

**Construction Contract**  
**(Erie Commons Irrigation Pond Improvements P23-294)**

This Construction Contract (the "Contract") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2024 (the "Effective Date"), by and between the Town of Erie, 645 Holbrook Street, P.O. Box 750, Erie, CO 80516, a Colorado municipal corporation (the "Town"), and Territory Unlimited, Inc., an independent contractor with a principal place of business at 3054 South County Road 13, Loveland Colorado 80517-8711 ("Contractor") (each a "Party" and collectively the "Parties").

**Recitals**

- A.** The Town issued a Request for Bids for the construction of the Project, dated November 8, 2024 ("RFB"), which is incorporated by this reference as if fully set forth here. Two Bid Addendums were subsequently issued by the Town, on November 14, 2024 ("Bid Addendum 1"), and on November 14, 2024 ("Bid Addendum 2"), all of which are also incorporated by this reference as if fully set forth here.
- B.** Contractor responded to the RFB and submitted its Bid for the Project on November 15, 2024, which Bid is incorporated by this reference as if fully set forth here.
- C.** The Town has determined that Contractor submitted the lowest responsible Bid and has selected the Contractor to perform the Work, subject to the terms and conditions of the Contract Documents.

**Agreement**

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

- 1. Contract Documents and Scope of Work. The "Contract Documents" for this Project consist of the following:
  - A. Bid Form (including Bid Summary)
  - B. Bid Schedule
  - C. Bidder's Qualification Statement
  - D. This 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
- Q. Bid Addenda 1 through 2.

Any conflicts or inconsistencies between or among any of the Contract Documents shall be resolved in accordance with the order of precedence specified in Section 8.04 of the General Provisions. 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.

Contractor shall perform the following described work (the "Work"), in accordance with and reasonably inferable from this Contract and the Contract Documents, attached hereto and incorporated herein by this reference, necessary for the successful completion of the Project:

All labor, services, materials, tools, suppliers, equipment, plant, transportation, and other work necessary for the installation of sheet piles to prevent piping of water through the embankment between the irrigation pond and Coal Creek. The Work also includes: dewatering, removal of existing grouted boulders, compacted embankment with grouted boulder replacements to protect the embankment during overtopping events, and removal and replacement of the existing concrete flow measurement flume as identified in the Unit-Price Bid Form and shown or called for in the Contract Documents.

2. Bonds. Within 10 days of the Effective Date, Contractor shall provide the payment and performance bond and certificate of insurance required by the Contract Documents. A payment and performance bond is not required for contract amounts under \$50,000 unless indicated differently in the Request for Bids or the Contract Documents.

3. Commencement and Completion of Work. Contractor shall commence the Work identified in the Notice to Proceed within 10 days of date of the Notice to Proceed. Substantial Completion of the entirety of the Work for the Project shall be accomplished by Contractor within 67 calendar days of the Notice to Proceed, unless the time within which Contractor is required to achieve

Substantial Completion is subsequently extended in accordance with the Contract Documents. Final Completion of the Work shall be accomplished within 31 days of the date of Substantial Completion.

4. Contract Price. The Town agrees to pay Contractor, subject to all of the terms and conditions of the Contract Documents, for the Work at the unit Bid prices shown in the Bid Schedule and the Unit-Price Bid Form for the actual quantity of the Work placed and accepted by the Town, as determined by the Project Manager, in an amount not to exceed \$314,586.

5. 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 Project, without discrimination as to race, color, creed, sex, sexual orientation, gender identity, gender expression, marital status, national origin, ancestry, age, or religion except when sex, gender, or age is a *bona fide* occupational 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.

6. Miscellaneous.

a. *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 County, Colorado.

b. *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.

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

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

e. *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.

f. *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.

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

h. *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.

i. *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.

j. *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.

k. *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**

\_\_\_\_\_  
Justin Brooks, Mayor

Attest:

\_\_\_\_\_  
Debbie Stamp, 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 Territory Unlimited, Inc.

My commission expires:  
(Seal)

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