

Bid Form and Instructions

Stanley Fairgrounds Multi-Use Stall Barn and Multi-Purpose Event Center



TOWN OF ESTES PARK

Prepared for:
Town of Estes Park
170 MacGregor Avenue
Estes Park, CO 80517

Contract Issue
December 12, 2012

SEALED BIDS RECEIVED BY:

January 15, 2013
3:00 pm

At Town of Estes Park
Attn: Scott Zum
Public Works
170 MacGregor Ave
Estes Park, CO 80517

ELECTRONIC BIDS RECEIVED BY:

January 15, 2013
3:00 pm

Via email
Attn: Elena Scott
escott@norris-design.com

SECTION 000100

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INVITATION TO BID

The Town of Estes Park is soliciting bids for construction of a new Multi-Use Stall Barn and Multi-Purpose Event Center (MPEC). The Multi-Use Stall Barn is approximately 26,000 square feet and the MPEC is approximately 37,000 square feet. The site is located in Estes Park at the Stanley Park Fairgrounds, generally located between Community Drive and 4th Street and Highway 36 and Manford Avenue. The Multi-Use Stall Barn and MPEC will be located at the vacant North West quadrant of the Fairgrounds, on generally 4.5 acres.

The Town awarded a construction contract for earthwork and extension of a sanitary sewer line which will service the property. The earthwork and sanitary line construction are estimated to be completed by January 15, 2013.

The Town reserves the right to award within 90 days of bid opening either the Multi-Use Stall Barn, or the MPEC, or both buildings concurrently. The Town will determine which of the buildings or if both buildings will be constructed after the bid opening.

The project will be out for bid on December 12, 2012 with a construction completion date targeted for 175 calendar days following bid award for the Multi-Use Stall Barn, and 240 calendar days following bid award for the MPEC.

Electronic and hard copies of the bids should be provided. Electronic bids shall be emailed to Norris Design, attention Elena Scott escott@norris-design.com. Sealed bids will be received at the Town's Public Works offices (170 MacGregor Ave, Estes Park, CO 80517) for the services referenced above until 3:00 PM (Mountain Time) on January 15, 2013, at which time the bids will be opened in public by Town Staff and design team members.

The bids shall be in a sealed envelope, plainly marked "Stanley Park Fairgrounds – Multi-Use Stall Barn and Multi-Purpose Event Center" and shall state the name and address of the bidder. All sheets submitted with the bid shall be clearly marked with the Contractor's name submitting the bid.

No proposals will be considered which are received after the time mentioned and any proposals so received shall be returned to the submitter and not be considered under any circumstances. Sole responsibility rests with the submitter to see that their proposal is received on time at the stated location.

Town of Estes Park presently anticipates issuing the Notice to Proceed within 90 days of bid opening.

A bidder to whom a contract is awarded will be required to furnish certification of specific insurance requirements and performance bonds necessary for contracts with Town of Estes Park.

There will be a non-mandatory pre-bid conference at 9:00 am on December 18, 2012 at the Town of Estes Park Museum, located at 200 4th Street, Estes Park, CO. All bidders are required to submit questions in writing by January 3, 2013. Responses will be provided in writing by January 9, 2013.

Plans and specifications will be available electronically on the Town of Estes Park's website. Bidders will be responsible for all costs associated with printing documents. Geotechnical Reports are also available on the Town of Estes Park's website.

The Town of Estes Park reserves the right to accept or reject any and all bids, to waive any informality or technicality in any bid, to postpone the award of the contract for a period not exceeding ninety (90) days after the bid opening, all according to the best interests of the owner. Any questions concerning this bid shall be directed via email to:

Elena Scott, Norris Design, escott@norris-design.com

END OF SECTION

SECTION 002110

INSTRUCTIONS TO BIDDERS

INSTRUCTIONS TO BIDDERS

1. Defined Terms

Terms used in these Instructions to Bidders which are defined elsewhere in the Contract Documents have the same meanings. The term "Successful Bidder" means the most qualified, responsible Bidder to whom The Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award.

2. Copies of Contract Documents

- a. Contract Documents to be used can be obtained from the Town of Estes Park website. It will be the contractor's responsibility to print any documents required for preparing and submitting the bid.
- b. Complete sets of Contract Document shall be used in preparing Bids. Neither the Owner, nor Owner's Representative assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Contract Documents.
- c. The Owner reserves the right to issue Addenda. Bidder shall provide an e-mail address to which the Owner can e-mail the Addenda or notice thereof. In the event the Bidder does not have an e-mail address, the Bidder shall provide a telephone number where the Owner can notify the Bidder by phone of the addenda. The Bidder shall be responsible for obtaining any Addenda.
- d. The Owner, in making Contract Documents available, does so only for the purpose of obtaining Bids on the Work and does not confer a license or grant for any other use.

3. Qualifications of Bidders

To demonstrate qualifications to perform the Work, each bidder is required to complete and submit the included Contractor's Qualification Statement with the bid package.

4. Examination of Contract Documents and Site

- a. Before submitting a Bid, each Bidder shall (a) examine the Contract Documents thoroughly; (b) visit the site to become familiar with local conditions that in any manner affect cost, progress or performance of the Work; (c) become familiar with federal, state and local laws, ordinances, rules and regulations that in any manner affect cost, progress or performance of the Work; and (d) study and carefully correlate Bidder's observations with the Contract Documents.
- b. Bidders may visit the site at any time to review the area of work. Bidders are asked to check in at the Fairgrounds office adjacent to the grandstand for access.
- c. The submission of a Bid shall constitute an incontrovertible representation by the Bidder of compliance with every requirement and that the Contract Documents are sufficient in scope

and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

5. Interpretations

All questions about the meaning or intent of the Contract Documents shall be submitted to the Owner's Representative in writing. Replies shall be issued by Addenda pursuant to Paragraph 2.c hereof. The last day for interpretation of the Contract Documents is January 3, 2013. Questions received after 3:00 pm on this date shall not be answered. Only questions answered by formal written Addenda shall be binding. The Owner has not and will not authorize anyone to orally interpret any of the Contract Documents and any such oral or other interpretations or clarifications shall be without legal effect.

6. Bid Form

- a. The Bidder shall submit a completed Bid Form in an electronic and printed format.
- b. Bid Forms shall be clearly printed, so as to be legible. Bids may be disqualified if they are illegible, as determined by the parties reviewing the bids.
- c. Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown.
- d. Bids by partnerships must be executed in the partnership name and signed by a general partner, whose title must appear under the signature, and the official address of the partnership must be shown below the signature.
- e. All names must be typed or printed by the signature.
- f. The Bidder is required to complete all Bid Schedules electronically. If all Bid Schedules are not complete, the Bid will be considered incomplete. Bids with other omissions may be rejected in the sole discretion of the Owner.
- g. Alterations of the bid form will not be accepted.
- h. Qualifications to the bid must be include with the bid, at the time of bid openings.

7. Submission of Bids

Bids shall be submitted electronically and sealed at the time and place indicated in this Advertisement for Bid. The Bid shall be contained in a sealed envelope, marked with "Stanley Fairgrounds Multi-Use Stall Barn and Multi-Purpose Event Center" and name and address of the Bidder and accompanied by all other required documents and a disk (or electronic storage device *e.g.* "thumb drives") containing the bid form, bid schedule, and any other relevant information. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face thereof.

8. Modification and Withdrawal of Bids

- a. Bids may be modified or withdrawn by an appropriate document executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.
- b. If, within twenty-four hours after Bids are opened, any Bidder files a duly signed written notice with the Owner and promptly thereafter demonstrates to the reasonable satisfaction of the Owner that there was a material and substantial mistake in the preparation of the Bid, that Bidder may withdraw the Bid. Thereafter, that Bidder will be disqualified from further bidding on the Work.

9. Award of Contract

- a. If the Contract is to be awarded it shall be awarded to the most qualified responsible Bidder, however, the Owner reserves the right to reject any and all Bids, to waive any and all informalities and to negotiate contract terms with a Bidder, and the right to disregard all non-conforming, non-responsive, or conditional Bids. Discrepancies between words and figures will be resolved in favor of words. Discrepancies between the indicated sum or product and the correct sum or product thereof will be resolved in favor of the correct sum or product.
- b. The Owner may conduct such investigations as deemed necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of the Bidders, in accordance with the Contract Documents to the Owner's satisfaction within the prescribed time.
- c. The Owner reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to the Owner's satisfaction.
- d. If the contract is to be awarded, the Owner shall give the Successful Bidder a Notice of Award within fifteen days after the day of the Bid opening or such other time as may be set forth in the Bid Documents.

10. Signing of Agreement

When the Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by at least four unsigned counterparts of the Agreement and all other Contract Documents. Within (10) ten calendar days thereafter Contractor shall sign and deliver four fully executed counterparts of the Agreement to the Owner with all other Contract Documents attached. Within (10) ten days thereafter the Owner shall deliver one signed counterpart to Contractor.

11. Pre-Bid Conference

There will be a non-mandatory pre-bid conference at 9:00 am on December 18, 2012 at the Town of Estes Park Museum, located at 200 4th Street, Estes Park, CO.

12. Order of Precedence

In case of discrepancy in the Contract Documents, the order of precedence is as follows:

Change Orders

Addenda

Special Conditions

Technical Specifications

General Conditions

Bid Schedule Descriptions

Governing Local Municipality's Standards and Specifications

13. Project Schedule

The Bidder is required to submit with the bid a proposed construction schedule to complete the work described in the Contract Documents. The schedule shall indicate the proposed starting and ending dates for the various phases of the project and for the various components of the work. Schedule shall also indicate manpower and resources available for work on this project. Which shall include an estimate of number of crews working on site on weekly basis and average time per week for key personnel on the project. Schedule shall assume a start date within 90 days of bid opening and it is expected that the project would be completed within 175 calendar days for the Multi-Use Stall Barn or 240 calendar days for the MPEC. The construction schedule will be reviewed when evaluating the bids. Therefore the bidders shall give careful consideration of how work can be sequenced to meet or finish sooner than the guidelines shown in this paragraph.

END OF SECTION

SECTION 004100

BID FORM

Stanley Fairgrounds Multi-Use Stall Barn and Multi-Purpose Event Center

THIS PROJECT IS SUBMITTED TO:

Town of Estes Park
170 MacGregor Avenue
Estes Park, CO 80517

December 12, 2012

To whom it may concern:

The undersigned bidder, having examined the site of the proposed work and having full knowledge of the conditions under which the work must be performed, hereby proposes to enter into and perform as set forth in the Town of Estes Park Master Agreement, Construction Agreement, and all other contract documents, of which this Proposal forms a part, and will do the construction therein described on the terms and conditions therein set forth; and will furnish all required labor and materials and pay all incidental costs, all in strict conformity with the Town of Estes Park Master Agreement and Construction Agreement, for the following prices listed in the bid form(s) as payment in full.

If awarded the Contract, the undersigned hereby agrees to execute said Town of Estes Park Master Agreement and Construction Agreement, and procure the required insurance within fourteen (14) consecutive calendar days from the date of the Notice of Award of said Contract.

The undersigned further proposes that should this Proposal be accepted, the contractor will commence work within seven (7) consecutive calendar days from and including the date of Notice to Proceed and the contractor will substantially complete the work covered by the Town of Estes Park Master Agreement, and the Construction Agreement, **within 175 calendar days for the Multi-Use Stall Barn or within 240 calendar days for the MPEC.**

The undersigned further agrees, if awarded the Contract for the Work included in this Bid Proposal, to begin and to complete and deliver the Work contemplated in accordance with the conditions set forth in the Town of Estes Park Master Agreement and Construction Agreement.

The undersigned has checked carefully the figures inserted hereinafter by him, and understands that the owner will not be responsible for any error or omissions on the part of the undersigned in preparing this Bid.

The undersigned hereby certifies that this Bid is genuine, and not sham or collusive, or made in the interest or behalf of any person not herein named, and that the undersigned has not, directly or indirectly, induced or solicited any other Bidder to put a sham Bid, or induced any other person, firm or corporation to refrain from bidding, and that the undersigned has not in any manner sought by collusion to secure for himself any advantages over any other bidder.

The only persons interested as principals in this Bid other than the one whose signature is affixed hereto are to be listed as follows (if there are none, state such fact): None.

Name: _____ Address: _____

Name: _____ Address: _____

This Bid shall be valid from the date of submission to the date of an executed Town of Estes Park Master Agreement and Construction Agreement.

In submitting this Bid, it is understood that the right is reserved by the Owner to reject any or all bids, and to waive irregularities in bidding.

Respectfully submitted,

Contractor (Bidder) _____

(SEAL)

By (Signature) _____

(Title) _____

(corporation/incorporated/partnership) (under the law of the State of Colorado composed of officer, partners or owner, as follows:

President _____

Vice President _____

Secretary _____

Name of Contractor _____

Treasurer _____

Address _____

City _____

State _____

Zip Code _____

Telephone Number _____

1. The undersigned bidder proposes and agrees, if this bid is accepted, to enter into an agreement with the owner in the Town of Estes Park Master Agreement and Construction Agreement forms, to complete all work as specified or indicated in the fore mentioned agreements for the contract price indicated and within the contract time in this bid and in accordance with the Town of Estes Park Master Agreement and the Construction Agreement.
2. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with performance and payment bonds and warranty bonds. This bid will remain open until the seventh day after the effective date of any agreement between the owner and the apparent successful bidder. Bidder will sign the Town of Estes Park Master Agreement and the Construction Agreement and submit all documents required by the contract documents within 10 days after the date of the owner's Notice of Award.

3. In submitting this Bid, Bidder represents, as more fully set forth in the Agreement, that:

- a. Bidder has received and examined copies of all the Contract Documents and of the following addenda:

<u>Addenda Date</u>	<u>Addenda Number</u>	<u>Initial</u>

- b. Bidder has examined the site and locality where the Work is to be performed, the legal requirements (federal, state and local laws, ordinances, rules and regulations) and the conditions affecting cost, progress or performance of the Work and has made such independent investigations as Bidder deems necessary.

4. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, group, association, or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain any advantage over any other Bidder or over The Owner.
5. Bidder will complete the Work for all bid items listed in the bid form.
6. Bidder agrees that the Work will be completed within 175 calendar days for the Multi-Use Stall Barn or 240 calendar days for the MPEC as described throughout these contract documents. Contract days will not be counted. Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the work on time. Extension maybe made to the contract period at the discretion of the Owner.
7. The following documents are attached to and made a condition of this Bid:
- a. A completed Contractor's Qualification Statement as required by Paragraph 3 of the Instructions to Bidders.
- b. A preliminary construction schedule as described the Instructions to Bidders.
- c. Bidders shall submit a list of intended subcontractors for the project. The list shall include the company name, contact information, years in business, the approximate percentage of the work to be performed, and the services which will be provided by that subcontractor.
8. Communications concerning this Bid shall be addressed via email to:
- Elena Scott
escott@norris-design.com
9. Terms used in this Bid which are defined elsewhere in the Contract Documents have the same meanings.

10. The Bidder shall pay special attention to the following items:

- a. The Contractor shall carefully plan out the Work to complete the project within the Contract Period, and keep accurate records of items creating delays to production schedules. Advance planning will be required to prevent the occurrence of overtime.
- b. Payment for overtime required to complete the work in the contract period will not be authorized unless unforeseen circumstances occur.
- c. The unit pricing supplied with the bid form. These numbers will also be used as a basis for additions and subtractions from the scope of work.
- d. The quality of workmanship and materials will be monitored closely by the owner and owner's representative.

THE UNDERSIGNED BIDDER, having familiarized himself with the work required by the Contract Documents, the site where the Work is to be performed, local labor conditions and all laws, regulations and other factors affecting performance of the Work, and having satisfied himself of the expense and difficulties attending performance of the Work,

HEREBY PROPOSES and agrees, if this Bid is accepted, to enter into Agreement in the form attached, to perform all work, including the assumption of all obligations, duties and responsibilities necessary to the successful completion of the Agreement and the furnishing of materials and equipment required to be incorporated in and form a permanent part of the Work, tools, equipment, supplies, transportation, facilities, labor, superintendence and services required to perform the Work; and Bond, insurance and submittals; all as indicated or specified in Contract Documents to be performed or furnished by Contractor in accordance with the following Bid prices Contractor must submit on all scheduled values to be considered.

Bid will be voided if bid form is modified or altered in any way.

Values for each scheduled item shall be written out in words and numeric format. The schedule of values shall be completed in full which shall be used to justify the contract amount for each schedule item.

BID PRICE

SCHEDULE #A – Multi-Purpose Event Center

Total cost for materials, installation, warranties and labor for the work shown on plans with exception of the Add Alternates. All associated permit costs and fees, mobilization, overhead, and general conditions shall be included with this total.

(Dollars)

TOTAL

TOTAL OF SCHEDULE A IN NUMBERS _____

I acknowledge that this bid includes Addendum(s). If none, so state. _____

SCHEDULE #B – Multi-Use Stall Barn (list alternates separately in spaces provided below)

Total cost for materials, installation, warranties and labor for the work shown on plans with exception of the Add Alternates. All associated permit costs and fees, mobilization, overhead, and general conditions shall be included with this total.

_____ (Dollars) \$ _____

ADD ALTERNATE #B.1 – Cupolas

Total cost for materials, installation and labor for the purchase and installation of the cupolas and associated roofing requirements. Refer to Architectural Construction Drawing Add Alternate Notes. All associated permit costs and fees, mobilization, overhead, and general conditions shall be included with this total.

_____ (Dollars) \$ _____

ADD ALTERNATE #B.2 – Wood Trim and Truss Accents

Total cost for materials, installation and labor for the purchase and installation of the wood gable accents at pedestrian entries as shown on plans and elevations. Refer to Architectural Construction Drawing Add Alternate Notes. All associated permit costs and fees, mobilization, overhead, and general conditions shall be included with this total.

_____ (Dollars) \$ _____

ADD ALTERNATE #B.3 – Restroom Interior Finishes

Total cost for materials, installation and labor for the purchase and installation of the alternate restroom interior finishes. Refer to Architectural Construction Drawing Add Alternate Notes. All associated permit costs and fees, mobilization, overhead, and general conditions shall be included with this total.

_____ (Dollars) \$ _____

ADD ALTERNATE #B.4 – Public Address System

Total cost for materials, installation and labor for the purchase and installation of the public address system. Refer to performance specification included in the project manual. All associated permit costs and fees, mobilization, overhead, and general conditions shall be included with this total.

_____ (Dollars) \$ _____

TOTAL

TOTAL OF SCHEDULE B INCLUDING ALTERNATES IN
NUMBERS _____

I acknowledge that this bid includes Addendum(s). If none, so state. _____

SCHEDULE #C – Multi-Use Stall Barn and Multi-Purpose Event Center Combined

Total cost for materials, installation, warranties and labor for the work shown on plans including Add Alternates. All associated permit costs and fees, mobilization, overhead, and general conditions shall be included with this total.

TOTAL

TOTAL OF SCHEDULE C IN NUMBERS _____

I acknowledge that this bid includes Addendum(s). If none, so state. _____

The undersigned bidder agrees to enter into agreement after acceptance of this bid, and further agrees to complete all work covered by the bid, in accordance with specified requirements and in accordance with specified requirements and in accordance with the following estimated schedule.

<i>Date</i>	<i>Task</i>
1/7/2013	Bid Opening
Within 90 calendar days from Bid Opening	Bid Award
Within 175 calendar days from Bid Award	Substantial Completion Stall Barn
Within 240 calendar days from Bid Award	Substantial Completion MPEC

Liquidated Damages. Owner and Contractor recognize the importance of establishing and enforcing deadlines. If the date for deliverables are not met then the Owner could suffer financial loss. They also recognize the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the Owner if work is not completed on time, therefore damages for delays in meeting deadlines for all or portions of the work as shown on contract documents or as documented in project schedules or meeting notes, shall be assessed at a cost of \$250 per calendar day for every day late.

PREPARED BY

Signed: _____
Name Printed: _____
Title: _____
Company: _____

END OF SECTION

SECTION 004325

BID SUBMITTAL CHECKLIST

The following items shall be included as part of the bid package. Packages not containing these items shall be deemed incomplete and therefore disqualified from bidding.

1. Completed Bid Form (Section 004100)
2. Bidder's qualifications (Section 004510)
3. Acknowledgement of Addendums
4. Proposed subcontractor list
5. Proposed project schedule
6. Unit Pricing (Section 004330)

END OF SECTION

SECTION 004330

UNIT PRICING

All unit/total prices for each of the items listed shall include all costs involved in the installation of each item or performance of tasks (to include labor and equipment, except where noted), its pro rata share of profits, overhead, warranty, bonding, insurance, mobilization, and administrative fees, unless otherwise indicated. Refer to technical specifications for exact description of products. Costs listed below will be the basis or additions and subtractions to the base bid amount.

Totals for each schedule item shall match the total shown on the bid form, thereby justifying the value of the bid.

This document shall be provided by the contractor in their format of choice, preferably as a Microsoft Excel spreadsheet to allow for easier consolidation of this information. Bidders shall provide this information with their bid electronically. The estimated quantities form may be e-mailed to the Owner's Representative or submitted on a disk. This information must be received by the time stated by the bid opening, otherwise this information will be considered incomplete.

END OF SECTION

SECTION 004340

PROPOSED SUBCONTRACTOR FORM

List subcontractors and suppliers providing services and/or materials to be furnished and a summarization of the dollar value of each subcontract:

Subcontractor	Scope of Work	Years in Business	Percentage of Work	Contact Person and Phone Number

This is to certify that the names of the foregoing mentioned Subcontractors or material suppliers are submitted with full knowledge and consent of the respective parties

Bidders:
(Name of Company)

By: _____
(Signature and Title)

Date:

Note: The previous sheet may be reproduced by the Contractor to list Subcontractors totaling more than will fit on this page. Certify each sheet as an original sheet and staple additional sheets to this page.

END OF SECTION

SECTION 004510

BIDDER'S QUALIFICATIONS

The Undersigned certified under oath the truth and correctness of all statements and/or all answers to questions made hereinafter.

Submitted to: TOWN OF ESTES PARK

Submitted by:

NAME _____
 Address _____
 City, State Zip _____
 Phone _____
 Principal Office _____

Check One: () Corporation () Partnership () Joint Venture () Individual () Other _____

1. List the five largest active construction projects your organization has under contract to date. Each project description shall contain contact information for references.

Project Name _____
 Owner _____ Phone Number _____
 Owner's Rep. _____ Phone Number _____
 Contract Amount _____ Contract Dates _____
 Remaining Amount of Work _____

2. Provide resumes for the principal individuals who would be assigned to this project. Indicate their position in the company, their role on the project, approximate time per week on the project, experience expertise, certifications, etc.

3. Summarize the experience of the individuals in your organization who would be assigned to this project.

NAME	POSITION	APPROX. TIME/WEEK
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. Name of bonding and insurance companies and name and address of agents: maximum bonding capacity. What portion remains of this bonding capacity at the time of submittal of the Bid?

5. What is your Worker's Compensation Experience Modifier Rate?

END OF SECTION

SECTION 005200

TOWN OF ESTES PARK

MASTER AGREEMENT
FOR CONSTRUCTION

(For use in Colorado)

MASTER AGREEMENT NUMBER: 2012 –

This Master Agreement for Off-Site and On-Site Construction (the "*Master Agreement*") is entered into as of _____, 2012 the "*Effective Date*") between TOWN OF ESTES PARK _____, a _____ corporation ("*Contractor*"), regardless of whether Contractor's actual capacity will be prime contractor or subcontractor.

Section 1. INCORPORATION OF MASTER AGREEMENT INTO CONTRACT AND TERM

- 1.1 **Incorporation.** This Master Agreement establishes the general conditions applicable to any specific, Commitment (the "*Contract*") subsequently entered into between Owner and Contractor. The provisions of this Master Agreement will apply to and become part of any bid submitted by Contractor to Owner and any Contract entered into between Contractor and Owner and any Time and Material Authorization ("*TMA*"), Field Purchase Order ("*FPO*") or Change Order. Unless otherwise indicated, the capitalized terms used but not defined in this Master Agreement have the definitions stated in the Contract.
- 1.2 **Applicability to Open Contracts.** Contractor and Owner agree, acknowledge and accept that this Master Agreement hereby replaces and supercedes any prior master agreement entered into between Owner and Contractor. All open Contracts, including all open TMAs, FPOs, Change Orders or other amendments, issued prior to the effective date of this Master Agreement (the "*Open Contracts*") are incorporated herein by reference and remain operative and in full force and effect except that this Master Agreement governs the Open Contracts. All references in Open Contracts to the "Master Agreement" or to a provision thereof, shall be deemed to refer to this Master Agreement.
- 1.3 **Term.** The term of this Master Agreement (the "*Term*") will extend from the Effective Date until the _____ date unless cancelled or modified in writing by Owner prior to that time or extended for completion of a Contract as provided in such Contract. The term of any Contract commences on its effective date and ends upon the Completion of Work unless a written termination is issued prior thereto.
- 1.4 **Owner's Authorized Representative** for the projects will be a representative from Norris Design and/or the Town of Estes Park who will have the rights and authority assigned to the Owner's Representative in the Contract Documents. The name of the individual who will act as the Owner's Authorized Representative will be set forth in the Contract Documents.

Section 2. DEFINITIONS

"Applicable Requirements" means all federal, state and local laws, statutes, ordinances, codes, rules, regulations, orders, judgments and decrees applicable to the Work, including without limitation a state or federal Storm Water Management Plan (***"SWMP"***).

"Bid" means the offer or proposal of the Bidder submitted on the prescribed Bid Form setting forth the prices for the Project to be constructed.

"Bid Form" means the form of the offer or proposal setting forth the Project to be constructed.

"Bidder" means any individual, firm or corporation submitting a bid for the Project contemplated, acting directly or through a duly authorized representative.

"Owner" is defined in the preamble.

"Owner's Authorized Representative" means the person specified in Section 1.4 of the Master Agreement or other applicable Contract, or such other Project Manager or other individuals, as Owner designates to Contractor.

"Business Day" is defined in Section 13.1.

"Change Order" means a written document provided by Contractor to the Owner, requesting an authorization for an addition, deletion or revision in the Work, or an adjustment in the Construction Schedule or Contract Price, issued after the effective date of the Master Agreement, to be signed by both Owner and Contractor.

"Completion of Work" means (a) the Work has passed all applicable inspections and Contractor has obtained all required approvals, permits, certificates and sign-offs from the appropriate agencies, including governmental authorities and utilities, (b) all Work, including all punch list work, has been completed to Owner's satisfaction, as evidenced by a written approval notice to Contractor from Owner's Authorized Representative and (c) Contractor has delivered to Owner the as-built Plans, annotated Specifications and other documentation required in Section 4.4 below, and cleaned the Site as required in Section 4.5(a) below.

"Construction Schedule" means a document containing specific time periods and deadlines associated with construction of the Project and performance of the Work.

"Contract" is defined in Section 1.1.

"Contract Documents" means the Master Agreement, the Contract, the Contractor's Bid, Plans, Specifications, engineering reports, soils reports, acoustical reports, geotechnical and geological investigation reports and other documents specified in the Contract, and all subsequent Change Orders.

"Contract Price" means the compensation for the Work, as specified in the Contract authorizing the Work to be performed.

"Contractor" is defined in the preamble.

"Effective Date" is defined in the preamble.

"FPO" is defined as a Field Purchase Order issued for additional work by Owner's Authorized Representative.

"General Conditions" means the general conditions as set forth in the Contract Documents.

"Hazardous Substance" is defined in Section 4.5(g)(1).

"IIPP" is defined in Section 4.5(e)(2).

"Losses" is defined in Section 8.1.

"Master Agreement" is defined in the preamble.

"Owner" is defined in a Contract if different than Owner.

"Payment Authorization" means all written authorizations that Owner requires contractor to submit with invoices for payment.

"Phase" means a portion of the Project defined as such.

"Plans" means the official plans, drawings, working drawings, or supplemental drawings or exact reproductions thereof, approved by the Owner's Authorized Representative, which show the location, character, dimensions, and details of the Work.

"Project" means the construction project specified in the the Contract and Scope of Work; in the total construction of which the Work may be the whole or a part.

"Proprietary Information" is defined in Section 12.1.

"Site" means the physical location of the Project(s).

"Special Conditions" means the specific clauses setting forth conditions or requirements peculiar to the Project, covering work or materials involved in the Bid which are not thoroughly or satisfactorily stipulated in the General Conditions or Specifications.

"Specifications" means the specifications specified in the Project Manual for the Multi-Use Stall Barn and the Multi-Purpose Event Center.

"Subcontractor" means an individual or entity having a direct contract with the Contractor or with any other Subcontractor for the performance of a portion of the Work.

"Supervisor" means Contractor's Supervisor designated under the Contract Documents.

"Term" is defined in Section 1.3.

"Time and Material Authorization" or *"TMA"* means a document, which will be provided to Owner by Contractor identifying hourly charges for specific work to be performed and equipment to be used to complete the Project.

"Work" or "Scope of Work" means the work specified in any contract issued by Owner to Contractor, as may be modified by subsequent approved Change Orders, and TMAs.

Section 3. OWNER/CONTRACTOR RELATIONSHIP

Owner and Contractor are committed to working together in a relationship based on integrity and continual improvement in order to achieve a mutually beneficial relationship and to deliver exceptional value and quality to Owner's customers. Contractor acknowledges that its relationship with Owner and its responsibilities under this Master Agreement include a continuing need for process improvements, elimination of waste and more efficient use of labor and materials.

Section 4. CONTRACTOR'S WORK

4.1 Applicable Requirements and Plans and Specifications.

4.1(a) Performance Standards. Contractor must expeditiously perform the Work in a good and workmanlike manner and must provide all labor, materials, tools, supplies, equipment, machinery, supervision, coordination, transportation, services and all other things necessary for execution of the Work. Contractor must perform the Work in accordance with all Applicable Requirements, the Contract Documents, where applicable.

4.1(a)(1) Where the Plans or Specifications describe portions of the Work in general terms, but not in complete detail, the best industry practice is to prevail and only materials and workmanship of the first quality are to be furnished. Whether or not shown by the Contract Documents, the Work includes any item of labor, service and/or material reasonably implied or customarily furnished by a contractor performing work of the type comprising the Work, or required to complete the Work in compliance with any Applicable Requirements. Contractor must furnish, without extra charge, any additional material and labor required to comply with Applicable Requirements, the Contract Documents, where applicable, even though not mentioned in the Specifications or shown on the Plans.

4.1(a)(2) All material must be installed in accordance with the manufacturer's specifications. If Contractor installs any material in a manner that voids the manufacturer's guarantee and/or warranty without prior written authorization from Owner, Contractor assumes all obligations under the manufacturer's guarantee and/or warranty at Contractor's sole cost and expense.

4.1(b) Notification of Inconsistencies. Contractor must provide written notification to Owner of any inconsistency between the Contract Documents and Applicable Requirements, where applicable, or of any other inconsistency, error or omission Contractor may discover in the Contract Documents. If Contractor performs any portion of the Work which Contractor knows, or shall know, is inconsistent with any Applicable Requirements, where applicable,

or which otherwise involves an inconsistency, error or omission, without having previously reported it to Owner in writing, Contractor will bear all costs for correction and any associated delay.

4.1(c) Priority of Documents. If any inconsistency among the Contract Documents cannot be resolved through ordinary contract interpretation, the following priority will apply: (1) the Contract; (2) Specifications; (3) Plans (except that Plans have priority over Specifications as to quantity); and (4) this Master Agreement.

4.1(d) Permits. Contractor will secure permits for the Work except as otherwise noted.

4.2 Contractor's Expertise, Representations and Warranties.

4.2(a) Contractor's Expertise. Contractor acknowledges that Owner relies upon Contractor's experience, expertise, recommendations and supervision in the performance and scheduling of the Work and in striving continually to improve upon the methods and materials necessary for completing the Work.

4.2(b) Representations and Warranties. Contractor represents and warrants that it is:

- (1) an expert in its field and trade and able to furnish the facilities, tools, materials, supplies, equipment and qualified personnel required to perform the Work, and has sufficient expertise and competence to do so;
- (2) financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to perform the Work and meet its obligations under the Contract Documents;
- (3) authorized to do business in Colorado;
- (4) properly qualified, certified and licensed to perform the Work by all governmental and quasi-governmental authorities having jurisdiction over Contractor or the Work, and will remain so at all times during performance of the Work;
- (5) a duly formed and existing legal entity in good standing in Colorado and the jurisdiction within which the entity was formed; and
- (6) duly authorized to execute this Master Agreement and any Contracts hereunder; and
- (7) including in its Contract Price sufficient money to comply with all applicable local, state and federal laws or regulations governing the labor or services provided.

4.3 Inspection of Work and Rework.

4.3(a) Inspection of Work. The Work is subject to inspection and approval by both the Owner and governmental authorities and utilities. Contractor must do each of the following:

- (1) Perform frequent and on-going inspections of the Work to ensure that the Work is in compliance with the Contract Documents, and Applicable

Requirements, where applicable. Contractor will not be relieved from any of its responsibilities with respect to the Work by the activities or duties of Owner or Owner's Authorized Representative, or by inspections required or performed by persons other than Contractor.

- (2) Fully comply with all inspection programs and protocols designated by Owner.
- (3) Coordinate all required inspections of the Work by governmental authorities and utilities.
- (4) Give Owner's Authorized Representative timely notice (at least 48 hours) of governmental and utility inspections so that the Authorized Representative may observe the inspections.
- (5) Bear all costs and any associated delay for reinspection and correction (to the satisfaction of Owner and the relevant governmental authority or utility) if the Work or any portion of it fails to pass inspection.
- (6) Commence corrective work within twenty-four (24) hours after the failed inspection and diligently pursue the corrective work to satisfactory completion.

4.3(b) Coverage of Work. If any portion of the Work is not visually observable or is otherwise covered prior to required inspection or contrary to the requirements of the Contract Documents or the request of Owner's Authorized Representative, that portion must be uncovered or removed at Contractor's cost and after inspection must be recovered or replaced at Contractor's cost, all without any extension of time.

4.3(c) Resolution of Dispute over Quality. If any dispute arises as to the quality of Contractor's work or the quality or type of materials furnished, Owner's reasonable decision regarding the quality or type of materials to be used is binding on Contractor during the course of the Work. Thereafter, Contractor may choose to seek extra payment for the cost of the labor or materials, provided all notices have been timely submitted as required in Section 5, below.

4.4 As-Built Plans, Annotated Specifications and Other Documentation.

4.4(a) As Built Plans and Specifications. When required by the Contract, Contractor must prepare and maintain on a current basis an accurate and complete set of as-built Plans showing clearly all changes, revisions and substitutions during construction, including, without limitation, field changes and the final location of all utility lines, pipes, grades and other significant features, and as related to the Work, annotated Specifications marked in the field to show all changes, revisions and substitutions.

4.4(a)(1) In the event of a Specification that allows Contractor or any subcontractor to elect one of several brands, makes or types of material or equipment, Contractor must show which of the allowable items was furnished.

4.4(a)(2) The as-built Plans and annotated Specifications must be kept at the Site, and must be available for inspection by Supervisor, Owner and any governmental authorities or utility companies and must be provided to Owner at the Completion of Work.

4.4(b) Documentation. At the Completion of Work and prior to final payment, Contractor must provide Owner with all operating manuals, guarantees, warranties, and product warranties, which relate to any materials or equipment installed by Contractor as well as the names of replacement parts suppliers and all other similar documentation relating to the Work.

4.5 Site Requirements.

4.5(a) Cleanliness.

4.5(a)(1) Contractor must keep its work areas in a neat and safe condition at all times and ensure that neither it nor its subcontractors, nor others for whom it is responsible, create any hazardous or unsafe conditions which might affect others on or off the Site.

4.5(a)(2) On a daily basis Contractor must pile all rubbish, waste and debris resulting from the Work in a location or trash bin designated by Owner's Authorized Representative and must ensure that all materials, supplies and equipment are properly and safely stored.

4.5(a)(3) At the Completion of Work, Contractor must remove from and about the Site all waste materials, rubbish, tools, construction equipment, machinery and surplus materials, and must leave the Site in "broom clean" condition.

4.5(a)(4) If Contractor intends to dispose of any soil or debris generated from excavation, drilling or other activities, or Hazardous Substances (as defined in Section 4.5(g)(1) below, then Contractor must –obtain written approval from Owner's Authorized Representative prior to disposal so Owner can sample and profile the materials or Hazardous Substance and require Contractor to effect such disposal only at facilities approved by Owner in advance and in writing Contractor shall not permit any run-off to a storm drain, except for uncontaminated clear run-off water.

4.5(b) Drug Free. Illegal drugs (including prescription drugs belonging to another) and alcohol are strictly prohibited on the Site at all times. Contractor must instruct its employees, subcontractors and others for whom it is responsible that the possession of illegal drugs or alcohol while on the Site, or working on the Site under the influence of illegal drugs or alcohol, will result in immediate removal of employee from all of Owner's projects. Contractor must strictly enforce this policy. Contractor's failure to enforce this policy is a material breach of this Master Agreement and any Contract, and a basis for terminating any Contract as well as for terminating this Master Agreement.

4.5(c) Supervision.

4.5(c)(1) At any time Contractor is performing the Work, and at other times as necessary, the Supervisor must be present at the Site. The Supervisor must be skilled and knowledgeable both in the performance and supervision of the Work and fully knowledgeable regarding the requirements of the Contract Documents and Applicable Requirements. So far as reasonably possible, Contractor will keep the same Supervisor on the job throughout the performance of the Work. The Supervisor must be authorized to respond to the needs and requirements of Owner without obtaining further authorization. At its sole discretion, Owner may require Contractor to replace its Supervisor on twenty-four (24) hour notice at no cost to Owner.

4.5(c)(2) The Supervisor must have the linguistic skills necessary to communicate with Contractor's employees, subcontractors, suppliers and others for whom Contractor is responsible, whatever their primary language may be, as well as to communicate fully with Owner's Authorized Representative.

4.5(c)(3) If Contractor fails to have adequate supervision on the Site, Owner may supply its own supervision, at Contractor's cost, or in the alternative, cause all Contractor's employees to cease work until adequate supervision is provided, again at Contractor's cost, including any associated delay.

4.5(d) **Training.**

4.5(d)(1) Contractor warrants that its employees and any subcontractors or others for whom Contractor is responsible have received or will receive, prior to commencing the Work, all training and instruction necessary for performance of the Work in conformance with Applicable Requirements, the Contract Documents and industry standards.

4.5(d)(2) Contractor warrants that each of the employees who are performing the Work is knowledgeable about the requirements of the Contract Documents and Applicable Requirements.

4.5(d)(3) Owner may require Contractor to remove and replace any employee who is inadequately trained, who fails to demonstrate the necessary skills to do the Work, or who is not knowledgeable about the requirements of the Contract Documents and Applicable Requirements.

4.5(e) **Safety.**

4.5(e)(1) Contractor must fully comply with all Applicable Requirements with respect to occupational health and safety standards under the Occupational Safety and Health Act (OSHA) of 1970, 29 Code of Federal Regulations, Section 1926, any other applicable public authority, accident prevention and safety equipment and safe practices. Contractor must fully cooperate with Owner's Safety Manager to implement and enforce any other accident prevention and safety program of Owner. Contractor must cooperate with any regulatory

agency consultation or compliance inspections. Contractor is responsible for protecting the public from hazards related to the Work.

4.5(e)(2) Contractor must have an Injury/Illness Prevention Program (“*I.I.P.P.*”) and Contractor must provide Owner with a copy of its *I.I.P.P.* upon request. Contractor must conduct periodic inspections of Site conditions and equipment and must provide documentation of such inspections to Owner’s Safety Manager upon request. Contractor must provide personal protective equipment and adequate safety training to all of its employees.

4.5(e)(3) Contractor must immediately notify Owner of any incident which causes personal injury, or environmental or property damage, and must cooperate fully with Owner’s Risk Management Department.

4.5(e)(4) Contractor is responsible for ensuring that all vehicles used or required for the performance of the Work, including ANY vehicle brought on Site by Contractor, any subcontractor or any of their respective employees, suppliers or others for whom Contractor is responsible be in safe operating condition and registered and insured as required by state law.

4.5(e)(5) Contractor accepts sole responsibility for providing a safe work place for its and its subcontractors’ employees, suppliers and others for whom Contractor is responsible, including without limitation safety training and the adequacy, and required use, of all safety equipment. Contractor must pay any fine imposed on Owner as a result of Contractor’s violation of Applicable Requirements. In the case of Contractor’s failure to maintain a safe work area, Owner may (but is not required to) correct the dangerous condition at Contractor’s cost.

4.5(f) Storage On Site.

4.5(f)(1) Owner’s Authorized Representative may, within its sole discretion, permit Contractor to store materials, tools or equipment on the Site. Contractor must strive to minimize the length of time that materials are stored at the Site, and must coordinate with Owner’s Authorized Representative to ensure prompt installation of stored materials.

4.5(f)(2) Contractor is solely responsible for materials, tools and equipment stored at the Site. In the event of loss or damage, Contractor must proceed promptly to make repairs to or to replace the lost or damaged items at Contractor’s cost. Contractor waives all rights of indemnity it might have for loss or damage to materials, tools or equipment stored at the Site caused by Owner’s passive negligence.

4.5(f)(3) Owner will not provide any utilities for storage facilities. Contractor must maintain permitted storage areas in a neat, safe and sanitary condition and in compliance with all Applicable Requirements. By written notice to Contractor, Owner may revoke Contractor’s use of any permitted storage area at any time. In such event, Contractor must remove all materials, tools, equipment, goods and facilities and restore the area to

its original condition within three (3) days after delivery of the removal notice.

4.5(g) Hazardous Substances.

4.5(g)(1) For purposes of this Master Agreement, "*Hazardous Substance*" includes, but is not limited to, substances defined as hazardous substances, hazardous wastes, hazardous materials, toxic substances, or terms of similar import as defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act of 1976, the Super Fund Amendments and Reauthorization Act of 1986, the Toxic Substances Control Act of 1976, or any other federal, state or local law, statute, rule or regulation pertaining to the protection of the environment or the health and safety of persons and property.

4.5(g)(2) Contractor must use and store on the Site only the minimum quantities of any Hazardous Substance required for the Work. Contractor must fully comply with all Applicable Requirements regarding the use, storage and disposal of any Hazardous Substance, and must notify Owner and other contractors on the Site if Contractor intends to use any Hazardous Substance. Contractor must promptly cleanup and remove, by approved methods, any Hazardous Substance spilled or otherwise released onto the Site, the ground water under the Site or the air above the Site, by Contractor or others for whom Contractor is responsible.

4.5(g)(3) Upon request, Contractor must promptly provide Owner and any other affected parties with a Materials Safety Data Sheets ("*MSDS*"), and any other requested information, pertaining to any Hazardous Substance Contractor uses or intends to use on the Site.

4.5(g)(4) If Contractor encounters any Hazardous Substance on the Site it must immediately notify Owner's Authorized Representative and cease work in the affected area until otherwise instructed by Owner and must follow all directions of Owner with regard to the Hazardous Substance and communication with third parties regarding the Hazardous Substance.

4.5(h) Protection of Property.

4.5(h)(1) Contractor must perform the Work in such a manner that it will not injure, delay or damage any other work performed by Owner or any other contractor. Contractor must take all precautions necessary to protect all work installed by others and any public improvements, including, without limitation stall barns, fences, driveways, sidewalks, graded lots, curbs, and gutters. Vehicles may not be parked in driveways, sidewalks or graded lots except to load or unload materials.

4.5(h)(2) In the event that Contractor, its subcontractors, suppliers or others for whom it is responsible cause damage to other work or property, Contractor will bear the costs for correction or repair.

- 4.5(h)(3)** Contractor must follow all orders of Owner's Authorized Representative with regard to access to the Site and parking and must enter and leave the Site as directed by Owner's Authorized Representative. It is Contractor's responsibility to prevent infringement of the rights of enjoyment of adjacent property owners. Contractor acknowledges that it has been specifically instructed to confine all activities to the Site, unless it receives prior written permission from both Owner and the owner of the other property Contractor intends to use.
- 4.5(i) Emergencies.** In any emergency affecting the safety of persons or property, Contractor must take immediate action to prevent or alleviate threatened damage, injury or loss. Contractor must provide Owner with a twenty-four (24) hour emergency phone number at which Contractor can be reached during non-work hours. If Contractor cannot be reached when called, Owner will take all necessary actions to protect life and property, at Contractor's cost if Contractor is responsible. Contractor's warranties will remain in effect under all conditions and will not be affected by the work of others during an emergency.
- 4.5(j) Dust and Erosion Control For Off-Site Construction.** If Contractor is performing Work under a Contract for Off-Site Construction, then the following provisions apply:
- 4.5(j)(1)** At all times during construction and until the Completion of Work, Contractor must prevent the formation of any air borne dust nuisance by use of appropriate methods which confine dust particles to the immediate surface of the Site. Contractor must provide its own labor, material and equipment for this dust control work. Dust control must conform to all Applicable Requirements. Contractor must pay any fine imposed on Owner as a result of Contractor's violation of any dust control standards, regulations or requirements and will also bear any and all costs to Owner (including construction delays) caused by Contractor's failure to comply with the terms of the paragraph.
- 4.5(j)(2)** At all times during construction and until the Completion of Work, Contractor must prevent erosion of dirt from any and all water sources. Erosion control must conform to all Applicable Requirements. Contractor must provide its own labor, material and equipment for this erosion control work. It is Contractor's sole responsibility to protect the Work during inclement weather and to repair the Work if damaged following inclement weather at Contractor's expense until the Completion of Work. Contractor must pay any fine imposed on Owner as a result of Contractor's violation of any erosion control standards, regulations or requirements and will also bear any and all costs to Owner (including construction delays) caused by Contractor's failure to comply with the terms of this paragraph. Contractor is responsible for all damages to adjacent properties or improvements as a result of Contractor's failure to control water or erosion.
- 4.5(j)(3)** If Contractor fails to provide adequate dust or erosion control, Owner may suspend the Work, in whole or in part, until Contractor provides adequate dust or erosion control or Owner may provide dust and

erosion control at Contractor's sole cost and expense. Contractor will perform the Work to avoid interference with any and all dust and erosion control measures of Owner or other contractors. Contractor will be responsible for any such interference and will pay all costs, fines or assessments associated therewith.

4.5(k) Protection of Dust and Erosion Control For On-Site Construction. If Contractor is performing Work under a Contract for On-Site Construction, then the following provisions apply:

4.5(k)(1) Contractor will perform its onsite Work to avoid interference with any and all Dust and Erosion Control measures of Owner or other contractors or to cause violations of any and all Applicable Requirements for Dust and Erosion Control. Failure of Contractor to comply with this provision may result in Contractor being responsible for the payment of any resulting fines or assessments against Owner or other contractors.

4.5(l) Storm Water Management Plan. The Project is being developed in accordance with a Storm Water Management Plan ("*SWMP*") as required by the Colorado Department of Public Health and Environment. The SWMP imposes requirements for the design, implementation and maintenance of Best Management Practices ("*BMPs*") to eliminate and/or mitigate all prohibited discharges into storm drains during and after construction of the Project. Contractor will be subject to the SWMP and all BMPs established pursuant to the SWMP. All activities undertaken by Contractor or Contractor's agents, employees, sub-contractors or representatives or others for whom Contractor is responsible, with respect to the Work must comply with the SWMP and BMPs. The requirements of the BMPs include, but are not limited to, preventing run-off of soil, sand, sediment, oil, gasoline or other hydrocarbons, paint, fertilizers, pool chemicals, other household chemicals and other debris into the storm drains located in the Project. The SWMP affirmatively obligates Contractor to take immediate corrective action whenever there is a violation of the BMPs as to the Work. Penalties include significant fines that will be imposed against Contractor for violation of the SWMP or BMPs. Any violation of the SWMP or BMPs attributable to Contractor shall be the sole responsibility of Contractor, including the obligation to pay any and all fines assessed against Contractor, Owner or the Project attributable to Contractor's violation.

4.6 Site Conditions.

4.6(a) Verification of Existing Conditions and Warranty.

4.6(a)(1) Prior to beginning the Work, Contractor will carefully examine the Site, all previous work, all adjacent areas that may be affected by the Work, and all Contract Documents (where applicable) and fully satisfy itself as to the nature and location of the Work and fully acquaint itself with all conditions, including subsurface conditions, which in any manner may affect the Work.

- 4.6(a)(2)** Contractor assumes the risk of any variances between the actual conditions and the conditions shown or indicated in the Contract Documents, to the extent Contractor knows or should have known of such actual conditions, unless Contractor provides written notification to Owner prior to start of the Work. In all cases where dimensions are governed by field conditions that are already established, Contractor has full responsibility for correct knowledge of the actual conditions.
- 4.6(a)(3)** If Contractor deems that surfaces or work to which its Work is to be applied or affixed are unsatisfactory or unsuitable, written notification of said condition(s) must be given immediately to Owner. **By commencement of the Work, Contractor warrants that all related, adjacent or dependent work and materials are acceptable.** Contractor is responsible to Owner for all damage or delay in connection with any failure of the Work due to defects or damages in the underlying surface of the Site or previous work by others.
- 4.6(b) Lines and Grades.** If necessary, Owner will provide Contractor with base control points within fifty (50) feet of property lines, and with other lines, benchmarks and reference lines. Contractor acknowledges that as part of its Site inspection, it must verify the extent of such reference points to be supplied by Owner for Contractor's Work. If reference points are missing or Contractor finds the points inadequate, Contractor must immediately provide written notification to Owner. Absent written notification, Contractor assumes full responsibility for the accuracy of all lines, levels, and measurements and their relation to benchmarks, property lines, and reference lines. In all cases where dimensions are governed by conditions already established before Contractor starts the Work, Contractor has full responsibility for correct knowledge of the actual conditions. No variation from specified lines or grades may be made except on the written direction of Owner's Authorized Representative. Contractor will bear all costs for correction and associated delay in connection with line or grade deviations unless Contractor can establish that the Engineer's staking was in error, and the error caused the need for corrective work.
- 4.6(c) Underground Lines.** Contractor is solely responsible to contact the "U.S.A." Utility Location Service at 1-800-642-2444 for a staked location of all underground utilities prior to starting the Work, if necessary. Contractor is solely responsible for all costs for correction and associated delay in connection with repair of all utilities, marked or unmarked, damaged by it during performance of the Work.
- 4.6(d) Archaeological Monitoring.** There may be archaeologically sensitive zones on the Site. Archaeological monitors may be present on the Site on a full or part time basis. In the event archaeological artifacts are discovered during performance of the Work, the appropriate governmental agency has and retains all right, title and interest to such artifacts and has the right to perform archaeological excavations as deemed necessary. In the event of archaeological examination and related delays of the Work, Contractor will be entitled to an extension of time to complete the Work, subject to Section 4.9. However, Contractor has no claim for damages or compensation for the delay.

4.7 Subcontractors and Suppliers.

- 4.7(a) **List of Subcontractors and Suppliers.** Contractor must provide Owner with a list of the names and addresses of all subcontractors and suppliers who are to perform work for and or supply materials to Contractor in connection with the Work. Contractor must not make any substitution or addition to the list without first notifying Owner in writing. Contractor is solely responsible to Owner for the performance of its subcontractors and suppliers and their compliance with Applicable Requirements, and the Contract Documents.
- 4.7(b) **Payment of Bills.** Contractor must timely pay for all labor, materials, equipment, transportation, and services, including applicable taxes, ordered for or used in the Work by Contractor. If Contractor fails to make any payment, Owner has the right, but not the obligation, to make payment directly to any of Contractor's laborers, subcontractors or suppliers or for the account of Contractor and to deduct the amount of the payment from any amounts due and owing to Contractor. If the funds payable to the Contractor are not sufficient to cover this amount, Contractor must promptly pay the difference to Owner on demand.
- 4.7(c) **Liens.** Contractor must not allow any claim of lien or statutory withholding notice to be recorded against the Site or served against Owner and must provide to Owner, on demand, satisfactory evidence of any payment in dispute. If any lien, notice, claim of lien or any attachment is recorded in connection with the Work, Contractor must cause such lien or attachment to be removed. In the event Contractor fails to have any lien or attachment removed within fifteen (15) days after Owner's demand, Owner may take whatever actions it deems necessary in order to remove such lien or attachment, at Contractor's cost (including attorney's fees and costs incurred by Owner).
- 4.7(d) **Materials and Alternatives.** If any items specified in the Contract Documents are discontinued, unavailable, or if Contractor desires to use a suitable alternative, Contractor must notify Owner in writing as soon as possible and must submit a list of alternatives with all necessary information pertaining to specifications, applications, characteristics, warranties, and costs. Owner's written approval is required prior to installation of any alternative.

4.8 Labor Relations.

- 4.8(a) **Independent Contractor.** Contractor is an independent contractor and is solely responsible for payment of all federal and state taxes and insurance and contributions for social security and unemployment taxes, which are based on the wages, salaries or other compensation paid by Contractor to its employees.
- 4.8(b) **No Illegal Aliens.** Contractor must employ, and must cause its subcontractors to employ, only American citizens or non-citizens with legal United States work authorizations and at all times must obey all Applicable Requirements concerning the employment of persons at the Site, including without limitation the requirements of the Immigration Reform and Control Act of 1986 and the Immigration and Naturalization Service's rules and regulations.

4.8(c) Employment and Labor Regulations.

4.8(c)(1) Contractor must comply with all Applicable Requirements concerning equal opportunity employment and warrants that it and its subcontractors and suppliers are equal opportunity employers.

4.8(c)(2) Contractor recognizes that in the performance of the Work, it may be necessary to work side by side with other contractors on the Site who may, or may not, be signatories to collective bargaining agreements with labor organizations. Owner reserves the right to establish a "two gate" system at any time during performance of the Work. Contractor will not be relieved of its obligations to supply sufficient, properly skilled workers to perform the Work without delay or interruption as a result of any labor dispute between Contractor, or any of its subcontractors or suppliers, and their respective employees. Contractor will not be entitled to any adjustment to the Contract Price and must pay any increased costs as a result of any labor dispute involving its own forces or the forces of its subcontractors or suppliers. However, Contractor will be entitled to all direct out-of-pocket expenses reasonably incurred and may seek an extension of time as a result of a strike affecting a trade or product generally, as agreed upon by Contractor and Owner's Purchasing Department. Contractor represents and warrants, and will provide evidence upon Owner's request, that neither it nor any of its subcontractors or suppliers are delinquent in making payments or reports to any union fringe benefit trust fund or appears on any delinquency list published by any union fringe benefit trust fund.

4.9 Time of Performance.

4.9(a) Sequencing and Schedule of Project. Contractor acknowledges that Owner has complete control over the timing and sequence of the Project. Owner's Authorized Representative will provide a Construction Schedule to Contractor. The Construction Schedule will set forth the start date for the Work as well as the date for the Completion of Work and any intermediate milestones. The Construction Schedule is to provide Owner and Contractor with a general framework of the time for Contractor's performance. The actual schedule will depend on a number of factors such as weather, market conditions and other matters in the discretion of Owner, and Contractor must not proceed with any part of the Work ahead of time designated by Owner without prior written authorization. Owner reserves the right to provide an updated or amended Construction Schedule at any time and Contractor must immediately proceed in accordance with the amended Construction Schedule. Contractor must coordinate its Work with any other contractors so there will be no interference with work of others.

4.9(b) Sequencing of Work. Contractor acknowledges it is responsible to perform all elements of the Work in the proper sequence and the Work in the proper sequence with work of other contractors. Contractor will not proceed with work out of sequence without providing written notification to Owner.

- 4.9(c) Timely Completion of Work.** Contractor must complete the Work in a prompt and diligent manner and achieve the Completion of Work in accordance with the time designated in the Construction Schedule. Contractor acknowledges that failure to meet the Construction Schedule is a material breach of the Contract. If Contractor is behind in the Work or if any portion of the Work is not commenced, performed, finished and delivered at the time established by Owner, Owner may direct Contractor, on forty-eight (48) hours notice, to furnish additional labor and expedite deliveries of material and equipment, at Contractor's cost. If additional labor is not available, Owner may require Contractor to work overtime or additional shifts (and/or weekends and holidays) to such an extent as will be sufficient to achieve the Completion of Work or any portion of the Work in accordance with the Construction Schedule, all at Contractor's cost.
- 4.9(d) Mandatory Overtime.** In order to expedite completion of the Project or the Work, Owner may direct Contractor to work overtime. Contractor must work overtime as directed by Owner and, so long as the overtime was not caused by the delay of Contractor, its subcontractors, suppliers or others for whom it is responsible, Owner will pay the actual extra cost of overtime over Contractor's normal labor rates. Contractor must not mark-up such costs for overhead or profit. Time slips covering overtime must be checked and approved daily by Owner's Authorized Representative.
- 4.9(e) Remedies for Delay.** Contractor is not entitled to recover from Owner any additional compensation or impact or other damages on account of any delay or disruption to work flow, whether caused in whole or in part by Owner or others. Contractor's sole remedy for such delay will be an extension of time to perform, which will be subject to Owner's written approval. Contractor must make any request for an extension of time within three (3) calendar days of the event giving rise to the request. The request must be in writing and reasonably detailed, including without limitation specifying the cause of the delay and the anticipated number of delay days. Contractor's failure to timely deliver a request constitutes conclusive and no rebuttable evidence that no time extension is due.

Section 5. CHANGES TO WORK

- 5.1 Owner's Right to Change Work.** During the course of the Work, Owner may make changes to the scope of the Work, including additions to and deletions from the scope of the Work. Owner will request a Change Order from Contractor for each change. Owner may also authorize an extension or shorten the time required to perform the Work, and/or change the Work as described in the Scope of Work, by requesting a Change Order from the Contractor or by issuing a FPO to the Contractor describing the Work. Work performed under a Change Order, FPO, or TMA is subject to all of the terms and conditions of the Contract Documents.
- 5.2 Contractor's Compensation for Change Order.**
- 5.2(a) Mutually Agreed Upon Change.** If a Change Order increases or decreases the scope of the Work, then the Contract Price will be adjusted accordingly as mutually agreed upon by the parties. All mutually accepted changes to the Work and the Contract Price will be fully set forth in a written Change Order signed by both parties.

- 5.2(b) Proceeding Without Agreement.** If the parties cannot agree within five (5) Business Days after Owner delivers the proposed Change Order as to whether any particular work is a change to the Work, or should result in adjustment to the Contract Price, or the amount of the adjustment, Contractor must nonetheless timely perform the alleged changed or extra work, if directed to do so in writing by Owner's Authorized Representative. If Contractor believes that the Contract Price must be increased because of the changed or extra work, Contractor must submit a written "Notice of Intent to File Claim for Additional Compensation." within five (5) Business Days after Owner's Authorized Representative delivers written direction to proceed with the changed or extra Work. Contractor's Notice must reasonably describe the basis for the requested adjustment to the Contract Price. Contractor must keep and submit to Owner on a daily basis a complete breakdown of all costs incurred for the extra Work, including a labor breakdown by name of person, hours worked, and task performed for each worker performing the extra Work as well as a similar breakdown for all equipment used and copies of all invoices and delivery tickets for materials used.
- 5.2(c) Requirement of Notice.** Contractor's failure to timely deliver a "Notice of Intent to File a Claim for Additional Compensation", or maintain and deliver an accurate cost breakdown and supporting documentation, constitutes conclusive and no rebuttable evidence that no changed or extra Work was performed and that no payment for the alleged changed or extra Work is due to Contractor. No notice by Contractor or Owner is required if the change will result in a reduction in the Contract Price.
- 5.2(d) Calculation of Price Adjustment.** In the absence of agreement as to the amount of the Contract Price adjustment to be made for any changed or extra Work, the increase or decrease to the Contract Price will be determined on the basis of: (1) unit prices, if any, set forth in the Master Agreement, unless calculating the adjustment in this manner would be inequitable; (2) Direct Costs plus a mark-up, (any increase or decrease in Direct Costs, as defined in the Master Agreement, plus or minus a mark-up of not more than fifteen percent (15%) for Work performed directly by Contractor and an aggregate of five percent (5%) for Work performed by all tiers of subcontractors, for an aggregate mark-up not to exceed twenty percent (20%)); or (3) the stated price, if the item of Work is separately priced in the Master Agreement. Labor rates in connection with any change are those set forth in the Master Agreement. In any case, Contractor will deliver to Owner information reasonably acceptable to Owner substantiating the claimed adjustment.
- 5.3 Requirement of Writing.** The scope of Work, Construction Schedule and Contract Price may be changed only by a written Change Order, or FPO signed by Owner. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any change in the Work, whether or not there is in fact any unjust enrichment, will be the basis for any claim for an increase in the Contract Price.
- 5.4 Contractor's Compensation for Field Purchase Order (FPO).** Contractor will be compensated for any work performed pursuant to the terms and in the amount set forth in the FPO.

Section 6. PAYMENTS

- 6.1 Contract Price.** Contractor must perform the Work for the Contract Price set forth in the Contract. The Contract Price covers all costs, foreseen or unforeseen, incurred or to be incurred by Contractor to perform and complete the Work, including without limitation, all applicable labor, materials, payments to subcontractors or suppliers, rental charges, sales, use and other similar taxes, multiple move-ins, communication and copying costs, insurance premiums, taxes, applicable permit fees, testing fees, royalty and license fees, utility charges, guaranties and maintenance bonds required by the Contract Documents, as well as Contractor profit and overhead.
- 6.2 Changes to Contract Price.**
- 6.2(a) Requested Price Change.** If Contractor experiences a change in its cost to complete the Work, Contractor may propose a price increase or decrease to Owner on sixty (60) days' prior written notice. Contractor must justify any requested price increase with adequate documentation demonstrating an increase in Contractor's price for labor, materials, supplies, overhead or equipment necessary for completion of the Work. Owner has the sole discretion to accept, reject or modify Contractor's proposed adjustment.
- 6.2(b) Price Change Procedure.** If after a review of Contractor's proposed adjustment and documentation Owner approves a price change, a written Change Order will be issued and executed by Owner and Contractor setting forth the new agreed-upon Contract Price. Any adjustment under this Section will apply only to Work to be performed on the project that is begun after the date the Change Order is fully executed. Contractor must complete all Work on the project that was started prior to the date a Change Order is fully executed at the agreed upon Contract Price in effect prior to that date or in a prior Change Order.
- 6.2(c) Termination of Contract.** If Owner and Contractor cannot reach agreement on a new Contract Price, Owner may terminate the Contract, and may terminate this Master Agreement as well, under Section 10.2. Any and all Work not completed on the project that was started prior to the date of termination will continue to be governed by the Contract Documents as if the Contract and/or Master Agreement had not been terminated.
- 6.3 Payment Terms.**
- 6.3(a) Payment Procedure.** Unless otherwise specified in the Contract, Owner will pay Contractor, within thirty (30) days after the date of the receipt of an invoice, accompanied by either a Payment Request Form or a FPO, depending on which payment method applies to the applicable Contract, meeting the criteria set forth in Section 6.4, of the amount which Owner's Authorized Representative reasonably determines to be due to Contractor under Contracts. Owner may pay any or all billings by joint check, as necessary to protect Owner.
- 6.3(b) Unit Prices.** Where the Contract Price is determined based on unit prices, Contractor must keep complete and accurate records of the quantities of all Work performed according to the Bid Forms submitted by the Contractor.

6.3(c) Partial and Final Payment. Owner will make final payment to Contractor of the balance due to it under the Contract thirty (30) days after receipt of Contractor's final invoice following the Completion of Work and after receipt of documentation, as defined in Section 4.4(b) of this Master Agreement. No partial payment to Contractor will operate as approval and/or acceptance of Work done or materials furnished. Any partial payment or payments made by Owner to Contractor will be subject to final audit and adjustment and Contractor must reimburse Owner in the event there is any overpayment. The acceptance by Contractor of final payment constitutes a release by Contractor in favor of Owner and its surety of any claims and/ or liens against Owner and Owner's property in any way arising under or by virtue of the Contract Documents, except for written claims in stated amounts submitted to Owner prior to final payment.

6.3(d) Condition Precedent to Payment. As a condition precedent to any payment becoming due, Contractor must previously have provided to Owner: (1) the certificates of insurance (or policies) required under this Master Agreement; (2) Contractor's employer tax identification numbers and any business licenses that apply to the Work; and (3) evidence of payment to and/or lien waivers and releases from laborers, any applicable union trust fund, subcontractors, suppliers, and others with respect to labor, materials and services furnished to Contractor for the Work, all in a form satisfactory to Owner.

6.4 Billing.

6.4(a) Billing Procedures. For Contracts being administered without using Auto Voucher Procedures, invoices must meet the following criteria:

- (1) Each invoice must show the following and be accompanied by a Payment Authorization Form:
 - Project Name
 - Project Number
 - Contract Number or FPO Number
 - Change Order number, if applicable
 - Pay item number, description of item or draw breakdown invoiced and dollar amount (percentage only will not be accepted).
 - Name of Owner's Authorized Representative
- (2) Necessary lien releases, on Owner's standard forms with original signatures, invoice numbers, phase numbers from Contractor and all subcontractors and suppliers.
- (3) Final draw or retention, if applicable, will be billed separately, thirty (30) days after the Completion of Work and receipt of documentation, as defined in Section 4.4(b) of this Master Agreement.
- (4) All invoices must be submitted for payment no more than ninety (90) days after Completion of Work. No invoices will be paid that are received by Owner more than ninety (90) days after the Completion of Work.

- (5) Contractor's certification that (1) all information contained in the invoice is true and correct, (2) Contractor is not aware of any basis for the filing of any mechanic's lien, materialmen's liens, stop notices, security interests or other liens in connection with the Work and (3) all due and payable bills have been paid to date, or will be paid with the proceeds of the invoice.

6.5 Payment Offset Rights ("Back Charges").

- 6.5(a) Right to Withhold Payment.** Owner has the right, but is not required, to deduct from any amounts due to Contractor an amount sufficient to completely protect Owner against any and all Losses arising from Contractor's breach of this Master Agreement or the Contract, including without limitation the following: (1) defective work not remedied in a timely fashion; (2) the assertion by third parties of any claim or lien against Owner or its surety or the Site arising out of Contractor's performance of the Work, including claims covered by insurance until the claims are accepted without a reservation of rights by the Contractor's insurer; (3) unsatisfactory progress by Contractor; (4) failure by Contractor to diligently perform punch-list, clean-up, or warranty work; and (5) damage caused by Contractor to the work or property of Owner or other contractors.

If Owner exercises this right in good faith, Contractor is not entitled to any interest whatsoever on the money so withheld regardless of the resolution of the dispute. When the cause for any withholding has been remedied by the Contractor to the Owner's reasonable satisfaction, the amount of such withholding will be paid.

- 6.5(b) Offset Against Any Contract.** Owner may offset against any payment otherwise due Contractor any sum due from Contractor as a result of a breach of the Contract Documents or any other agreement, which Contractor has or did have with Owner.

- 6.5(c) Payment by Contractor.** If there are no sums due to Owner from Contractor, or the sums are insufficient to cover the amounts owed by Contractor to Owner, Owner will invoice Contractor for the amount due and Contractor must submit payment within thirty (30) days. Interest will accrue at the highest rate permitted by law on any amount not paid in thirty (30) days.

- 6.5(d) Books and Records.** Contractor must maintain full and accurate records and books of account necessary to document: (a) All activities undertaken by or on behalf of Contractor in the course of the Work including without limitation all testing, sampling and other work performed by Contractor, its agents and subcontractors; and (b) except for work for which compensation is entirely on a fixed price basis, all charges, expenses and disbursements paid or incurred by Contractor, its agents and subcontractors in performing the Work. Books of account must be kept in accordance with generally accepted accounting principles consistently applied or in another auditable form agreed to by Owner in advance and in writing. Contractor must make all such books and records available to Owner for inspection and copying upon request during normal business hours for a period of at least five (5) years after the Completion of Work under each Contract.

Section 7. WARRANTY

- 7.1 Requirement of Quality.** Contractor warrants to Owner that (a) all materials and equipment furnished by Contractor are new (unless otherwise specified in the Contract Documents) and of good quality, (b) the Work is of first-class workmanship and free from defects and (c) the Work conforms with Applicable Requirements, the Contract Documents, where applicable. Any portion of the Work not conforming to these standards, including any substitutions not properly authorized, is deemed defective.
- 7.2 Two Year Warranty.** Contractor guarantees all materials and workmanship for a period of two (2) years from the Completion of the Work as directed in the Contract. The warranty period for any corrected portion of the Work will be extended until one (1) year after each correction. This special two-year warranty is in addition to other contractual, implied and statutory warranties. Nothing contained herein will be deemed to limit Contractor's liability for latent or patent defects or any statutory or implied warranties and it has no relationship to the time within which other obligations of Contractor under the Contract Documents may be enforced.
- 7.3 Correction of Work.** As between Owner and Contractor, if any portion of the Work is found to be defective (a) prior to the Completion of Work or (b) during the warranty period, or such longer period of time as may be prescribed by the Contract Documents or Applicable Requirements, then Contractor must promptly repair or replace it to Owner's satisfaction. Contractor must perform all necessary corrections within the shortest time possible, and must use overtime help and time saving procedures as Owner may require. If Contractor fails to initiate proper corrective action within twenty-four (24) hours after notice from Owner, fails to keep a confirmed appointment with Owner or Owner's customer, or in the event of an emergency, the problem may be corrected by Owner, at Contractor's cost.
- 7.4 Cost of Corrections.** Contractor is responsible for all costs arising out of defective Work, including without limitation all costs of detection, correction or delay, Owner's personnel and other costs allocable to troubleshooting, administration and the like, re-testing and reinspection costs, any consequential or other damages suffered by Owner and the cost of repairing or replacing all other work adversely affected.
- 7.5 Trained Warranty Personnel.** Contractor warrants that it has employees trained or will train employees to perform warranty work. Contractor must provide specific warranty training as directed by Owner, and must provide Owner with a current list of these warranty service providers upon request. Contractor will dispatch ONLY such specially trained individuals to repair or replace Work found to be defective under the terms of the above warranty.
- 7.6 Product Warranties.** Contractor shall provide Owner with copies of all product warranties, which relate to any materials or equipment (collectively referred to as products) installed by Contractor, including all documentation required to be provided to Owner pursuant to Section 4.4(b) above.

Section 8. CONTRACTOR'S INDEMNITY

- 8.1 Defense and Indemnity.** To the maximum extent, permitted by law, Contractor shall defend, indemnify and hold harmless the Town of Estes Park and its officers, directors,

agents, employees, successors and assigns (collectively, "Indemnity") from all losses, claims (including, without limitation, personal injury, bodily injury, death of persons or damage to property), demands, allegations, damages, actions, obligations, causes of action, judgments, liabilities, costs and expenses (including, without limitation, attorneys' fees, investigation costs, disbursements and court costs incurred as a result of such claims or in enforcing this indemnity provision, at trial and on appeal) (collectively, "Indemnity Losses") arising out of, in connection with, or resulting from:

- (a) Any breach by or default of Contractor under this Agreement, including, without limitation, the failure of the Work to comply with Contract Documents, deviations in the Work from any plans or specifications provided by Owner; and/or defects in the Work;
- (b) Any alleged or actual infringement or violation of any trademark, patent, copyright, unfair trade or other intellectual property rights arising in connection with the Work, except where Owner specifies a particular process or product of a particular manufacturer and Contractor does not know, and reasonably should not know, of any infringement or violation;
- (c) The injury or death of any person (including Contractor's and its subcontractors' and suppliers' officers, directors, agents or employees) or damage to property of any kind (including loss of use) arising out of or in any way connected with any of the following acts or omissions by Contractor, its subcontractors, suppliers or others under the control of Contractor or for whom Contractor is responsible:
 - i. Any willful misconduct or other intentionally wrongful acts;
 - ii. Any acts or omissions giving rise to punitive damages;
 - iii. Any acts or omissions in connection with ownership, maintenance, use (including transport of mobile equipment) or loan to others of aircraft, automobiles or watercraft owned or operated by or leased or loaned to Contractor, its subcontractors or suppliers or others under the control of Contractor or for whom Contractor is responsible; or
 - iv. Any negligent act, error or omission of Contractor, its subcontractors, suppliers or others under the control of Contractor or for whom Contractor is responsible in connection with the Project, including, without limitation, the negligent performance of, or errors or omissions in, the performance or non-performance of the Work.

The defense and indemnity obligations in Section 8.1 will apply regardless of whether the event giving rise to the defense and indemnity obligation is caused in part by the negligence (passive or active), breach of warranty or strict liability of Owner, its architect, engineer, or any Indemnity, but will not apply as to Owner or a particular Indemnity if the Loss is caused solely by the negligence or willful misconduct of Owner or that Indemnity, respectively, or solely by defects in designs furnished by Owner. Contractor's obligation to indemnify under this Section 8 is independent from and in addition to Contractor's duty to defend.

- 8.2 Subcontracts.** Contractor shall incorporate the provisions of this Section 8 in written contracts with its subcontractors and suppliers.

- 8.3 **Survival.** The provisions of this Section 8 shall survive the Completion of Work and the expiration or earlier termination of this Master Agreement and/or the Contract.

Section 9. INSURANCE AND BONDS

- 9.1 **Business Auto Liability Insurance and Workers Compensation and Employer's Liability Insurance**

9.1(a) **Business Auto Liability Insurance.** Contractor and subcontractors must secure and maintain at their own cost Business Auto Liability Insurance in the amount of \$1,000,000 each occurrence combined single limit for bodily injury and/or property damage liability, including coverage for:

- (a) Owned automobiles.
- (b) Hired or borrowed automobiles.
- (c) Non-owned automobiles.

Contractor must provide a Certificate of Insurance to Owner evidencing such coverage prior to commencing the Work. The Certificate must include endorsements (1) naming Owner, the owner of the Project, and such additional parties as Owner reasonably designates, as additional insureds and (2) providing thirty (30) days' written notice to Owner in the event of cancellation or material reduction in coverage, except for non-payment of premiums for which notice will be ten (10) days.

9.1(b) **Worker's Compensation and Employer's Liability Insurance.** Contractor and subcontractors must secure and maintain, at their own cost, Worker's Compensation and Employer's Liability Insurance for all operations. Worker's Compensation insurance shall include coverage under the U.S. Longshoremen's and Harborworker's Act, if applicable. The Worker's Compensation insurance shall be in the form and amount required by applicable statute. The Employer's Liability minimum limits are as follows:

- (a) \$1,000,000 each accident
- (b) \$1,000,000 each Disease - Policy Limit
- (c) \$1,000,000 Disease – Each Employee

Contractor and subcontractors must provide a certificate of insurance evidencing such coverage prior to commencing the work. The Worker's Compensation policy must contain endorsements providing (i) waiver of subrogation in favor of The Town of Estes Park and (ii) 30 days written notice to The Town of Estes Park in the event of cancellation or reduction in coverage, except for non-payment of premiums, for which notice must be ten days.

- 9.2 **Certificates.** Owner will provide all contractors and subcontractors with appropriate evidence of insurance. A separate policy will be issued to each contractor and subcontractor for workers' compensation and employer's liability insurance. General liability insurance will be covered through a master policy. A certificate of insurance will

be issued to each covered contractor and subcontractor as evidence of the general liability insurance.

9.3 Contractor's Responsibilities. Contractors and subcontractors must cooperate with Owner and Owner's insurance administrator. Contractor's and subcontractors' responsibilities include without limitation timely (a) providing necessary contract, operations and insurance information, (b) notifying Owner's insurance administrator of all subcontracts awarded, (c) maintaining and providing monthly payroll records and other records as necessary for premium computation, for a period of at least one year after the Completion of Work (which Owner and insurance companies may audit periodically), (d) complying with loss control, safety, accident prevention and claims reporting and handling procedures, and other procedures specified in the insurance manual to be provided by Owner, (e) maintaining the OSHA 200 Log to be provided monthly to Owner and (f) notifying their insurance brokers and insurers of the coverage provided and immediately reporting all new subcontractors to Owner for potential enrollment. Contractor's failure to meet the timely reporting requirements to Owner's insurance administrator will subject Contractor to paying (as set forth in Section 9.5 below) premiums estimated by Owner's insurance administrator that may otherwise exceed costs determined from timely reports by Contractor. The procedure for Owner's estimating Contractor's premium obligations are as set forth in Owner's Insurance Manual as may be adjusted from time to

9.4 INSURANCE

Contractor must secure and maintain, at its own cost, the following insurance coverage and must provide evidence of such insurance via a certificate of insurance.

9.4(a) Worker's Compensation and Employer's Liability Insurance shall be as specified in Section 9.1(b).

9.4(b) General Liability Insurance shall be on an occurrence basis with minimum limits as follows:

- (a) \$1,000,000 – Each Occurrence
- (b) \$2,000,000 – General Aggregate

General Liability Insurance must include the following coverage:

- (i) Independent Contractor's coverage (liability which Contractor may incur as a result of the operations, acts or omissions of subcontractors, suppliers and their agents or employees);
- (ii) Blanket Contractual coverage, including both oral and written contracts and including obligations assumed by Contractor under this Agreement (including without limitation, coverage to the maximum extent possible for the indemnification contained in this Agreement);
- (iii) Personal injury coverage;
- (iv) Broad Form Property Damage coverage, including completed operations;
- (v) An endorsement naming Owner and such additional parties as Owner designates as additional insureds. The endorsement must be ISP Form CG2012 11/85 Edition or its equivalent. The endorsement must cover the acts of subcontractors or suppliers;

- (vi) An endorsement providing the insurance is primary as respects Owner, and any insurance maintained by Owner is excess and non-contributing; and
- (vii) An endorsement providing 30 days written notice to Owner in the event of cancellation or reduction of coverage, except for non-payment of premiums, for which notice must be ten days.
No endorsement limiting or excluding a standard coverage is permitted. Claims-made coverage or modified occurrence is not acceptable.

9.4(c) Business Auto Liability Insurance shall be as specified in Section 9.1(a).

9.4(d) Additional Insurance. Other insurance, in an amount as specified by Owner in any Contract, if required by Owner for a particular Scope of Services.

9.4(e) Insurance Requirements and Limitations.

9.4(e)(1) Certificates and endorsements in a form reasonably acceptable to Owner demonstrating compliance with the above requirements (or at Owner's request) certified copies of the actual policies) must be delivered to Owner before Contractor performs any Services.

9.4(e)(2) All insurance specified herein or in contract documents to be furnished by Contractor must be issued by a company or companies, which maintain a full profile rating from AM Best of at least A-VIII unless expressly modified in writing by Owner.

9.4(e)(3) Contractor must maintain all of the above insurance coverage in force until final Completion of Services, or earlier cancellation of this Agreement or termination of any Contract, except that the Professional Liability Insurance must be maintained for a period of three years after said date, and if written on a claims made basis must be retroactive to the date Services were first rendered under this Agreement.

9.4(e)(4) If Contractor fails to purchase or maintain the insurance herein specified, Owner will have the right, but not the obligation, to purchase such insurance on behalf of and at Contractor's cost. Contractor must deliver all information required to facilitate Owner's purchase. If Contractor's insurance does not comply with the above requirements, Town of Estes Park will have the right to charge Contractor any additional premium charged by Owner's insurer.

9.4(e)(5) The use of self-insured retentions or deductibles for professional liability coverage in excess of \$50,000 or self-insured retentions or deductibles in excess of \$10,000 for all other coverage required by this Section 9 will not be allowed unless specifically approved by Owner in advance and in writing. Contractor is fully responsible for payment of any self-insured retentions or deductibles, regardless of their amount.

9.4(e)(6) The insurance requirements set forth herein will not limit Contractor's obligations under this Agreement or any Contract. The requirements simply represent the minimum amounts of insurance coverage required

to be maintained by Contractor. Any failure by Owner to enforce any of these provisions in a timely manner will not act as a waiver of enforcement of any of the provisions at a later date.

9.4(e)(7) Owner and Contractor waive all rights against each other and subcontractors, suppliers, agents and employees of each other, for damages caused by fire or other perils to the extent covered by property insurance applicable to the Services, but only to the extent that such insurance policies permit such waiver. Each party will obtain a waiver of subrogation endorsement to the policies required to be obtained by it, if applicable.

- 9.5. **Bonds.** At any time prior to commencement of any Work, Owner may require Contractor to furnish to Owner, at Owner's expense, a Performance Bond and or Payment Bond each in an amount specified by Owner, but not to exceed the Contract Price (without bond premiums). The bonds must be in a form and executed by a corporate surety satisfactory to Owner. If Owner demands the bonds, Contractor must not commence any Work until it has furnished the bonds and they have been accepted by Owner.

Section 10. TERMINATION

10.1 Termination for Default.

10.1(a) **Causes for Termination.** Owner, at its option, may terminate Contractor's right to further perform under the Contract Documents and complete the performance of the Work if Contractor breaches a material provision of the Contract Documents, and such failure or default, if curable, is not corrected within forty-eight (48) hours after written demand by Owner. A material breach includes, without limitation, any of the following: (1) Contractor files, or is the subject of, a petition for bankruptcy, (2) Contractor makes a general assignment for the benefit of its creditors, (3) a receiver is appointed on account of Contractor's insolvency, (4) a writ of execution or attachment or any similar process is issued or levied against any bank accounts of Contractor, any property or assets of Contractor being used or required for use in the performance of the Work or any substantial portion of any other property or assets of Contractor, (5) Contractor fails to make prompt payment to employees, laborers, subcontractors or suppliers, (6) Contractor refuses or neglects to supply a sufficient number of properly skilled workers or a sufficient quantity of material, (7) Contractor fails to properly and diligently prosecute the Work or (8) Contractor fails to perform the work in accordance with the Applicable Requirements or the Contract Documents.

10.1(b) **Completion of Balance of Work.** If Owner terminates the Contract under 10.1(a), Contractor will not be entitled to receive any further payment under the Contract Documents until the Completion of Work and expiration of the period in which any lien may be filed. If the unpaid balance of the Contract Price exceeds the expense incurred by Owner to finish the Work, any excess remaining, after deducting any other amounts due Owner under Section 6.5, will be paid to Contractor. If the expense exceeds the unpaid balance, Contractor must immediately pay the difference to Owner.

10.1(c) Non-Exclusive Remedy. Owner's right to terminate Contractor's right to perform under this Section 10.1 is in addition to and not in limitation of any other rights or remedies existing under the Contract Documents, at law or in equity, including without limitation the right to recover damages from Contractor. Should any competent authority with jurisdiction, whether an arbitrator or a court, determine that Owner's termination for cause was in error and that Owner was in breach for so terminating Contractor, the termination will be deemed a termination for convenience and Contractor's remedies will be limited to those provided in Section 10.2.

10.2 Termination for Convenience.

10.2(a) Termination Procedure. At any time and for any or no reason Owner may terminate: (1) any or all of the Contract(s); and, (2) this Master Agreement for Owner's convenience by written notice to Contractor. Unless the notice directs otherwise, upon receipt of such notice, Contractor must immediately discontinue the Work and the placing of orders for materials in connection with the Work, and if requested, must make every reasonable effort to procure cancellation of all existing orders or subcontracts upon terms satisfactory to Owner, or at Owner's option give Owner or Owner's assignee the right to assume and receive all benefits to be derived from those obligations directly.

10.2(b) Contractor's Compensation. Upon termination under this Section 10.2, Contractor will be entitled, as its sole compensation, to the lesser of: (1) the actual, verifiable direct costs of the Work completed, plus a markup of fifteen percent (15%) aggregate, for Contractor and subcontractors and suppliers of all tiers, on those Costs for all indirect costs, impact costs, field supervision, administration, overhead and profit, or (2) the percentage of Work completed multiplied by the Contract Price, minus (in both clauses (1) and (2)) the amount of any payments made to Contractor prior to the date of termination and any amounts owed to Owner by Contractor under the Contract Documents. Contractor will not be entitled to any claim against Owner for unearned compensation, lost profits, lost opportunities or other damages.

10.3 Suspension. At any time and for any or no reason Owner may suspend the Work for Owner's convenience by written notice to Contractor. Upon such suspension, Contractor will be entitled to compensation as outlined in Section 10.2 above for termination for convenience. Contractor will not be entitled to recover from Owner, on account of such suspension, any additional compensation or damages which Contractor incurs as a result of the suspension and subsequent start-up. If the Work is suspended, and then recommenced, the time for performance will be extended by the number of days the Work was actually delayed. If a suspension continues for more than one (1) year, Contractor as its sole remedy will have the option of terminating the Contract(s) on thirty (30) days' written notice to Owner.

Section 11. DISPUTE RESOLUTION PROCEDURE

11.1 Disputes. For any and all disputes between The Town of Estes Park and Contractor, the parties will endeavor to resolve all such disputes through good faith negotiations. If the parties are unable to negotiate a mutually acceptable resolution, the parties agree to appoint a third party mediator,

whose fees they will split evenly. The parties agree to meet in good faith with the mediator in order to attempt to resolve the dispute. Pending final resolution of any claim, Contractor will proceed diligently with performance of the Work (unless Owner directs otherwise in writing) and Owner will continue to make payments not the subject of the particular dispute in accordance with this Master Agreement and any applicable Contracts.

Section 12. CONFIDENTIAL DISCLOSURE

- 12.1 Information Furnished by Owner.** Information and ideas disclosed to Contractor in connection with the Contract Documents at any time in any form (including without limitation, orally, or in Plans, Specifications, software or other materials) which Owner considers proprietary and so indicates to Contractor at the time of disclosure or within a reasonable time after disclosure (*"Proprietary Information"*) are entrusted to Contractor only for use on behalf of Owner. Contractor must keep Proprietary Information in confidence and must neither use (other than in performance of the Work) nor disclose Proprietary Information except as authorized in writing by Owner. However, Contractor is not liable for use or disclosure of any Proprietary Information which is shown by clear and convincing proof to either have been known to Contractor at the time of receipt from Owner or to be in the public domain.
- 12.2 Information Developed by Contractor.** Information and ideas developed by Contractor under or in the course of performing the Work are owned by Owner and if Owner so indicates to Contractor, such information and ideas will be treated as Proprietary Information in accordance with Section 12.1.
- 12.3 Ownership and Use of Documents.** The Contract Documents are and will remain the property of Owner. Contractor must return or satisfactorily account for all Contract Documents upon termination or expiration of the Contract Documents and the Completion of Work.
- 12.4 Confidentiality.** Contractor must not divulge information concerning the Work (including for example, cost information in applications of permits and approvals) to anyone other than the core team (consisting of Contractor, Owner and their respective authorized consultants, subcontractors and suppliers) without Owner's prior written consent unless the information has been made public by Owner. Owner reserves the right to release all information as well as to time its release, form and content. Contractor must ensure that each of its employees, agents, subcontractors and suppliers, who now or subsequently are assigned to perform the Work, will comply with the confidentiality obligations set forth in this Section 12. Contractor must include these obligations in written contracts with agents, suppliers and subcontractors. These requirements will survive termination or expiration of the Contract Documents and the Completion of Work.
- 12.5 Requests for Disclosure.** In the event any third party, including a governmental agency, requests verbal or written information from Contractor, Contractor must immediately notify Owner of such request by telephone, with written confirmation within three (3) days. Contractor must oppose any request on such grounds as Owner may have, or as directed by Owner, whether by legal process or otherwise. In such event, Owner will reimburse the reasonable expense of Contractor's counsel. In the event the request is before any tribunal, Contractor must advise the tribunal of the confidential or privileged nature of the data requested. If Contractor is nevertheless required pursuant to judicial or administrative order to disclose the information, it may do so.

Section 13. MISCELLANEOUS

- 13.1 Notice.** Notices or communications with respect to routine performance and administration of the Work must be given by such means as may be appropriate to provide adequate communication, including written confirmation as necessary.

All other notices, consents, requests, demands or other communications to or upon the respective parties must be in writing and will be effective for all purposes upon receipt on any Business Day before 5:00 PM local time and on the next Business Day if received after 5:00 PM or on other than a Business Day, including without limitation, in the case of (a) personal delivery, (b) delivery by messenger, express or air courier or similar courier, (c) delivery by United States first class certified or registered mail, postage prepaid and (d) transmittal by telecopier or facsimile, addressed to the parties at their respective addresses, as set out in the Contract or, if before any Contract, at the addresses below the parties' signatures. A **"Business Day"** is any day other than a Saturday, Sunday or federal or state legal holiday.

- 13.2 No Waiver.** Waiver by either party of any breach of this Master Agreement will not constitute a waiver of any subsequent breach of the same or any other provision.

- 13.3 Interpretation.** The Section numbers are not part of the Master Agreement and may not be used for any interpretation of the meaning of this Master Agreement. They are supplied solely for convenience in locating provisions of the Master Agreement.

- 13.4 Governing Law; Severability.** The performance and interpretation of the Contract Documents is governed by the internal laws of Colorado. If any provision of the Contract Documents is held to be invalid, in whole or in part, under any applicable federal, state, municipal or other law, ruling or regulation, then that provision will remain in effect to the extent permitted, and the remaining provisions will remain in full force and effect.

- 13.5 No Assignment by Contractor.** Contractor may not assign, by operation of law or otherwise, any of its rights or obligations under the Contract Documents without Owner's prior written consent, which may be granted or withheld in Owner's sole discretion. The making of any assignment by Contractor, or any consent to it by Owner, will in no event relieve Contractor, or its surety, of any of its obligations under the Contract Documents. This Section 13.5 does not apply to the subcontracting by Contractor of a portion of the Work, under the Contract Documents. Subject to the above, the Contract Documents are binding upon and will inure to the benefit of the successors and permitted assigns of the parties.

- 13.6 Independent Contractor.** Contractor is an independent contractor, and nothing in the Contract Documents may be construed to create a principal-agent, partnership, employer-employee or other relationship between Owner and Contractor. Contractor is solely responsible for directing, supervising and bearing all costs associated with its officers and employees, including without limitation (a) payroll taxes and health and other benefits and (b) federal and state taxes and insurance and contributions for social security and unemployment which are measured by wages, salaries or other remunerations paid to Contractor's employees.

- 13.7 No Third Party Beneficiaries.** No provision contained in the Contract Documents creates or gives to third parties any claim or right of action against Owner or Contractor.

- 13.8 Fair Construction.** The Contract Documents must be construed as a whole in accordance with their fair meaning.

- 13.9 **Attorneys' Fees.** In any default of the terms and conditions of this Master Agreement, the non-defaulting party shall be entitled to reasonable attorney's fees and court costs from the defaulting party.
- 13.10 **Early Use By Owner.** In its sole discretion, Owner will be permitted to occupy and/or use any portion of the Work, which has been either partially or fully completed by Contractor before the Completion of Work. This use or occupancy will not relieve Contractor of its warranty obligations to make good, at its own expense, any defect in materials, equipment or workmanship. Contractor will not be responsible for the maintenance of such portion of the Work as may be used and/or occupied by Owner, or for any damages whose proximate cause is Owner's sole negligence or willful misconduct.
- 13.11 **Condition Precedent.** A condition precedent to the effectiveness of this Master Agreement is the execution and delivery of a Contract by Owner.
- 13.12 **Survival.** Indemnities, insurance requirements, confidentiality requirements, representations and warranties, and other provisions which by their nature are intended to continue after the Completion of Work, will survive expiration or termination of the Contract Documents and the Completion of Work.
- 13.13 **Integration; Amendments.** This Master Agreement contains the entire understanding between the parties and supersedes any prior written or oral agreements respecting the subject matter of this Master Agreement. There are no representations, agreements or understandings, oral or written, between the parties relating to the subject matter of this Master Agreement, which are not fully expressed in this Master Agreement. No act, usage or custom will be deemed to amend or modify this Master Agreement. This Master Agreement may not be modified or amended except in writing signed by the party against whom enforcement is sought.

The parties have executed this Master Agreement as of the Effective Date.

OWNER: Town of Estes Park

By: _____
Authorized Agent

By: _____
Authorized Agent

Address for Notices:

Town of Estes Park
170 MacGregor Avenue
Estes Park, CO

CONTRACTOR:

By: _____

Name: _____

Title: _____

Date: _____

Address for Notices:

Phone: _____

Fax: _____

Emergency Phone: _____

Contractor's Tax I.D. No. _____

Contractor Contacts:

Role	Contact Name	Phone/E-mail
Accounting:		
Bid Contact:		
Contract Signer:		
Owner/Principal:		

END OF SECTION

SECTION 005205

TOWN OF ESTES PARK CONTRACT AGREEMENT

THIS AGREEMENT is effective as of the ___ day of _____, 2012 by and between the Town of Estes Park (TOEP), a body corporate and political, P.O. Box 1200, Estes Park, Larimer County, Colorado, 80517, (hereinafter called OWNER) and _____ (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Project Name here

Approximate quantities for the major items are as follows:

1. Major item
2. Large item
3. Next items
4. Another item

Article 2. PROJECT MANAGER

The Project Manager shall be determined by the TOEP Public Works Department, and who is hereinafter called PROJECT MANAGER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to PROJECT MANAGER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIMES

The Work must be completed by DATE , 2012, and ready for final payment in accordance with the General Conditions subject to applicable laws regarding final payment.

Article 4. CONTRACTOR PRICE

OWNER shall pay the CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to the unit prices times the quantities of work actually completed. Unit prices are those shown in the Proposal and . Quantities of work actually completed will be determined by the PROJECT MANAGER.

Article 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with the General Conditions. Applications for Payment will be processed by the PROJECT MANAGER as provided in the General Conditions.

- 5.1 *Progress Payments; Retainage.* OWNER shall make progress payments per the Town's Annual Vendor Payment Schedule on account of the Contract Price on the basis of CONTRACTOR's applications for Payment as recommended by PROJECT MANAGER, as provided by the General Conditions during construction as provided in paragraphs 5.1.1 and 5.2 below.
- 5.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as PROJECT MANAGER shall determine, or OWNER may withhold, in accordance with the General Conditions.
- a. Ninety-five percent (95%) of Work completed (with the balance being retainage).
 - b. Ninety-five percent (95%) with the balance being retainage of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in the General Conditions).
- 5.2 *Final Payment.* Upon final completion and acceptance of the Work in accordance with the General Conditions, OWNER will publically advertise the Project Completion for two weeks. Should no liens be officially posted the Owner shall pay the remainder of the Contract Price as recommended by PROJECT MANAGER as provided in the General Conditions.

Article 6. INTEREST

Following settlement of any claims posted again this Contract; final payment will be made in accordance with the Town's Annual Vendor Payment Schedule. All moneys not paid when due as provided in paragraph 27 of the General Conditions shall bear interest at the rate of 10% per annum compounded monthly.

Article 7. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including any

- Addenda(s)) and the other related data identified in the Bidding Documents including "technical data".
- 7.2 CONTRACTOR has reviewed the site, and become familiar with, and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance or furnishing the Work.
- 7.3 CONTRACTOR acknowledges he knows, understands, and accepts all plans, specifications, and design intent of the Work.
- 7.4 CONTRACTOR acknowledges he has met with the Project Manager and has been in correspondence with the Project Manager and has sought and received clarification of all issues concerning construction and design.
- 7.5 CONTRACTOR assumes full responsibility and obligation for high quality workmanship and timely completion of this project as illustrated by the plans, drawings, and specifications.
- 7.6 CONTRACTOR understands that he may make on-site layout and grading and construction modifications to achieve the desired intent. Such modifications/grading changes and layout cost are already included in the Contract Documents.
- 7.7 CONTRACTOR understands and acknowledges that this Agreement is a performance based Agreement, either based on: 1) unit prices 2) maximum lump sum amount: totaling \$ dollar value here that shall not be exceeded or increased, except for contract changes allowed, agreed, and approved in writing.
- 7.8 CONTRACTOR will work cooperatively with the PROJECT MANAGER to mutually achieve a final product acceptable to OWNER.
- 7.9 CONTRACTOR shall indemnify, save and hold harmless the OWNER from all damages, claims, and judgments whatsoever (including costs, legal fees, and expenses incurred by the OWNER related to such damages or claims) to the OWNER or claimed by third parties against the OWNER, arising directly or indirectly out of CONTRACTOR'S negligent performance of any of the requirements, provisions, or services furnished under this Agreement.
- 7.10 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all examinations, investigations, explorations, tests, reports and studies which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance of furnishing the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 9 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by the CONTRACTOR for such purposes.

- 7.11 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing underground facilities at or contiguous to the site and assumes responsibility for the accurate location of said underground facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said underground facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the General Conditions.
- 7.12 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents.
- 7.13 CONTRACTOR has given PROJECT MANAGER written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by PROJECT MANAGER is acceptable to CONTRACTOR.

Article 8. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work, consisting of the following:

- 8.1 This Agreement
- 8.2 Exhibits to this Agreement.
- 8.3 Notice of Award
- 8.4 Notice to Proceed.
- 8.5 Information for Bidders.
- 8.6 Special Conditions.
- 8.7 General Conditions.
- 8.8 Drawings bearing the title: Project name here
- 8.9 Addenda (s).
- 8.10 Contractor's Bid. (Bid Proposal, Bid sheet & Appendix)
- 8.11 Bid Bond
- 8.12 Performance & Payment Bond
- 8.13 Drawing or Plans (including CDOT and Larimer County documents as referenced)
- 8.14 Technical Specifications and Details.
- 8.15 Documentation submitted by CONTRACTOR prior to Notice of Award.
- 8.16 Change Orders (post approval signatures)
- 8.17 Insurance Certificate, Business License, Tax Certification.
- 8.18 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:

All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.

The documents composing the Contract Documents are attached to this Agreement and made part hereof (except as expressly noted otherwise above).

Contractors are required to comply with applicable federal, state, and local safety and health laws, regulations and ordinances.

There are no Contract Documents other than those listed above. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

In case of conflicting provisions, requirements or discrepancies the order of application of the Contract Documents is as follows:

1. Change Orders for clarification of drawings
2. This Agreement
3. Addenda
4. Drawings
5. Special Conditions
9. General Conditions

Article 9. MISCELLANEOUS

- 9.1 Reference to the General Conditions shall include modification thereto by any Supplementary Conditions issued.
- 9.2 No assignments by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3 Except for the intended beneficiaries of any "Labor and Material Payment Bond" executed in conjunction with this Agreement, nothing in this Agreement shall be construed to give any rights or benefits by virtue of this Agreement to anyone other than OWNER and CONTRACTOR, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sale and exclusive benefit of OWNER and CONTRACTOR and not for the benefit of any other party.
- 9.4 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.5 In the event of default of any of the provisions of this Agreement by either party which shall require the party not in default to commence legal actions against the defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs, including fees of experts, incurred because of the default. Additionally, CONTRACTOR shall indemnify the OWNER for legal expenses and costs incurred by the OWNER by reason of claims filed by suppliers, subcontractors or other parties, against the Retainage held by the OWNER where the OWNER has paid such sums to the CONTRACTOR.
- 9.6 The OWNER has allocated sufficient funds to pay the contract price. PO# _____.
- 9.7 Any provisions or part of the Contract Documents held to be void or unenforceable under any Law or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision

that comes as close as possible to expressing the intention of the stricken provision.

9.8 The Contractor certifies that the Contractor shall comply with the provisions of CRS 8-17.5-101, et seq. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform work under this contract. The Contractor represents, warrants, and agrees that:

- it (i) has verified that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and the Department of Homeland Security,
- or (ii) otherwise will comply with the requirements of CRS 8-17.5-102(2)(b)(I). The Contractor shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision or CRS 8-17.5-101, et seq., the Town may terminate this contract for breach of contract, and the Contractor shall be liable for actual and consequential damages to the Town.

If the Contractor obtains actual knowledge that a subcontractor performing work under this contract knowingly employs or contracts with an illegal alien, the Contractor shall:(a.) Notify the subcontractor and the Town within three days that the Contractor 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 the notice required pursuant to sub-paragraph (a) above, the subcontractor does not stop employing or contracting with the illegal alien, unless the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR, and PROJECT MANAGER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by PROJECT MANAGER on their behalf.

This Agreement will be effective as provided on the first page hereof.

TOWN OF ESTES PARK

By: _____
William C. Pinkham

By: _____

Title: _____

Title: _____
(If CONTRACTOR is a corporation
attach evidence of authority to sign.)

Attest: _____

Attest: _____

Address for giving notices:

170 MacGregor Avenue
P. O. Box 1200
Estes Park, Colorado 80517
970-577-3586

Address for giving notices:

SECTION 006235

APPLICATION FOR PAYMENT FORM



TOWN OF ESTES PARK

Town of Estes Park
Public Works Department

APPLICATION FOR PAYMENT

Pay App. # _____

PROJECT NAME: Stanley Park Fairgrounds Grading & Sanitary Sewer Improvements

Contractor: _____ Original Contract Value: \$ _____

Address: _____ Adjusted Contract (by CO) \$ _____

Total % complete _____ %

Total expenditures by month (per tab sheet)

Month #1	\$ _____	Month #4	\$ _____
Month #2	\$ _____	Month #5	\$ _____
Month #3	\$ _____	Month #6	\$ _____

- A) **Total Completed to Date** \$ _____
 - B) **Materials on Site** (not installed) \$ _____
 - C) **Total Change Orders to Date** \$ _____
Change Order #1 \$ _____ Change Order #2 \$ _____
 - D) **Total Material & Earnings to Date** (A + B + C)..... \$ _____
 - E) **Total Deductions** (1 + 2) \$ _____
 - 1. _____% Retainage to date \$ _____
 - 2. Total previously paid \$ _____
- Total Amount Due** (this application, D - E)..... \$ _____
Total Amount Paid to Date \$ _____

APPROVED BY:

Company: _____
By: _____
Title: _____
Date: _____

Town of Estes Park
By: _____
Title: _____
Date: _____

Fund / Acct.	Approved Payment
OK by:	