



**TOWN OF CASTLE ROCK  
CONSTRUCTION CONTRACT  
(Castle Rock Reservoir No. 2 and Castle Rock Reservoir No. 1 Construction Project)**

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THIS CONSTRUCTION CONTRACT ("Contract") is made between the **TOWN OF CASTLE ROCK**, a Colorado municipal corporation ("Town"), 100 N. Wilcox Street, Castle Rock, Colorado 80104 and **HUDICK EXCAVATING, INC. d/b/a HEI CIVIL**, 5460 Montana Vista Way, Castle Rock, Colorado 80108 ("Contractor").

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 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 Contract, are:

1. Change Orders
2. Notice to Proceed
3. Construction Contract
4. General Conditions
5. Where applicable, Davis-Bacon Act Wage Determinations
6. The following Addenda, if any:

Number	Date
I	2/2/2023
II	2/17/2023
III	3/1/2023
IV	3/10/2023
V	3/15/2023
VI	3/16/2023

7. Special Conditions of the Contract: None.
8. The following Specifications: None.
9. The following Drawings/Reports: None.
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, and Labor and Material Payment 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 **\$26,490,159.04** ("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 money equal or in excess of the Contract Price for this work.

**TERM.** The term shall commence upon execution of the Contract and terminate on **April 15, 2025**, unless an extension of the Contract is agreed to in writing by the Town and the Contractor.

**COMPLETION OF WORK.** The Contractor must begin work covered by the Contract within **10** calendar days from the date of the Notice to Proceed, and must complete work within **730** calendar days from and including the date of Notice to Proceed, according to the General Conditions.

**LIQUIDATED DAMAGES.** If the Contractor fails to complete the Work by the date set for 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 **\$500.00** 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

With a copy to: [Legal@crgov.com](mailto:Legal@crgov.com)

**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. *Certificate of Insurance ("COI") must be submitted along with the executed contract as **Exhibit 2**.*

**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.** Contractor has completed the Affidavit of Independent Contractor Status, attached as **Exhibit 3**, and submitted same at the time of execution of this Agreement. 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 4<sup>th</sup> day of April, 2023.

**ATTEST:**

**TOWN OF CASTLE ROCK**

\_\_\_\_\_  
Lisa Anderson, Town Clerk

\_\_\_\_\_  
Jason Gray, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lena McClelland, Assistant Town Attorney

**CONTRACTOR:**

**HUDICK EXCAVATING, INC. d/b/a HEI CIVIL**

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

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

**EXHIBIT 1**

**CONTRACTOR'S BID**



## **EXHIBIT 2**

### **CONTRACTOR'S CERTIFICATE OF INSURANCE**

### EXHIBIT 3

#### TOWN OF CASTLE ROCK AFFIDAVIT OF INDEPENDENT CONTRACTOR STATUS

I, \_\_\_\_\_, an authorized representative of **HUDICK EXCAVATING, INC. d/b/a HEI CIVIL ("HEI Civil")**, holding legal authority to sign this Affidavit declare under oath that I am 18 years or older and have the capacity to sign this Affidavit.

In accordance with Section 8-70-115, C.R.S., I certify the following:

- With respect to the Agreement, **HEI Civil** represents and warrants that it is its express intention to be employed as an independent contractor of the Town of Castle Rock (the "Town") for purposes of performing the work or services which are the subject of the Agreement. **HEI Civil** understands and confirms that the Town reasonably relied on this intention in entering into the Agreement.
- The Town does not require that **HEI Civil** work exclusively for the Town, except that **HEI Civil** may choose to work exclusively for the Town for a finite period of time specified in the \_\_\_\_\_ document.
- The Town does not establish a quality standard for the work or services performed pursuant to the Agreement, except that the Town may provide plans and specifications regarding the work but cannot oversee the actual work or provide instruction as to how the work is performed.
- The Town does not pay a salary or hourly rate but rather a fixed or contract rate, as noted in the terms and conditions of the Agreement, and any Exhibits made part of the Agreement.
- The Town cannot terminate the work or services performed during the contract period unless otherwise agreed to in the terms and conditions of the Agreement.
- **HEI Civil** is not provided with anything, if at all, more than minimal training from the Town.
- The Town does not provide **HEI Civil** with tools or benefits for the performance of the work or services which are the subject of the Agreement, except materials and equipment may be supplied.
- The Town does not dictate the time of performance, except that a completion schedule and a range of mutually agreeable work hours may be established in the Agreement.
- The Town issues checks payable to **HEI Civil** a party to the Agreement; and the Town does not combine their business operations in any way with the **HEI Civil's** business, but instead maintains such operations as separate and distinct.



- **HEI Civil** understands that if a professional license to practice a particular occupation under the laws of the State of Colorado requires the exercise of a supervisory function with regard to the work of services performed under this Agreement, such supervisory role shall not affect the independent contractor relationship with the Town.
- **HEI CIVIL UNDERSTANDS THAT NEITHER HEI CIVIL NOR ITS EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS OF THE TOWN.**
- **HEI CIVIL UNDERSTANDS THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID PURSUANT TO THE AGREEMENT.**

CONTRACTOR:

**HUDICK EXCAVATING, INC. d/b/a HEI CIVIL**

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

Name

**STATE OF COLORADO** )

) ss.

**COUNTY OF** \_\_\_\_\_ )

The foregoing instrument as acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
20\_\_ by \_\_\_\_\_ as \_\_\_\_\_ of the above mentioned Contractor.

Witness my official hand and seal.

My commission expires:

\_\_\_\_\_

Notary Public