the Work completed. A progress payment shall be made only after Contractor has submitted an application for a progress payment on a form approved by the Project Manager, and if requested by the Project Manager, Contractor shall submit copies of invoices from subcontractors or supplies and partial waivers executed by each.

- B. Progress payments shall be in an amount equal to 95% of the Work actually completed. Completed Work shall include materials and equipment not incorporated in the Work but delivered to the work site and suitably stored.
- C. If Contractor fails to complete any required Work within the time period agreed between Contractor and the Project Manager, or within any time period set forth in the Contract Documents, as modified or extended, the Town is expressly authorized to withhold any progress payment for such Work until such Work is completed.

## **7.02 FINAL PAYMENT:**

Upon final acceptance of the Work, the Town shall make final payment to Contractor pursuant to C.R.S. § 38-26-107.

## **7.03 LIQUIDATED DAMAGES:**

- A. Because time is of the essence and delayed performance constitutes a compensable inconvenience to the Town and its residents, the liquidated damages established in this Section shall be enforced. Such damages are not a penalty. For each day Final Completion is delayed after the Final Completion date stated in the Construction Contract, as modified through approved change orders, Contractor shall be assessed the following amounts:

<b>Contract Price</b>	<b>Amount per day</b>
\$0-\$50,000	\$350
\$50,000-\$100,000	\$380
\$100,000-\$250,000	\$440
\$250,000-\$500,000	\$520
\$500,000-\$1,000,000	\$640
\$1,000,000-\$2,000,000	\$820
\$2,000,000-\$4,000,000	\$1,080
\$4,000,000-\$8,000,000	\$1,450
\$8,000,000-\$12,000,000	\$1,820
\$12,000,000 or greater	\$2,250

- B. Allowing Contractor to continue and finish the Work or any part thereof after the Final Completion date shall not operate as a waiver on the part of the Town of any of its rights under the Contract Documents. Any liquidated damages assessed shall not relieve Contractor from liability for any damages or costs of other contractors caused by a failure of Contractor to complete the Work in the Contract Time. Liquidated damages may be deducted from any payment due Contractor or the retainage. If the liquidated damages exceed the amount owed to Contractor, Contractor shall reimburse the Town.

## **7.04 ORAL AGREEMENTS PROHIBITED:**

This Contract is expressly subject to the provisions of C.R.S. § 29-1-110(1), and Contractor acknowledges that neither the Town nor any employee or agent thereof is authorized to expend or contract for the expenditure of any monies in excess of those appropriated by the Erie Board of Trustees. The Town acknowledges that sufficient funds have been appropriated to pay the Contract Price, but Contractor shall not rely upon the appropriation of any funds in addition to those already appropriated unless and until the same are lawfully appropriated by the Erie Board of Trustees.

## **7.05 ITEMS NOT INCLUDED IN BID:**

No additional compensation shall be paid for any costs or services listed in the Contract Documents but not specifically listed in the Bid as a Bid item.

**7.06 CHANGES IN QUANTITY:**

- A. Except as provided in Section 7.07, the unit Bid price shown in the Bid Schedule shall be used to determine the payment owed Contractor for any changes in quantity.
- B. The actual quantity placed, as determined by the Project Manager, shall be used to calculate the payment due to Contractor.
- C. Prior to any Work being performed in excess of any of the Bid Schedule quantities, Contractor shall notify the Town, in writing, of every quantity that will exceed 105% of the quantity listed on the Bid Schedule.
- D. Except as provided in Section 7.08, Contractor shall not be entitled to compensation for any increased expense, loss of expected reimbursement or loss of anticipated profits, directly or indirectly caused by any changes in quantity.

**7.07 BID PRICE ADJUSTMENTS:**

- A. When a major item is increased to more than 125% or decreased below 75% of the original quantity stated on the Bid Schedule, the unit Bid price shall be modified by written change order. Payment for major items shall be calculated by multiplying the actual quantity placed by the modified Bid price.
- B. For purposes of this Section, a major item is any item having a Bid value, determined by multiplying the Bid quantity by the unit Bid price that exceeds 10% of the original Contract Price.

**7.08 ELIMINATED ITEMS:**

Should any items contained in the Bid Schedule be found unnecessary for completion of the Work, the items shall be eliminated. The Contract Price shall be modified through written change order, and the amount of the change order shall be the eliminated quantity multiplied by the unit Bid price stated in the Bid Schedule, minus any reasonable costs incurred by Contractor for the eliminated items. Reasonable costs shall be determined by the Project Manager based on information provided by Contractor, and may include mobilization of eliminated materials and equipment mobilization costs, if the sole purpose of the equipment was to place the eliminated material. In no case shall the costs exceed the amount of the eliminated items.

**7.09 MATERIALS STORED BUT NOT INCORPORATED:**

Payments may be made to Contractor for materials stored on the work site but not incorporated into the Work as evidenced by invoices or cost analyses of material produced, if the material has been fabricated or processed and is ready for installation into the Work and conforms with the Contract Documents. Payments shall not exceed 85% of the price shown in the Bid Schedule or 100% of the certified invoice cost of the stockpiled material, whichever is less. Payment for stockpiled materials shall not relieve Contractor of responsibility for loss or damage to the material. Payment for living plant materials or perishable materials shall not be made until the living or perishable material is made an integral part of the finished Work.

**7.10 COST RECORDS:**



Contractor shall make cost records available to the Town if the Town deems it necessary to determine the validity and amount of any item claimed.

## **PART 8. MISCELLANEOUS**

### **8.01 PUBLICATIONS:**

Any and all publications relating to the Work and authored by Contractor or any of its subcontractors shall be submitted to the Town for its prior written approval of the content of the publication. If the Town disapproves of the content of the publication, the author shall withdraw it from publication. The term “publication” as used herein shall include articles or letters to be published in any newspaper, magazine, trade journal or other periodical.

### **8.02 CONFIDENTIALITY:**

Any and all reports, information, data, statistics, forms, designs, plans, procedures, systems, studies and any other communication form of knowledge given to or prepared or assembled by Contractor under this Contract shall, to the extent authorized and permitted by law, be kept as confidential and not be made available by Contractor to any individual, company or organization without the prior written consent of the Town. Notwithstanding the foregoing, Contractor shall not be restricted from releasing information in response to a subpoena, court order, or legal process, but Contractor shall notify the Town in writing before responding.

### **8.03 INDEPENDENT CONTRACTOR:**

Contractor, for all purposes arising out of this Contract, is an independent contractor and not an employee of the Town. It is expressly understood and agreed that Contractor shall not be entitled to any benefits to which the Town’s employees are entitled, such as overtime, retirement benefits, worker’s compensation, injury leave or other leave benefits.

### **8.04 CONFLICTS:**

Should any conflict arise in the Contract Documents, the order of precedence is as follows:

1. Construction Contract.
2. Special Provisions.
3. General Provisions.
4. Supplemental Specifications.
5. Detailed Plans (Calculated dimensions will govern over scaled dimensions).

## **SPECIAL PROVISIONS**

### **1. General.**

- A. All labor, services, material, and other work necessary for the construction of this project shall be provided by Contractor. Contractor's responsibilities shall include, but not be limited to: managing the budget; scheduling and coordinating work meetings; conducting field tests and geotechnical studies; preparing exhibits and participating in formal and informal public meetings at locations provided by the Town; and timely processing field orders, change orders and notices of substantial completion.
- B. Contractor shall carefully examine all Work, and shall be solely responsible for the character, quality, and quantities of Work, materials, and compliance with the Contract Documents.
- C. Contractor shall identify any and all necessary easements for construction and maintenance of the Work.

### **2. Other Regulations.**

- A. Contractor shall ensure that the Work is in compliance with the Urban Drainage and Flood Control District Urban Storm Drainage Criteria Manual, CDOT Specifications, AASHTO Specifications, International Building Code, Uniform Plumbing Code, Uniform Mechanical Code, National Electrical Code, Americans with Disabilities Act, and other applicable codes and specifications.
- B. In case of any discrepancy between any of the requirements set forth in the Urban Drainage and Flood Control District Urban Storm Drainage Criteria Manual, CDOT Specifications, AASHTO Specifications, International Building Code, Uniform Plumbing Code, Uniform Mechanical Code, National Electrical Code, Americans with Disabilities Act, and these Contract Documents, the more stringent requirement shall apply. If any questions arise as to which requirement is more stringent than another, the Project Manager shall be authorized to determine which is more stringent, and the Project Manager's decision shall be final.

### **3. Representatives.** Contractor shall have at the work site at all times as its agent, a competent superintendent capable of reading and thoroughly understanding the Contract Documents and being thoroughly experienced in the type of work being performed. The Town shall have a representative on the job site to observe work for conformance with the Contract Documents.

### **4. Work Administration.** The Town shall administer the Work, including the finalization of any change orders, pay estimates and payments of such, acceptance of work, and other matters as stipulated in the Contract Documents.

### **5. Engineer.** The Engineer for this Work shall be the Town Engineer.

### **6. Inspections and Testing.**

- A. Contractor shall be responsible for performing materials testing. In addition to the materials testing performed by Contractor, the Town may conduct Quality Assurance testing at its own discretion.

- B. Contractor shall coordinate its construction schedule with the testing agency and Town so that key inspection points may be observed. If Contractor fails to provide reasonably adequate notice or proceeds without the required inspection, the subject work shall be re-exposed or redone in its entirety, while the inspector is present. No extra compensation shall be awarded to Contractor for extra work due to Contractor's failure to coordinate inspections with the testing agency or the Town. All costs associated with Contractor's failure to coordinate inspections shall be borne by Contractor.
- C. Contractor shall perform construction inspections. Contractor shall attend any pre-construction meeting(s) and be available to provide technical assistance during the course of construction as necessary. Contractor shall provide site visits and reviews upon request from the Town during the construction phase to ensure compliance with the intent of the plans and to resolve any potential conflicts. Contractor shall provide a written summary after each site visit.
- D. Contractor shall be responsible for scheduling the final inspection with the Town.

7. Construction Schedule.

- A. At the time of the Pre-construction Conference, Contractor shall prepare and submit to the Town for review a construction schedule including: proposed daily construction hours; details of all construction items; start and finish dates; confirmation and dates for coordinating all utility relocation and/or interruptions; and the same information for all subcontractor(s). The schedule shall not be changed without prior notification and review by the Town. The schedule shall be in the form of a chart of suitable scale to indicate approximately the percentage of Work scheduled for completion at any time. Contractor shall enter on the chart the actual progress at the end of each 2-week interval as directed by the Town and shall deliver to the Town a copy thereof on a biweekly basis.
- B. Contractor shall also prepare and submit a schedule of the anticipated manpower by title and duty. The manpower proposed shall be adequate for orderly flow of work and completion within the time specified in the Contract Documents.
- C. All construction activities shall be coordinated with the Project Manager.

8. Saturday, Sunday, Holiday and Night Work.

- A. Work shall normally not be performed on Saturdays, Sundays, observed holidays, or outside of the daytime working hours of 7:00 a.m. to 7:00 p.m., or as indicated on the construction schedule. Lane closures are restricted to 9:00 a.m. to 4:00 p.m. on arterial and collector streets, except for such work as may be necessary for proper care, maintenance, and protection of Work already completed, or in cases where the Work would be endangered or if hazards to life or property would result.
- B. If Contractor believes it necessary to work on Saturdays, Sundays, holidays, or at night, Contractor shall make a request no later than 7:00 a.m. two business days prior to desired work dates and receive written approval before such date so that inspection and engineering services can be provided. Such approval may be revoked by the Town if Contractor fails to maintain adequate equipment and lighting at night for the proper prosecution, control, and inspection of the work. If Work is performed without the

Town's prior approval, and as a result the Town had not assigned inspectors to the work, the Town may declare Work performed during this period of time defective, solely on the grounds that it was not properly inspected.

- C. Any Work performed on a Saturday, Sunday, holiday, or night shall be at Contractor's risk in terms of extra costs, extra work, or unforeseen conditions.

9. Progress Reports.

- A. Contractor shall prepare at least monthly a progress report for the project in a form, in sufficient detail, and of a character approved by the Project Manager. The progress report shall specify an estimated percentage of completion (including percentage of completion of each activity and event shown on the progress schedule), whether the project is on schedule and, if not, the reasons therefore and any proposed adjustments to the schedule, as well as the contract time worked for each category of labor and the projected Work to be completed in the next succeeding month.
- B. If the completion of any part of the Work or the delivery of materials is behind the approved schedule, Contractor shall submit a plan acceptable to the Project Manager for bringing the Work up to schedule. The Town shall have the right to withhold progress payments for the work if Contractor fails to update and submit the progress/manpower schedule and reports as specified.

10. Pre-construction Conference.

- A. Contractor shall coordinate the Pre-construction Conference. Contractor's designated supervisor(s) assigned to the Work shall attend this meeting.
- B. Prior to mobilizing construction equipment, a Pre-construction Conference will be held. Contractor's designated superintendent(s) or supervisor(s) assigned to the Work shall attend this meeting. Contractor shall, at a minimum, provide the following to the Town at the Pre-construction Conference:
  - (1) The construction schedules;
  - (2) A detailed estimate of partial payments for the Work;
  - (3) The traffic control plan;
  - (4) A detailed plan showing site access and staging areas; and
  - (5) A subcontractor submittal, including names and contact phone numbers.

11. Fees and Permits.

- A. Prior to commencing any Work, Contractor shall secure, at its own expense, all necessary fees and permits required for the performance of the Work. The cost of compliance with this Section (including fees) is included in the Contract Price, and no additional compensation shall be provided.
- B. All fees for permits issued by the Town shall be waived.

12. Existing Utilities.

- A. The Work shall be coordinated with all impacted utility companies, districts, associations, agencies, and residents located in the work site. Contractor shall conduct the meeting and provide summary minutes.
  - B. Contractor shall determine the actual location of all existing utilities prior to starting any Work. Contractor shall contact the Utility Notification Center of Colorado to schedule area utility locates (811) and follow up with utility companies, as needed, for field locations prior to the start of Construction Work. If the exact location and depth of existing underground utilities are unknown, Contractor shall perform all necessary exploratory excavation to locate these facilities which may affect the Work prior to beginning construction. Contractor shall obtain required locates and Contractor shall include the information on the plans. Contractor shall resolve any utility discrepancies. Contractor shall be liable for all damage done to existing utilities in the performance of the Work.
  - C. If Contractor requests that utility companies relocate utilities for Contractor's convenience, such relocation shall be at Contractor's expense.
  - D. The time of performance under the Contract shall not be extended to account for repair of utilities which are damaged by Contractor.
13. Water and Electricity. Contractor shall provide and maintain, at its own expense, an adequate supply of water and electricity required for the Work. Contractor shall install and maintain supply connections and lines satisfactory to the Project Manager, and prior to Final Completion, Contractor shall remove the supply lines at its expense. If water is needed during construction, Contractor will obtain a hydrant meter from the Town for use during the project at the Contractor's expense.
14. Dust Control. Contractor shall use measures to prevent and control dust within the area affected by the Work. No additional compensation shall be paid to Contractor for dust control. Contractor shall clean any soil, dirt, or debris tracked onto any adjacent streets. Within 24 hours of notification by the Town that any adjacent streets require cleaning, Contractor shall clean such streets or the Town may have the streets cleaned and deduct the cost of such cleaning from the Contract Price.
15. Construction Staging Areas. All construction staging areas shall be located within the work site. The boundaries of construction staging areas shall be approved by the Town. Construction staging areas shall be used for material storage, parking for equipment, and employees' vehicles. A construction trailer shall not be required, but may be used if the location of the trailer is approved by the Town. Upon Final Completion, all staging areas shall be clean and restored to their original condition. No additional compensation shall be provided to Contractor for cleaning of construction staging areas.
16. Sanitary Facilities.
- A. Sanitary convenience for the use of all persons employed on the work, properly screened from public observation, shall be provided in sufficient numbers and in such a manner and at such points as approved by the Town. The contents shall be removed and disposed of in a satisfactory manner.

- B. The sanitary conveniences specified above shall be the obligation and responsibility of Contractor. The facilities shall be made available to all other contractors, subcontractors, and inspection personnel in the work site.
  - C. Contractor shall supply sufficient drinking water from approved sources to all of its employees.
  - D. Full compensation for compliance with this Section is included in the Contract Price, and no additional compensation shall be provided.
17. Soils Investigations and Foundation Engineering. Contractor shall be responsible for all geotechnical investigations necessary to design and perform the Work.
18. Lines and Grades. Contractor shall lay out the Work and shall be responsible for all measurements in connection therewith. Contractor shall, at its own expense, furnish all stakes, templates, platforms, equipment, and labor, including surveyors, that may be required in setting and cutting or laying out any part of the Work. Contractor shall be responsible for the proper execution of the Work to such lines and grades.
19. Traffic Control.
- A. Contractor shall furnish all necessary flag persons; erect and maintain warning lights, advance warning signs, detour signs, barricades, temporary fence, and sufficient safeguards around all excavations, embankments, obstructions; and perform any other work necessary for the protection of all work being performed, and for the safety of the public and pedestrian traffic, as well as motor vehicles. All signs and barricades shall conform to the current Manual on Uniform Traffic Control Devices.
  - B. At the Pre-construction Conference, Contractor shall submit a copy of the traffic control plan for review by the Town. The plan shall discuss the traffic control measures proposed for the safety of vehicular and pedestrian traffic through the work site.
  - C. Contractor shall at all times take proper precautions for the protection of and replacement or restoration of landscaping, driveway culverts, street intersection culverts or aprons, irrigation crossings and systems, mailboxes, driveway approaches, signs, existing utilities, and all other public and private installations that may be encountered during the Work.
  - D. No driveway or private alley shall be blocked without prior written permission from the resident who would be affected by such blocking, with a copy to the Town.
  - E. Contractor shall provide at least 72 hours written notice to all affected home/business owners within 500 feet of the limits of the project prior to beginning the Work. This also includes information of any lane closures, including dates and times. The Town shall send a press release if needed.
  - F. It is anticipated that a large number of employees will use automobiles for transportation to and from the work site. It shall be Contractor's responsibility to: maintain, protect, and control traffic in the vicinity of and in the work site; restrict parking on streets near the work site; and provide necessary parking areas for all employees in suitable locations as approved by the Town.

20. Archaeological and Historical Discoveries.
- A. Contractor shall inform the Town of any evidence which might suggest to a layperson that archaeological or historical materials may be present in the work site. Upon making such a discovery, Contractor shall do whatever is necessary to avoid disturbing the work site. This may require that Contractor's activities be redirected or stopped until the Town determines how to proceed.
  - B. As a result of Contractor's efforts to preserve the potential discovery at the work site, if Contractor's activities are delayed for longer than 8 normal work hours, Contractor shall prepare accounting information to support an adjustment to the Contract Price.
21. Water Control.
- A. Contractor shall take such precautions as necessary to construct the Work in a dry condition, and Contractor shall provide for drainage, dewatering, and control of all surface and subsurface water and shall erect any necessary temporary structures or other facilities at its own expense.
  - B. Contractor, at its own expense, shall furnish all necessary equipment and materials required to control the surface and subsurface water in all the areas from the commencement of Work through Final Completion.
  - C. Contractor shall be responsible for furnishing, transporting, and installing all materials and equipment, well points, pumping, channelization, diversion, damming, or other means of controlling surface water and ground waters.
22. Disposal Site.
- A. Contractor shall be responsible for the removal of all excess excavation, debris, deleterious material, muck, asphalt, concrete, trees, stumps, remains from clearing and grubbing, and all other materials not used for the construction of the improvements. Costs of disposal are included in the Contract Price and shall not entitle Contractor to additional compensation.
  - B. Contractor's cost for loading, hauling, daily cleaning of streets, disposal of the earthwork (excavation) materials, together with the construction, maintaining and watering of haul roads, and dump fees and permits are included in the Contract Price and shall not entitle Contractor to additional compensation.
23. Video Prior to Construction. Contractor shall provide the Town with a video of the entire work site prior to beginning construction, including all adjacent areas, at Contractor's own expense. One copy of the video shall be provided to the Town and become the property of the Town prior to the commencement of any Work.
24. Existing Improvements and Restoration.
- A. Contractor has field inspected the work site and fully understands that existing landscaping and improvements are present within the work site. Such existing improvements shall be protected. Any damage or disruption in the public right-of-way, drainage easements, Town property, or private property related to the Work shall be restored to pre-existing or better condition.

- B. Contractor shall be responsible for replacing all existing improvements, including irrigation systems and landscaping, damaged during Contractor's activities, except as otherwise provided in the Contract Documents.
25. Erosion Control. Contractor shall provide an erosion/sediment control plan for use during construction. The plan shall include site specific details showing the type, location, and quantity of BMP's to be used. The erosion/sediment control plan shall be designed to prevent sediment from leaving the construction area. Special attention shall be given to prevent sediment from entering into any wetland area.
26. Vandalism. Contractor shall take all necessary steps to protect the work site from vandalism. Contractor shall be solely responsible to repair any damage caused by vandalism, including the removal of graffiti, at Contractor's own cost. The Contract Price shall not be increased to reimburse Contractor for such costs.