

**TOWN OF CASTLE ROCK, COLORADO**

**AGREEMENT FOR CONSTRUCTION CONTRACT FOR THE**

**EAST PLUM CREEK STABILIZATION AT MEADOWS PARKWAY PROJECT**

THIS CONTRACT is made at the Town of Castle Rock, Colorado, between the Town of Castle Rock, Colorado (Town), a municipal corporation, and 53 Corporation, LLC (Contractor), a Limited Liability Corporation – S Corp. in the State of Colorado whose address is:

5655 Peterson Rd.  
Sedalia, CO 80135

In consideration of these mutual covenants and conditions, the Town and Contractor agree as follows:

**SCOPE OF WORK** The Contractor shall execute the entire Work including the Base Bid and Add Alternate as described in the Contract.

**CONTRACT** The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, written or oral representations and agreements. The Contract incorporates the following Contract Documents. In resolving inconsistencies among two or more of the Contract Documents, precedence will be given in the same order as enumerated.

**LIST OF CONTRACT DOCUMENTS**

The Contract Documents, except for Modifications issued after execution of this Agreement, are:

1. Change Orders;
2. Notice to Proceed;
3. Agreement for Construction Contract;
4. The following Addenda, if any:
 

| Number                | Date                 | Pages    |
|-----------------------|----------------------|----------|
| <b>Addendum No. 1</b> | <b>March 9, 2016</b> | <b>4</b> |
5. The following Revisions, if any:
 

| Number  | Date | Pages        |
|---|------|--------------|
| 6. <b>Town of Castle Rock</b> Construction Contract General Conditions;   |      |              |
| 7. Project Special Conditions of the Contract;  |      |              |
| 8. Construction Specifications as included in the Contract Documents:   |      |              |
| <b>2011 Colorado Department of Transportation Standard Specifications</b>   |      |              |
| 9. The following Drawings:  |      |              |
| <b>Title</b>  |      | <b>Pages</b> |
| <b>Contract Drawings for Construction of the East Plum Creek Stabilization at Meadows Parkway Drainage, GESC and Planting Plans Dated March 7, 2016</b> |      | <b>35</b>    |
10. Notice of Award;
11. Invitation to Bid;
12. Information and Instructions to Bidders;
13. Notice of Substantial Completion;
14. Notice of Construction Completion;
15. Proposal Forms, including Bid Schedules;
16. Performance, Labor and Material Payment and Warranty Bonds;
17. Performance Guarantee; and
18. Insurance Certificates.

**CONTRACT PRICE.** The Town shall pay the Contractor for performing the Work and the completion of the Project according to the Contract, subject to Change Orders as approved in writing by the Town, under the guidelines in the General Conditions. The Town will pay FIVE HUNDRED SIXTY THREE THOUSAND FOUR HUNDRED THIRTY FIVE AND 00/100 DOLLARS (\$563,435.00), (Contract Price), to the Contractor, subject to full and satisfactory performance of the terms and conditions of the Contract. The Town has appropriated money equal or in excess of the Contract Price for this work.

**COMPLETION OF WORK.** The Contractor must begin work covered by the Contract within 10 days, and must complete work within 150 calendar days from and including the date of Notice to Proceed, according to the General Conditions.

**LIQUIDATED DAMAGES.** If the Contractor fails to substantially complete the Work by the date set for substantial completion in the Contract, or if the completion date is extended by a Change Order, by the date set in the Change Order, the Town may permit the Contractor to proceed, and in such case, may deduct the sum of \$750 for each day that the Work shall remain uncompleted from monies due or that may become due the Contractor. This sum is not a penalty but is a reasonable estimate of liquidated damages.

The parties agree that, under all of the circumstances, the daily basis and the amount set for liquidated damages is a reasonable and equitable estimate of all the Town's actual damages for delay. The Town expends additional personnel effort in administering the Contract or portions of the Work that are not completed on time, and has the cost of field and office engineering, inspecting, and interest on financing and such efforts and the costs thereof are impossible to accurately compute. In addition, some, if not all, citizens of Castle Rock incur personal inconvenience and lose confidence in their government as a result of public projects or parts of them not being completed on time, and the impact and damages, certainly serious in monetary as well as other terms are impossible to measure.

**SERVICE OF NOTICES.** Notices to the Town are given if sent by registered or certified mail, postage prepaid, to the following address:

TOWN OF CASTLE ROCK  
100 N. Wilcox Street  
Castle Rock, CO 80104

**INSURANCE PROVISIONS.** The Contractor must not begin any work until the Contractor obtains, at the Contractor's own expense, all required insurance as specified in the General Conditions. Such insurance must have the approval of the Town of Castle Rock as to limits, form and amount.

**RESPONSIBILITY FOR DAMAGE CLAIMS.** The Contractor shall indemnify, save harmless, and defend the Town, its officers and employees, from and in all suits, actions or claims of any character brought because of: any injuries or damage received or sustained by any person, persons or property because of operations for the Town under the Contract; including but not limited to claims or amounts recovered from any infringements of patent, trademark, or copyright; or pollution or environmental liability. The Town may retain so much of the money due the Contractor under the Contract, as the Town considers necessary for such purpose. If no money is due, the Contractor's Surety may be held until such suits, actions, claims for injuries or damages have been settled. Money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that the Contractor and the Town are adequately protected by public liability and property damage insurance.

The Contractor also agrees to pay the Town all expenses, including attorney's fees, incurred to enforce this Responsibility for Damage Claim clause.

Nothing in the **INSURANCE PROVISIONS of the General Conditions** shall limit the Contractor's responsibility for payment of claims, liabilities, damages, fines, penalties, and costs resulting from its performance or nonperformance under the Contract.

**STATUS OF CONTRACTOR.** The Contractor is performing all work under the Contract as an independent Contractor and not as an agent or employee of the Town. No employee or official of the Town will supervise the Contractor. The Contractor will not supervise any employee or official of the Town. The Contractor shall not represent that it is an employee or agent of the Town in any capacity. **The Contractor and its employees are not entitled to Town Workers' Compensation benefits and are solely responsible for federal and state income tax on money earned.** This is not an exclusive contract.

**THIRD PARTY BENEFICIARIES.** None of the terms or conditions in the Contract shall give or allow any claim, benefit, or right of action by any third person not a party to the Contract. Any person, except the Town or the Contractor, receiving services or benefits under the Contract is an incidental beneficiary only.

**INTEGRATION.** This contract integrates the entire understanding of the parties with respect to the matters set forth. No representations, agreements, covenants, warranties, or certifications, express or implied, shall exist as between the parties, except as specifically set forth in this Contract.

**DEFINITIONS.** The Definitions in the General Conditions apply to the entire Contract unless modified within a Contract Document.

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

**TOWN OF CASTLE ROCK**

ATTEST

\_\_\_\_\_  
Paul Donahue, Mayor

\_\_\_\_\_  
Sally A. Misare, Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Robert J. Slentz, Town Attorney

\_\_\_\_\_  
Mark Marlowe, Utilities Director

STATE OF Colorado            )  
  ) ss.  
COUNTY OF Douglas        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016  
by Sally Misare as Town Clerk and Paul Donahue as Town Mayer of the Town of Castle Rock, Colorado.

Witness my official hand and seal.

My commission expires: \_\_\_\_\_

( S E A L )

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

CONTRACTOR

**53 CORPORATION, LLC**

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

Its: \_\_\_\_\_

**CORPORATE CERTIFICATE**

I, \_\_\_\_\_, certify that I am the Secretary of the Corporation named as Contractor in the foregoing Contract; that \_\_\_\_\_, who signed the Contract on behalf of the Contractor, was then \_\_\_\_\_ of the Corporation by authority of its governing body and signed the Contract within the scope of his or her Corporate powers.

**(CORPORATE SEAL)**

**Secretary:** \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016  
by \_\_\_\_\_ as \_\_\_\_\_ for 53 Corporation, LLC.

Witness my official hand and seal.

My commission expires: \_\_\_\_\_

**(SEAL)**

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