

RESOLUTION NO. 2019- 013

**A RESOLUTION APPROVING THE TOWN OF CASTLE ROCK CONSTRUCTION
CONTRACT WITH MARK YOUNG CONSTRUCTION, INC. FOR THE
CONSTRUCTION OF THE PUBLIC WORKS SERVICE CENTER EXPANSION
PROJECT**

WHEREAS, the Town and Mark Young Construction, Inc. have agreed to the terms and conditions by which Mark Young Construction, Inc. will undertake the construction of the Public Works Service Center Expansion Project.

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

Section 1. Approval. The Town of Castle Rock Construction Contract in the form attached as ***Exhibit 1*** is hereby approved. The Mayor and other proper Town officials are hereby authorized to execute the Contract by and on behalf of the Town of Castle Rock, Colorado.

Section 2. Encumbrance and Authorization for Payment. In order to meet the Town's financial obligation under the Contract, the Town Council authorizes the expenditure and payment from the 2019 appropriation account 135-3175-431.70-20, in an amount not to exceed \$4,960,349, which amount includes a 10% Town-managed contingency of \$450,941, unless authorized in writing by the Town of Castle Rock.

PASSED, APPROVED AND ADOPTED this 5th day of February, 2019 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 E. Gray, Mayor

Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

Robert Goebel, P.E. Director of Public Works

**TOWN OF CASTLE ROCK
CONSTRUCTION CONTRACT**

(Public Works Service Center Expansion Project)

THIS CONSTRUCTION CONTRACT ("Contract") between the **TOWN OF CASTLE ROCK**, a Colorado home rule municipal corporation ("Town"), 100 N. Wilcox Street, Castle Rock, Colorado 80104 and **MARK YOUNG CONSTRUCTION, INC.**, a Colorado corporation ("Contractor"), 7200 Miller Place, Frederick, Colorado 80504.

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. The following Addenda, if any:

Number	Date
1	November 5, 2018
2	November 12, 2018
3	November 19, 2018
4	November 29, 2018

6. Special Conditions of the Contract: Issued in Addenda #3
7. The following Specifications:
 - Public Works Service Center Renovation – Volume 1
 - Public Works Service Center Renovation – Volume 2
 - Geotechnical Evaluation Report

8. The following Drawings (For Bid Set):

- General Information Series
- Civil Series
- Landscape Series
- Structural Series
- Architectural Series
- Interior Series
- Furniture Series
- Mechanical Series
- Plumbing Series
- Electrical Series
- Fire Protection Series

9. Notice of Award;

10. Invitation to Bid;

11. Information and Instructions to Bidders;

12. Notice of Substantial Completion;

13. Notice of Construction Completion;

14. Proposal Forms, including Bid Schedules;

15. Performance, and Labor and Material Payment Bonds;

16. Performance Guarantee;

17. Insurance Certificates;

18. Bid Alternate Descriptions (*Exhibit #2*) and

19. The following alternates have been accepted and the costs associated with such alternates are reflected in the Contract Price:

- Bid Alternate #1: Exterior Covered Storage (+\$30,000 allowance)
- Bid Alternate #2: Bridge Crane (+\$85,273)
- Bid Alternate #3: Refinish Existing Restrooms (+48,400)
- Bid Alternate #4: Refinish Existing Showers (+\$12,900)
- Bid Alternate #5: Remove Existing Trailers (+\$12,996)
- Bid Alternate #6: Alternate Flooring Material (+\$55,906)

Bid Alternate amount included in the Contract Price: (+\$245,475)

Base Bid amount: \$4,263,933

TOTAL CONTRACT PRICE: \$4,509,408

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 \$4,509,408 ("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 upon receiving the Notice to Proceed according to the General Conditions. The work must be completed within 361-calendar days from the date provided in the Notice to Proceed.

As per General Conditions section 2.5.4 the following milestones shall be included in the portion of work (please refer to sheet GI201). The following shall be broken down into calendar days and an actual date must be provided, based on a Notice to Proceed of February 6, 2019:

- Phase A: Construction Commencement – February 12, 2019
- Phase A: Construction Completion – November 5, 2019
- Phase B: Construction Commencement – July 22, 2019
- Phase B: Construction Completion – August 16, 2019
- Phase A&B: TCO (fully inspected & punchlist issued) – November 5, 2019
- Phase C: Construction Commencement – August 19, 2019
- Phase C: Construction Completion – October 31, 2019
- Phase D: Construction Commencement – November 11, 2019
- Phase D: Construction Completion – January 3, 2020
- Phase C&D: TCO (fully inspected & punchlist issued) – January 3, 2020
- Final Substantial Completion – January 3, 2020
- Owner Training – Start-Up/Final Commissioning – February 2, 2020
- Final Punchlist – February 2, 2020
- Final Completion of Construction – February 2, 2020
- O&M/Warranty Pass Off/As-Built Drawings – February 2, 2020

LIQUIDATED DAMAGES. If the Contractor fails to complete the Work by the date set for completion in the Contract, the dates for the phasing plan listed above, 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 \$1,000 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 16th day of January, 2019

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

APPROVED AS TO FORM:

Robert J. Slentz, Town Attorney

CONTRACTOR:

MARK YOUNG CONSTRUCTION, INC.,
a Colorado corporation

By: _____

Title: _____

David Euida - President

(Insert either the Corporate or Partnership Certificate, as appropriate)