

Standard Form of Agreement Between Owner and Design- Builder – Lump Sum

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Standard Form of Agreement Between Owner and Design-Builder - Lump Sum

This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion or modification.

This **AGREEMENT** is made as of the _____ day of _____ in the year of 2023, by and between the following parties, for services in connection with the Project identified below.

OWNER:

Town of Erie
645 Holbrook
P. O. Box 750
Erie, Colorado 80516

DESIGN-BUILDER:

JOC CONSTRUCTION , LLC– South Boulder Canyon Ditch Pipe Project
4890 Ironton Street, Suite A
Denver, CO 80239

PROJECT:

South Boulder Canyon Ditch Pipe Project
Project Number P-22-289

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1

Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535 modified by Erie, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) modified by Erie ("General Conditions of Contract");

2.1.2 The Basis of Design Documents, including the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any, contained in the Design-Builder's Proposal, which shall specifically identify any and all deviations from Owner's Project Criteria; are described as follows:

Attachment 1 - Owner's Project Criteria

Attachment 2 - Design-Builders Proposal and Deviation List

2.1.3 This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder include:

Attachment 3 - Agreement for Professional Services dated June 24, 2022
for design of the South Boulder Canyon Ditch Project

Attachment 4 - Information Provided By Owner to Design-Builder

Attachment 5 - Design-Builder's Permit List

2.1.4 The General Conditions of Contract; Exhibit "A" and

2.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. Conflicts existing within Section 2.1.2 shall be resolved by giving precedence first to the Deviation List, if any, then the Owner's Project Criteria, and then the Design-Builder's Proposal.

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in the design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any design performance specifications; and (b) Design-Builder shall be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

3.6 In the event of some ambiguity in the Contract Documents, the parties shall be deemed to have jointly authored them and nothing shall be construed against or in favor of one party based on it being deemed the sole author.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

4.2 Owner's Limited License Upon Project Completion and Payment in Full to Design-Builder. Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder transfers to Owner all ownership in the Work

Product, except as provided herein. Such transfer shall not apply to Design-Builder's intellectual property rights developed, utilized, or modified in the performance of the Work; such rights shall remain the property of Design-Builder. Design-Builder shall have the right to retain and use copies of drawings, documents, and engineering or other data furnished or to be furnished by Design-Builder and the information contained therein subject to the confidentiality provisions of the Agreement and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product. Such transfer is conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties").

4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

4.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below; and

4.3.2 Owner agrees to pay Design-Builder the additional sum of Zero_Dollars (\$ 0.00) as compensation for the right to use the Work Product to complete the Project and subsequently use the work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

4.4 Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Use of the Work Product is at Owner's sole risk. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than March 30, 2024 (146) calendar days after the Date of Commencement.

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved as follows:

- Substantial Completion – Completion of the underground water conveyance pipe and appurtenances construction that will allow reliable delivery of water from the South Boulder Canyon Ditch through the underground pipe to Thomas Reservoir not later than April 1, 2024.

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract. Final Completion of the entire Work shall be achieved no later than April 30, 2024.

5.2.4 All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date in Section 5.2.1, above, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, (the "LD Date"), Designer-Builder shall pay Owner Eight-Hundred and Twenty Dollars (\$ 820.00) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestones, or Final Completion.

Article 6

Contract Price

6.1 Contract Price. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of One Million, Five-Thousand Four-Hundred and Fifty-Four_Dollars (\$ 1,005,454) ("Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements. Owner will furnish tax exemption certificate.

6.2 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

6.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of ten _percent (10_%) of the additional costs incurred for that Change Order.

6.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

☒ No additional reduction to account for Design-Builder's Fee or any other markup.

6.3 Allowance Items and Allowance Values.

6.3.1 For the specific Works set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis:

- All permits as shown in Attachment 5 - Design-Builder's Permit List
- Preparation of As-Built Record Drawings in accordance with Owner Standards

6.3.2 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth above.

6.3.3 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

6.3.4 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

6.3.5 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance, design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, associated with the applicable Allowance Item.

6.3.6 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.3.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the Wednesday of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.2 Retainage on Progress Payments.

7.2.1 Owner will retain five percent (5%) of each Application for Payment.

7.2.2 Within thirty (30) days after Final Completion of the entire Work and no claims have been made during the final payment advertisement period, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner pursuant to C.R.S. § 38-26-107 and in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly

submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of zero percent (0%) per month until paid.

7.5 Record Keeping and Finance Controls. With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Termination for Convenience

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

8.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

8.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

8.1.3 Overhead and profit in the amount of ten percent (10%) on the sum of items 8.1.1 and 8.1.2 above.

8.2 Reserved

8.3 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Todd Fessenden
Public Works Director
645 Holbrook
Erie, Colorado 80516
303-925-2871
tfessenden@erieco.gov

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

Todd Fessenden
Public Works Director
645 Holbrook
Erie, Colorado 80516
303-925-2871
tfessenden@erieco.gov

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Kiryl Kavalenka
Regional Operations Manager
4890 Ironton Street, Suite A | Denver, CO 80239
M: 720-419-5142
k@joc-construction.com

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

Kiryl Kavalenka
Regional Operations Manager
4890 Ironton Street, Suite A | Denver, CO 80239
M: 720-419-5142
k@joc-construction.com

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth below and in accordance with Article 5 of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

10.3 Design-Builder shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Design-Builder's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by laws or regulations or by the Contract Documents. Design-Builder shall also furnish such other Bonds as are required by the Contract Documents. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by laws or regulations, and shall be executed by sureties named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act. The Design-Builder shall furnish the performance and payment bond in the form provided in the Contract Documents or approved by the Town, the earlier of ten (10) days after the Town has issued the notice of award or delivery of the executed Agreement. The Town reserves the right to exclude any Surety Company on any ground it deems appropriate. The cost of the bonds shall be included in the bid.

10.3.1 If the surety on any Bond furnished by Design-Builder is declared bankrupt, becomes insolvent, has its right to do business terminated in any state where part of the Project is located, or ceases to meet any of the requirements of the Contract Documents, Design-Builder shall within ten days thereafter substitute another Bond and surety, both of which must be acceptable to the Town.

10.4 Licensed Sureties and Insurers; Certificates of Insurance:

10.4.1 All Bonds and insurance required by the Contract Documents to be purchased and maintained by Design-Builder shall be obtained from surety or insurance companies acceptable to the Town that are duly licensed to transact business in the State of Colorado and to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the General Conditions.

10.4.2 Design-Builder shall deliver to the Town, with copies to each additional insured, certificates of insurance (and other evidence of insurance requested by the Town or any other additional insured) which Design-Builder is required to purchase and maintain in accordance with paragraph 5.3. The certificates shall be reviewed and approved by the Town prior to execution of the Agreement. The Town shall have the right to request and obtain copies of any relevant insurance policies required herein. The completed certificates of insurance shall be sent to the person and address specified in the General Conditions.

10.5 Design-Builder's Insurance Requirements:

10.5.1 The Design-Builder agrees to procure and maintain, at its own cost, the policy or policies of insurance required by these General Conditions, in addition to any other insurance requirements imposed by the Contract Documents or by law. The Design-Builder shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the Contract Documents by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

10.5.2 Design-Builder shall procure and maintain, and shall cause each Subcontractor or Supplier of the Design-Builder to procure and maintain (or shall insure the activity of Design-Builder's Subcontractors and Suppliers in Design-Builder's own policy with respect to), the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. All coverages shall be continuously maintained from the date of commencement of the Work. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

10.5.2.1 Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employers' Liability insurance with

limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - each employee.

10.5.2.2 Commercial General Liability insurance with a combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

10.5.2.3 Business Automobile Liability insurance with a combined single limits for bodily injury and property damage of ONE MILLION DOLLARS (\$1,000,000) each accident with respect to each of Design-Builder's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

10.5.2.4 Builder's Risk insurance with limits of not less than the insurable value of the work to be performed under this contract at completion. The policy shall be written in completed value form and shall protect the Design-Builder and the Town against risks of damage to buildings, structures, and materials and equipment not otherwise covered under Contractors Equipment insurance, but to become a part of the completed building or structure, from the perils of fire and lightning, the perils included in the standard coverage endorsement, and the perils of vandalism and malicious mischief. Equipment such as pumps, engine-generators, compressors, motors, switch-gear, transformers, panelboards, control equipment, and other similar equipment shall be insured under Installation Floater insurance when the aggregate value of the equipment exceeds \$10,000. The policy shall provide for losses to be payable to the Design-Builder and the Town as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against the Design-Builder or the Town.

10.5.2.5 Installation Floater with minimum limits of not less than the insurable value of the work to be performed under this contract at completion, less the value of the materials and equipment insured under Builder's Risk insurance. The value shall include the aggregate

value of any City-furnished equipment and materials to be erected or installed by the Design-Builder not otherwise insured under Builder's Risk insurance. The policy shall protect the Design-Builder and the Town from all insurable risks of physical loss or damage to materials and equipment not otherwise covered under Builder's Risk insurance, while in warehouses or storage areas, during installation, during testing, and after the work under this contract is completed. The policy shall be of the "all risks" type, with coverages designed for the circumstances which may occur in the particular work to be performed under this contract. The policy shall provide for losses to be payable to the Design-Builder and the Town as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against the Design-Builder or the Town.

10.5.3 The policies required above, except for the Workers' Compensation insurance and Employers' Liability insurance, shall be endorsed to include the Town, and its officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by Contractor. The additional insured endorsement for the Commercial General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Design-Builder shall be solely responsible for any deductible losses under each of the policies required above.

10.5.4 Certificates of insurance shall be completed by the Design-Builder's insurance agent as evidence that policies providing the required coverages, conditions, and limits are in full force and effect, and shall be subject to review and approval by the Town. Each certificate shall identify the Project and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed or non-renewed until at least 30 days prior written notice has been given to the Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Town reserves the right to request and receive a certified copy of any relevant policy and any endorsement required herein.

10.5.5 Failure on the part of the Design-Builder to procure or maintain policies providing the required coverages, conditions, and limits shall constitute a material breach of contract upon which the Town may immediately terminate the contract, or at its discretion may procure or renew any such

policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Design-Builder to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Design-Builder from the Owner.

10.5.6 The parties hereto understand and agree that the Town is relying on, and does 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, 10 C.R.S. § 24-10-101 *et seq.*, as from time to time amended, or otherwise available to the Town, its officers, or its employees.

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows:

11.1.1 Any claims, disputes, or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 of the General Conditions of Contract shall be resolved in a court of competent jurisdiction in the state in which the Project is located.

11.1.2 *Rights and Remedies.* 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. 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.

11.1.3 *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 executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

Town of Erie, Colorado
(Name of Owner)

(Signature)

Justin Brooks
(Printed Name)

Mayor
(Title)

Date: _____

Attest: _____
Debbie Stamp

Title: _Town Clerk_____

Address for giving notices:

645 Holbrook Street
PO Box 750
Erie Colorado, 80516

License No: _____
(where applicable)

DESIGN-BUILDER:

JOC Construction, LLC
(Name of Design-Builder)

(Signature)

Kiryl Kavalenka
(Printed Name)

Regional Operations Manager
(Title)

Date: _____

(If Design-Builder is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Title: _____

Address for giving notices:

4890 Ironton Street, Suite A
Denver Colorado, 80239

Caution: You should sign an original DBIA document which has this caution printed in blue. An original assures that changes will not be obscured as may occur when documents are reproduced.

