

**TOWN OF CASTLE ROCK
SERVICES AGREEMENT
(Plum Creek Diversion Pump Station – Construction Management Services)**

DATE: _____ May 21 _____, 2019.

PARTIES: **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104 (“Town”).

DEWBERRY ENGINEERS, INC., a New York corporation, 990 South Broadway, Suite 400, Denver, CO 80209 (“Consultant”).

RECITALS:

- A. The Town issued a Request for Proposals from qualified firms with expertise in construction management services.
- B. Consultant timely submitted its proposal.
- C. Town wishes to engage Consultant to provide the services more fully described in the following Agreement and Exhibits.

TERMS:

Section 1. Scope of Services. Consultant shall provide professional construction management related to the Plum Creek Diversion Pump Station Project, in accordance with Consultant’s proposal attached as *Exhibit 1* (“Services”).

Section 2. Payment. Consultant shall invoice Town monthly for the Services rendered in accordance with the rate and fee scheduled identified in *Exhibit 1*. Town shall pay such invoices within 30 days receipt of such invoice. In no event shall the cumulative payment to Consultant exceed \$496,470, unless authorized in writing by Town.

Section 3. Completion. Consultant shall commence the Services upon execution of this Agreement and complete the Services not later than August 1, 2020. Consultant shall devote adequate resources to assure timely completion of the Services. Consultant shall perform the Services under this Agreement using a standard of care, skill and diligence ordinarily used by reputable professionals performing under circumstances similar to those required by this Agreement.

Town shall have the right to terminate this Agreement at any time with 30 days written notice to Consultant. In addition, this Agreement shall terminate December 31, 2019 in the event funds to support payment are not appropriated for calendar year 2020. The Town’s only obligation in the event of termination shall be payment of fees and expenses incurred up to and including the effective date of termination. Consultant shall turn over all work product produced up to the date of termination.

Section 4. Subcontractors. Consultant may utilize subcontractors to assist with specialized works as necessary to complete the Services. Consultant will submit any proposed subcontractor and the description of their services to the Town for approval.

Section 5. Assignment. This Agreement shall not be assigned by Consultant without the written consent of the Town.

Section 6. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the first page of this Agreement, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed given when deposited in the United States mail.

Section 7. Prohibition Against Employing Illegal Aliens. Consultant shall not knowingly employ or contract with an illegal alien to perform work under this contract. Consultant shall not enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

Consultant has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-verify program or the Department program, as defined in C.R.S. §§ 8-17.5-101(3.3) and 8-17.5-101(3.7), respectively. Consultant is prohibited from using the E-verify program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.

If Consultant obtains actual knowledge that a subcontractor performing work under this Agreement for services knowingly employs or contracts with an illegal alien, Consultant shall:

A. Notify the subcontractor and the Town within three days that the Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

B. Terminate the subcontract with the subcontractor if within three days of receiving notice required pursuant to this paragraph the subcontractor does not stop employee or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Consultant shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. §8-17.5-102(5).

If Consultant violates a provision of this Agreement required pursuant to C.R.S. §8-17.5-102, Town may terminate the Agreement for breach of contract. If the Agreement is so terminated, the Consultant shall be liable for actual and consequential damages to the Town.

Section 8. Insurance. Consultant agrees to procure and maintain, at his own cost, the following policy or policies of insurance. Consultant shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

A. Consultant shall procure and maintain, and shall cause each subcontractor of the Consultant to procure and maintain a policy with the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the Town. All coverage shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Workers Compensation insurance to cover obligations imposed by the Workers Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employer's Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-each employee.

2. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

3. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Consultant's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

4. Professional Liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) per claim and ONE MILLION DOLLARS (\$1,000,000) aggregate.

B. The policies required above, except Workers' Compensation insurance, Employers' Liability insurance and Professional Liability insurance shall be endorsed to include the Town, its officers and employees, as an additional insured. Every policy required above, except Workers' Compensation and Professional Liability insurance, if applicable, shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by Consultant. The

additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Consultant shall be solely responsible for any deductible losses under each of the policies required above.

C. Certificates of insurance shall be completed by Consultant's insurance agent as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. Each certificate shall identify the Project and shall provide that coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

D. Failure on the part of Consultant to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which at the Town's discretion may procure or renew any such policy or any extended connection therewith, and all monies so paid by the Town shall be repaid by Consultant to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Consultant from the Town.

E. The parties understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$350,000 per person, \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to Town, its officers, or its employees.

Section 9. Indemnification. Consultant expressly agrees to indemnify and hold harmless Town or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, to the extent caused by the negligent acts, errors or omissions of Consultant or any of their employees or agents in performing work pursuant to this Agreement. In the event that any such suit or action is brought against Town, Town will give notice within ten (10) days thereof to Consultant.

Section 10. Delays. Any delays in or failure of performance by any party of his or its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

Section 11. Additional Documents. The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

Section 12. Entire Agreement. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

Section 13. Time of the Essence. Time is of the essence. If any payment or any other condition, obligation, or duty is not timely made, tendered or performed by either party, then this Agreement, at the option of the party who is not in default, may be terminated by the non-defaulting party, in which case, the non-defaulting party may recover such damages as may be proper.

Section 14. Default and Remedies. In the event either party should default in performance of its obligations under this agreement, and such default shall remain uncured for more than 10 days after notice of default is given to the defaulting party, the non-defaulting party shall be entitled to pursue any and all legal remedies and recover its reasonable attorney's fees and costs in such legal action.

Section 15. Waiver. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

Section 16. Governing Law. This Agreement shall be governed by the laws of the State of Colorado.

Section 17. Independent Contractor. Consultant and Town hereby represent that Consultant is an independent contractor for all purposes hereunder. As such, Consultant is not covered by any worker's compensation insurance or any other insurance maintained by Town except as would apply to members of the general public. Consultant shall not create any indebtedness on behalf of the Town.

Section 18. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Town and Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than Town or Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

ATTEST:

Lisa Anderson, Town Clerk

Approved as to form:

Robert J. Slentz, Town Attorney

TOWN OF CASTLE ROCK

Jason Gray, Mayor

Approved as to content:

Mark Marlowe, Director of Castle Rock Water

CONSULTANT:

DEWBERRY ENGINEERS, INC.

By: _____

Its: _____

May 15, 2019

Mr. Matthew Hayes
Project Manager
Castle Rock Water
Town of Castle Rock
175 Kellogg Ct
Castle Rock, Colorado 80809

***Plum Creek Diversion Pump Station
Contract Amendment for Construction Phase Services***

Dear Mr. Hayes:

The scope of Dewberry's current contract with the Town of Castle Rock (Town) for engineering services for the Plum Creek Diversion Pump Station includes design phase services but does not include construction phase services. In accordance with your request, we have developed a proposed scope and fee for providing engineering services during construction (contract administration and inspection). Based on our discussions, Dewberry will assist the Town during construction by attending the pre-construction meeting and weekly project status meetings, reviewing submittals and shop drawings, assisting with answering RFIs, on-site construction observation, and preparation of record drawings. We will also assist with related tasks necessary for completion of the project including assistance with completing the Douglas County Floodplain Development process and Building Department Approval. The following task descriptions present the proposed scope of work in greater detail.

Task 1 Project Management

1.1 Project Management. Staff and project resources will be managed to provide for timely and efficient project execution. Assign and supervise staff, and provide technical direction, coordination and communication to achieve the project budget, schedule, and quality goals. Prepare detailed invoices and project status reports on a monthly basis. Our fee estimate for this task is based on two hours per week for the project manager and one hour per week of administrative time for 50 weeks.

Task 2 Project Meetings

2.1 Preconstruction Meeting. Attend the preconstruction meeting attended by the general contractor and major subcontractors. Assist the Town with presenting the details of the project work and administration, address questions and provide clarifications regarding plans and specifications. The Town will conduct the meeting and prepare official meeting notes.

2.2 Weekly Progress Meetings. Attend weekly project status meetings. Meetings will be led and meeting notes kept by the Town. Our fee estimate is based on 50 weekly meetings attended by our field construction inspector (2 hours per meeting) and project manager (4 hours per meeting).

Task 3 Technical Support

3.1 Submittal Review. Review and provide comments on submittals and shop drawings for the materials and equipment incorporated into the work. Track submittal status and work with the

contractor to facilitate the submittal approval process. The Town will be sent all approved submittals for review and concurrence prior to return to the contractor. Our fee estimate is based on review and administration of 60 submittals at an average review time of seven hours per submittal plus one hour per week to log and distribute submittals to reviewers assuming all submittals are received and processed within a six month period.

3.2 Daily Project Administration, Clarifications and Interpretations. Perform routine daily tasks including organization of project documentation and files, review contractor requests for information (RFI) and develop responses to clarify and interpret plans and specifications to facilitate the contractor's completion of the work in accordance with the project design intent. Our fee estimate allows for up to nine hours per week for the 50 week estimated duration of the project.

3.3 Evaluate Change Order Requests. Review contractor requests for change orders and assist the Town with establishing the scope and cost for valid claims for changes in the work and completing change orders to authorize the change to the contract. Our fee estimate is based on five change orders at an average of 16 hours per change order.

Task 4 Assistance with Final Douglas County Permitting

4.1 Flood Plain Development Permit. The proposed pump station is located within the 100 year flood plain of Plum Creek. As a result, a permit for construction within the flood plain must be obtained from Douglas County. To obtain the permit it is necessary to obtain a Conditional Letter of Map Revision (CLOMR) from FEMA to submit with the Douglas County Floodplain Development Permit application. Our design effort included development and submittal of the CLOMR review package and submittal of the flood plain permit application to Douglas County. However, during preparation of the CLOMR submittal several unanticipated complications arose with the computer modeling work that is a part of the documentation required as part of the CLOMR submittal.

- The Effective Model is the current computer model FEMA uses as the base model for flood analysis. This is typically provided by the local FEMA review agency to work from and it is normal to expect that the Effective Model is up to date and is in working condition. In this case, the Effective Model was a combination of the 2004 Flood Hazard Area Delineation (FHAD) map and the 2006 Letter of Map Revision (LOMR) for the Rio Grande Avenue bridge immediately upstream from the Plum Creek Diversion Pump Station site. However, the 2006 LOMR did not georeference the bridge cross-sections correctly and caused inconsistent results around the bridge that required correction.
- The Effective Model also did not convert the floodway encroachment from "Method 4" (roughly what ratio should the floodplain encroach) to "Method 1" (specific numbers defining the amount of encroachment), which is required by FEMA. This error required us to go back to an earlier version of HEC-RAS, convert the Effective Model to "Method 1" and then move forward. To complete this conversion, we had to get guidance from the Urban Drainage and Flood Control District (UDFCD) on how to fix the error that was occurring.
- In addition, Douglas County and UDFCD are working on replacing the Effective Model with a new FHAD model sometime in 2019. Their effort is about half way done, and though it is not yet the official Effective Model, we were requested to compare the results using this model to the results using the current Effective Model to see the differences.

These revisions have been completed and the CLOMR is in review and pending approval. Once that approval has been received we will work with Douglas County to complete the Floodplain Development Permit process. Most of the work required for development of the models was completed during the design phase, however the additional requirements from Douglas County, the deficiencies with the effective model that was the basis for the modeling, and additional requirements from Douglas County to compare the results requires additional level of effort to complete the Floodplain Development Permit.

4.1 Douglas County Building Department Review. Assemble and submit project plans (22" x 34" size) and other documents as required for code compliance review by the Douglas County Building Department, and respond to review comments received.

Task 5 Construction Observation and Inspection.

5.1 On-Site Observation and Inspection. Provide on-site observation of construction work to verify compliance with Contract Documents and design intent. This work includes preparation of daily reports of construction activity, confirming acceptability of the work as it progresses, assisting with clarification of design document requirements, and confirming measurement for payment for work completed and materials stored on site for monthly contractor progress payments. We anticipate that the construction phase of the project will begin about June 15, 2019 and will reach substantial completion by about May 15, 2020 and final completion by about July 15, 2020. Anticipating that the most intense activity would be during the first half of the project when deep excavation, substantial below grade concrete construction and erection of the building would be completed our estimated fee is based on having an engineer on site full time (40 hours per week) from mid- June through October 2019, half time (20 hours per week) from November 2019 through mid-May 2020, and intermittently during June and July 2020. Our fee estimate also includes up to five trips of four hours per trip to the site by our structural engineer, two trips by the project architect and five trips of four hours per trip by our electrical engineer to inspect critical work items or facilitate a solution to a difficult construction problem. At the end of the project we will prepare the final punch list and work with the contractor to achieve satisfactory completion of the project.

Task 6 Prepare Record Drawings

6.1 Verification of Existing Facilities. The available as constructed information for the existing pumping facilities, pipelines and Castle Rock Reservoir No. 1 is limited and incomplete compared with what is typically available. As a result, additional effort is required to determine or estimate sizes, dimensions and locations of existing facilities so that necessary connections and modifications can be made.

6.2 Record Drawings. Prepare record drawings showing actual as-constructed conditions based on field records compiled by the Contractor. The Engineer shall not be responsible for the accuracy of survey information, nor for any errors or omissions in the construction records furnished by the Contractor or the Town. Provide two CDs with scale-able drawings in PDF and AutoCAD format.

The attached spreadsheet summarizes the work breakdown and estimated level of effort to provide the construction phase services detailed above and the associated fee based on the estimated level of effort and current billing rates.

We appreciate the opportunity to continue providing service to the Town of Castle Rock and look forward to seeing the Plum Creek Diversion Pump Station through to successful completion. If you have any questions regarding our proposal please contact me at 303-951-0628.

Sincerely,

Dewberry Engineers, Inc.

Dave Butler, PE
Senior Project Manager

Dewberry Engineers Inc.
Cost Detail Worksheet
Town of Castle Rock Plum Creek Diversion Pump Station Project Reservoir
Construction Phase Services

Task	Task Description	Total Cost	Dewberry Engineers Inc.																	
			Subconsultants					Other Direct Costs	Labor Cost Subtotal	Total Hours	Engineer IX (PIC)	Engineer VI (PM)	Engineer VII (Stormwater & QA/QC)	Engineer V (PE)	Engineer V (Structural)	Engineer III (Electrical)	Engineer III	Senior CAD Designer	CAD Designer	Admin III
			Dewberry Billing Rate (\$/hour)																	
			\$ 210	\$ 165	\$ 185	\$ 155	\$ 155	\$ 130	\$ 125	\$ 125	\$ 110	\$ 90								
Task 1 - Project Management																				
1.1	Project Management	\$ 22,680	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 22,680	158	8	100								50
	Subtotal	\$ 22,680	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 22,680	158	8	100	0	0	0	0	0	0	0	50
Task 2 - Project Meetings																				
2.1	Preconstruction Meeting	\$ 1,320	\$ -	\$ -		\$ -	\$ -	\$ 40	\$ 1,280	8		4		4						
2.2	Weekly Progress Meetings	\$ 50,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,500	\$ 48,500	300		200		100						
	Subtotal	\$ 51,320	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,540	\$ 49,780	308	0	204	0	104	0	0	0	0	0	0
Task 3 - Technical Support																				
3.1	Submittal Review	\$ 69,580	\$ 8,800	\$ 8,800	\$ 8,800	\$ -	\$ -	\$ 200	\$ 60,580	446	2	72		16	32	96	224			4
3.2	Daily Project Administration, Clarifications and Interpretations	\$ 63,170	\$ 1,200	\$ 1,200	\$ 1,200	\$ -	\$ -	\$ 50	\$ 61,920	468		24		40	40	40	320			4
3.3	Evaluate Change Order Requests	\$ 12,090	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 50	\$ 12,040	88				16	16	16	40			
	Subtotal	\$ 144,840	\$ 10,000	\$ 10,000	\$ 10,000	\$ -	\$ -	\$ 300	\$ 134,540	1,002	2	96	0	72	88	152	584	0	0	8
Task 4 - Assistance with Final Douglas County Permitting																				
4.1	Douglas County Flood Plain Development Permit	\$ 14,580	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 14,580	100		4	32				64			
4.2	Douglas County Building Department Review	\$ 3,160	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,160	22		12					8			2
	Subtotal	\$ 17,740	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 17,740	122	0	16	32	0	0	0	72	0	0	2
Task 5 - Construction Observation																				
5.1	On-Site Observation and Inspection	\$ 208,660	\$ 2,500	\$ 2,500	\$ 2,500	\$ -		\$ 1,200	\$ 204,960	1,324		24		1260	20	20				
	Subtotal	\$ 208,660	\$ 2,500	\$ 2,500	\$ 2,500	\$ -	\$ -	\$ 1,200	\$ 204,960	1324										
Task 6 - Prepare Record Drawings																				
6.1	Verification of Existing Facilities	\$ 8,640	\$ -	\$ -		\$ -	\$ -	\$ -	\$ 8,640	64		16					32	16		
6.2	Record Drawings	\$ 42,590	\$ 1,500	\$ 1,500	\$ 1,500	\$ -	\$ -	\$ -	\$ 41,090	344		8		16	2	60	16	40	200	2
	Subtotal	\$ 51,230	\$ 1,500	\$ 1,500	\$ 1,500	\$ -	\$ -	\$ -	\$ 49,730	408	0	24	0	16	2	60	48	56	200	2
	Project Total	\$ 496,470	\$ 14,000	\$ 14,000	\$ 14,000	\$ -	\$ -	\$ 3,040	\$ 479,430	3322	10	440	32	192	90	212	704	56	200	62