

**RESOLUTION NO. 2023-**

**A RESOLUTION APPROVING A CONSTRUCTION CONTRACT WITH  
53 CORPORATION, LLC, FOR THE EAST PLUM CREEK REACH 6  
STABILIZATION PROJECT**

**WHEREAS**, the Town of Castle Rock, Colorado (the “Town”) has solicited bids for creek stabilization improvements for the East Plum Creek Reach 6 Stabilization Project (the “Project”); and

**WHEREAS**, the Project selection team has determined 53 Corporation, LLC, (the “Contractor”) is best qualified to perform work for the Project; and

**WHEREAS**, the Town and the Contractor have agreed to the terms and conditions by which the Contractor will provide work for the Project.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO AS FOLLOWS:**

**Section 1. Approval.** The Construction Contract between the Town and Contractor is hereby approved in substantially the same form attached as ***Exhibit 1***, with such technical changes, additions, modifications, or deletions as the Town Manager may approve upon consultation with the Town Attorney. The Mayor and other proper Town officials are hereby authorized to execute the Agreement by and on behalf of the Town.

**Section 2. Encumbrance and Authorization for Payment.** In order to meet the Town's financial obligations under the Agreement, the Town Council authorizes the expenditure and payment from account no. 212-4475-444.75-52 in an amount not to exceed \$1,353,006.00, plus a Town-managed contingency in the amount of \$135,301.00, unless otherwise authorized in writing by the Town.

**PASSED, APPROVED AND ADOPTED** this 17th day of January, 2023 by the Town Council of the Town of Castle Rock, Colorado, on first and final reading, by a vote of \_\_\_\_ for and \_\_\_\_ against.

**ATTEST:**

**TOWN OF CASTLE ROCK**

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

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

**Approved as to form:**

**Approved as to content:**

\_\_\_\_\_  
Michael J. Hyman, Town Attorney

\_\_\_\_\_  
Mark Marlowe, Director of Castle Rock Water



# Town of Castle Rock

## Agenda Memorandum

**Agenda Date:** 1/17/2023

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**Item #:** File #: TMP 2022-898

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**To:** Honorable Mayor and Members of Town Council

**Through:** David L. Corliss, Town Manager

**From:** Mark Marlowe, Director of Castle Rock Water  
David Van Dellen, Stormwater Manager  
Laura Kindt, Project Manager

**Resolution Approving a Construction Contract between the Town of Castle Rock and 53 Corporation, LLC, for the East Plum Creek Reach 6 Stabilization Project**

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### Executive Summary

Castle Rock Water is seeking Town Council approval of a Resolution (**Attachment A**) awarding a Construction Contract to 53 Corporation, LLC, for the East Plum Creek Reach 6 Stabilization Project in the amount of \$1,353,006 plus a 10% Town-managed contingency in the amount of \$135,301 for a total authorization of \$1,488,307. This project will be funded through the Stormwater Enterprise Fund.

East Plum Creek Reach 6 parallels Santa Fe Drive (Highway 85) from the North Meadows Drive bridge at its upstream limit to the Plum Creek Water Reclamation Facility (PCWRF) at its downstream limit. Improvements generally include stream channel improvements, buried riffle drops, steel sheet pile, bank protection, water control, erosion control measures, seeding, planting and other appurtenances. This project will mitigate impacts and preserve the natural drainageway within the project area (see **Attachment B**). The project is scheduled to begin in January 2023 and be completed by August 2023.

The total project cost including construction is shown below:

	Design	Supplemental Design	Construction	Total
Project Budget	\$223,089	\$132,534.00	\$1,488,306.60	\$1,843,929.60

### Notification and Outreach Efforts

Improvements will primarily be constructed within Town owned property and developer owned property. The Town is in the process of securing a license agreement with Castle Rock Development Company for this work. Town staff will contact adjacent residents through notification letters and

provide additional notifications through news releases and social media postings, as needed. Project details and updates are also provided on the Town website, CRgov.com.

### **History of Past Town Council, Boards & Commissions, or Other Discussions**

Town Council approved the East Plum Creek Watershed Master Plan Preliminary Design Report through Resolution 2009-03 on January 6, 2009. This project was included in the recommendations from the Watershed Master Plan.

Castle Rock Water staff will present this construction contract to the Castle Rock Water Commission at their meeting held on January 25, 2023. Castle Rock Water Commission was given a preliminary briefing on this project at their December 14, 2022 meeting.

### **Discussion**

East Plum Creek is the largest drainageway within the Town of Castle Rock limits other than Cherry Creek, which currently only has a minor segment within the Town limits. East Plum Creek Reach 6 flows from the southeast to the northwest to its confluence with Jarre Creek and West Plum Creek, combining into Plum Creek, the receiving water for the project. Plum Creek ultimately discharges to Chatfield Reservoir. The East Plum Creek Reach 6 Project limits include approximately 3,000 linear feet along the center line of the channel.

There were three previous studies completed for East Plum Creek, which include East Plum Creek Watershed Amended Flood Hazard Area Delineation 2013, East Plum Creek Watershed Master Plan Preliminary Design Report, 2009 and East Plum Creek Watershed Master Plan Stream Stability Report, 2007, that were referenced in the preparation of the design documents. The 2009 Master plan characterized East Plum Creek as having a wide floodplain with steep embankments and a low flow channel width of approximately 30 feet. Erosion in this section has caused slope failure and is slowly progressing towards private property. The 2009 Master Plan suggested proposed improvements including drop structures to reduce the channel slope. A stream gage will be reconstructed by United States Geological Survey (USGS) within the project reach following completion of the improvements. This gage will assist with accurate accounting of Town water rights along East Plum Creek.

Following approval of the design documents, the project was advertised for public bid from qualified contractors on November 22, 2022 on the Town's Rocky Mountain Bid Net site. Bids were received from nine contractors on Thursday December 15, 2022. Bid results are included in Table 1.

Table 1: Bid Results

<u>Contractor</u>	<u>Total</u>
American West Construction, LLC	\$2,192,865.00
Concrete Express, Inc.	\$2,896,846.00
D4 Excavating	\$3,817,598.95
Edge Contracting, Inc.	\$1,989,391.00
Graham	\$2,084,434.00

Lawrence Construction	\$2,083,958.00
Meridiam Partners, LLC	\$2,378,715.89
Tezak Heavy Equipment, Inc.	\$1,758,487.32
53 Corporation, LLC	\$1,353,006.00
<i>Engineer's Estimate</i>	<i>\$2,438,558.00</i>

53 Corporation, LLC, is the confirmed low bidder, having also met the qualification requirements under the contract. The design engineer for this project, provided a positive recommendation for 53 Corporation with recent experience on the Industrial Tributary project. Construction is anticipated to begin in January 2023 and be substantially complete by August 2023, weather permitting.

### **Budget Impact**

*Funds for this Construction Contract will be charged to the Stormwater capital account below. Construction of this project was originally budgeted in 2019 however this project was delayed by four years as a result of delays in getting the necessary permitting. This project will require a budget transfer from stormwater capital account 212-4475-444.75-52 which has a budget of \$2,700,000 in 2023. Additionally, there is approximately \$10 million available in capital reserves to complete this project and maintain other priorities in the coming year.*

<b>Fund Description</b>	<b>Account Number</b>	<b>Amount</b>	<b>Contingency</b>	<b>Total</b>
East Plum Creek Stream Stabilization	212-4475-444.76-37	\$1,353,006	\$135,301	\$1,488,307

### **Staff Recommendation**

Staff recommends Town Council approval of a Resolution awarding a Construction Contract to 53 Corporation, LLC, for the East Plum Creek Reach 6 Stabilization Project at a cost of \$1,353,006 plus a 10% Town-managed contingency in the amount of \$135,301 for a total authorization in the amount of \$1,488,307.

### **Proposed Motion**

*"I move to approve the Resolution as introduced by title."*

### **Alternative Motion**

*"I move to approve the resolution as introduced by title, with the following conditions: (list conditions)."*

*"I move to continue this item to the Town Council meeting on \_\_\_\_\_ date to allow additional time to (list information needed)."*

### **Attachments**

Attachment A: Resolution (Signature Needed)  
Exhibit 1: Construction Contract (Signature Needed)

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**Item #:** **File #:** TMP 2022-898

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Attachment B: Project Site Map



**TOWN OF CASTLE ROCK  
CONSTRUCTION CONTRACT  
(East Plum Creek Reach 6 Stabilization 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 **53 CORPORATION, LLC**, a Colorado limited liability company, 5655 Peterson Road, Sedalia, Colorado 80135 ("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
1	November 22, 2022
2	November 22, 2022
3	December 9, 2022
4	December 13, 2022

7. Special Conditions of the Contract:
  - A. Town of Castle Rock Special Conditions
  - B. Standard Special Provisions
  - C. Project Special Conditions
8. The following Specifications:

- A. Colorado Department of Transportation (CDOT) Standard Specifications for Road and Bridge Construction
- B. Town of Castle Rock Construction Methodology and Materials Manual
- C. Project Technical Specifications

9. The following Drawings/Reports:

- A. Construction Plans for East Plum Creek Stabilization Project
- B. Temporary Erosion & Sediment Control (TESC) Plans for East Plum Creek Stabilization Project

- 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 **\$1,353,246.00** ("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.

**COMPLETION OF WORK.** The Contractor must begin work covered by the Contract within ten (10) calendar days from the date of the Notice to Proceed, and must complete work within one hundred and eighty (180) 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 \$2,500.00 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 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**ATTEST:**

**TOWN OF CASTLE ROCK**

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

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

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Michael J. Hyman, Town Attorney

\_\_\_\_\_  
David L. Corliss, Town Manager

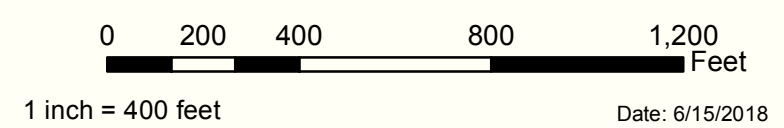
**CONTRACTOR:**

**53 CORPORATION, LLC**

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

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





Disclaimer: The data presented has been compiled from various sources, each of which introduces varying degrees of inaccuracies or inconsistencies. Such discrepancies in data are inherent and in supplying this product the Town of Castle Rock assumes no liability for its use or accuracy. Questions or comments regarding the cartographic composition of this map including, but not limited to, errors, omissions, corrections, and/or updates, should be directed to the Utilities Department, Town of Castle Rock, (720) 733-6087. Copyright 2017, Town of Castle Rock Utilities Mapping.

## Town of Castle Rock EAST PLUM CREEK REACH 6 STABILIZATION