

TOWN OF CASTLE ROCK, COLORADO

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT (Contract) is made at the Town of Castle Rock, Colorado, between the **Town of Castle Rock**, Colorado (Town), a municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104 and **M.A. Mortenson Company** (Contractor), a Colorado corporation, 1621 18th Street, Suite 400, Denver, CO 80202.

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

SCOPE OF WORK. Contractor shall execute the entire Work described in the Contract.

CONTRACT. The Contract represents the entire and integrated agreement between the parties 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. Construction Contract;
4. The following Addenda:

Number	Date
1	8.19.16
2	8.25.16
3	8.29.16
4	9.1.16
5	9.8.16

Exhibit 2 is attached to assist in identifying, and for clarification purposes, the applicable provisions of each Addenda as applicable (Addendum Descriptions, General Information Cover Sheet, and Project Manual Table of Contents).

5. Special Conditions of the Contract: Does not apply

6. The following Specifications:
Festival Park Project Manual (Volumes 1 & 2), including Addendums 1-4 listed above.
7. The following Drawings:
 - General Information Series (*Exhibit 3*)
 - Landscaping Series (*Exhibit 3*)
 - Civil Series (*Exhibit 3*)
 - Architectural Series (*Exhibit 3*)
 - Architectural Structural Series (*Exhibit 3*)
 - Lighting Series (*Exhibit 3*)
 - Electrical Series (*Exhibit 3*)
 - Water Feature Series (*Exhibit 3*)
 - Irrigation Series (*Exhibit 3*)
 - Environmental Graphic (*Exhibit 3*)
 - Pedestrian Bridge Drawings (*Exhibit 3*)
 - Prefabricated Bathroom Drawings (*Exhibit 3*)
 - Alternative Prefabricated Bathroom Drawings (*Exhibit 3*)
 - Certified Survey (*Exhibit 3*)
8. Notice of Award;
9. Invitation to Bid;
10. Information and Instructions to Bidders;
11. Notice of Substantial Completion;
12. Notice of Construction Completion;
13. Proposal Forms, including Bid Schedules;
14. Performance, and Labor and Material Payment Bonds;
15. Performance Guarantee; and
16. Insurance Certificates.
17. Bid Alternate Descriptions (*Exhibit 4*)
18. The following alternates have been accepted and the costs associated with such alternates are reflected in the Contract Price:
 - Bid Alternate 9a: Concrete Paving Type 2 – Integral Color: (-\$10,800)
 - Bid Alternate 13: Backside of Fountain Wall: \$0
 - Bid Alternate 14: Reduced Height of Fountain Wall: (-\$7,100)
 - Bid Alternate 15: Fountain Wall Material Substitution: (-\$4,800)
 - Bid Alternate 16: Supply Movable Furnishings: (+\$58,650)
 - Bid Alternate 21: Overlook Decking: (-\$14,000)
 - Bid Alternate 22a: Irrigation – Controller A: \$0
 - Bid Alternate 22b: Irrigation – Controller B: \$0
 - Bid Alternate 23: Alternate Restroom Type: (+\$10,000)

(Bid Alternate Amount included in the Contract Price: \$31,950).

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 \$5,815,147 and 00/100 DOLLARS (Contract Price) to the Contractor, subject to full and satisfactory performance of the terms and conditions of the Contract. The Contract Price is provisional based on the quantities contained in the Bid attached as **Exhibit 1**. The final Contract Price shall be adjusted to reflect actual quantities incorporated into the Work at the specified unit prices. The Town has appropriated funds equal to or in excess of the Contract Price for the Work.

COMPLETION OF WORK. The Contractor may not start construction until February 6, 2017. Activities such as pre-construction services, procurement, surveying, utility locates, submittals, RFI's and other non-construction related activities shall commence following the Notice of Award. The Work shall be completed by November 1, 2017.

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 \$500 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
Town Attorney
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 _____, 2016.

ATTEST:

TOWN OF CASTLE ROCK

Sally A. Misare, Town Clerk

Paul Donahue, Mayor

APPROVED AS TO FORM:

Robert J. Slentz, Town Attorney

CONTRACTOR:

M.A. Mortenson Company

By: _____

Title: _____