

**SAMPLE
CONSTRUCTION CONTRACT**

THIS CONSTRUCTION CONTRACT made and entered into effective the ____ day of _____, 20____, by and between:

- A. The City of Ouray, Colorado (the City) and
- B. _____, (the Contractor).

Article 1 The Project

The Project consists of:

5th Street Water Main Replacement

Article 2 Scope of Work

- 2.1 The term “Work,” as used in this Contract includes all labor necessary to produce the construction required by this Contract, and all materials and equipment incorporated or to be incorporated in such construction.
- 2.2 The Contractor shall provide all of the Work required by this Contract for the Project.
- 2.3 By executing this Contract, the Contractor represents that it has visited the site and become familiar with the local conditions under which the Work must be performed.

Article 3 Time of Commencement and Completion

- 3.1 The Work shall be commenced with ten (10) days upon written Notice to Proceed from the City.
- 3.2 The Work will be completed by _____, 2017

Article 4 Contract Price and Payment

4.1 The City will pay the Contractor \$_____, for the satisfactory performance of the Work, subject to additions and deductions by Change Order as provided in this Contract.

4.2 Subject to the applicable provisions of this Article, the Contractor may submit written applications for progress payments to the City's Representative, who shall upon review and approval submit to the City certificates for payment, who shall in turn make progress payments to the Contractor as follows:

The City shall make period progress payment to Contract within fifteen (15) days following the City's Representative's approval of the Work completed. Progress payment shall be in an amount equal to ninety percent (90%) of the Work completed until fifty percent (50%) of the total Work on the Project, as determined by the Project manager, is completed. Such determination shall include materials and equipment not incorporated in the Work but delivered to the Project site and suitable stored. After fifty percent (50%) of the total Work is completed, the retainage shall be reduced to five (5%). A progress payment shall be made only after the Contractor has submitted an application for a progress payment on a form approved by the City's Representative, and if request by the City's Representative, Contractor shall submit copies of all invoice from any subcontractors or suppliers and partial waivers executed by each subcontractor or supplier to who payment is to be made by Contractor and the City's Representative, or within any time period set forth in the Contract Documents, as modified or extended , the City is expressly authorized to withhold any progress payment for such Work until such Work is completed.

4.3 If the Contract Price exceeds Fifty Thousand Dollars, after completion of the Work, the City shall publish a Notice of Final Settlement, twice, at least ten (10) days prior to the date of final settlement. The City shall withhold from final payments any amounts as required pursuant to C.R.S. § 38-26-107.

4.4 Payments may be withheld on account of (a) defective Work not remedied, (b) claims for nonpayment against Contractor or any subcontractor asserted or evidence which indicates probable assertion of such claims, (c) failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment, (d) damage to another contractor or the City, or (e) unsatisfactory prosecution of the Work by the Contractor.

- 4.5 Final payment shall not be due until (a) forty-five days after the completion of the Work, (b) publication of the Notice of Final Settlement, if the Contract Price exceed fifty-thousand dollars, (c) the City’s Representative has inspected and approved the Work as complying with the contract, (d) receipt of copies of all invoices from any subcontractors and suppliers and a release executed by each subcontractor and supplier to whom payment is made by Contractor and (e) any manufacturers or suppliers warranties and equipment literature, and (f) any as built plans required are delivered to the City.
- 4.6 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and remaining unsettled.
- 4.7 Any and all payments of money by the City pursuant to this Contract shall be subject to the annual appropriations of money.

Article 5 Additional Documents

- 5.1 Attached and incorporated into this Contract are the following exhibits:
 - 5.1.1 Exhibit A – Proposal
- 5.2 The Contract and documents listed in Section 4.1 shall be signed in not less than duplicate by the City and the Contractor. If either the City or the Contractor do not sign the Drawings, Specifications, or any of the other documents listed in Section 4.1, the City’s representative shall identify them.

Article 6 City’s Representative

- 6.1 For the purposes in this Contract, the City’s Representative shall be _____.
- 6.2 The City’s Representative will provide general administration of the Contract and will be the City’s representative during construction and until issuance of the final certificate for payment.
- 6.3 The City’s Representative shall at all times have access to the Work wherever it is in preparation and progress.

- 6.4 The City's Representative will make periodic visits to the site to become familiarize generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with this Contract. On the basis of the City's Representative's on-site observations, the City's Representative will keep the City informed of the progress of the Work, and will endeavor to guard the City against defects and deficiencies in the Work. The City's Representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The City's Representative will not be responsible for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with this Contract.
- 6.5 Based on such observations and the Contractor's applications for payment, the City's Representative will determine the amounts owing to the Contractor and will issue certificates for payment.
- 6.6 The City's Representative will be, in the first instance, the interpreter of the requirements of the Contract and will make decisions on all claims and disputes.
- 6.7 The City's Representative will have authority to reject all or any portion of the Work that does not conform to this Contract.

Article 7 City Obligations

- 7.1 The City shall issue all instructions to the Contractor through the City's Representative.

Article 8 Contractor Obligations

- 8.1 The Contractor shall supervise and direct the Work, using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract.
- 8.2 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities

and services necessary for the proper execution and completion of the Work.

- 8.3 The Contractor shall at all times enforce strict discipline and good order among its employees, its subcontractors, and shall not employ on the Work any unfit person or anyone not skilled in the task assigned.
- 8.4 The Contractor warrants to the City and the City's Representative that all materials and equipment incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with this Contract. All of the Work not so conforming to these standards may be considered defective.
- 8.5 The Contractor shall pay all sales, consumer, use and other similar taxes required by law and shall secure all permits, and licenses necessary for the execution of the Work at Contractor's expense except as provided in Section 6.2. The City is exempt from state and local sales and use taxes. Contractor shall take steps to obtain such exemption from the Colorado Department of Revenue pursuant to C.R.S. § 39-26-708(3).
- 8.6 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work, and shall notify the City's Representative if the drawings and specifications are at variance therewith.
- 8.7 The Contractor shall be responsible for the acts and omissions of all its employees and all subcontractors, their agents and employees and all other persons performing any of the Work under a contract with the Contractor.
- 8.8 The Contractor shall review, stamp with its approval and submit all samples and shop drawings as directed for approval of the City's Representative for conformance with the design concept and with the information given in this Contract. The Work shall be in accordance with approved samples and shop drawings, if any were required as part of the Project.
- 8.9 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by its operations or operations of its subcontractors. At the completion of the Work the Contractor shall remove from the Project all waste materials, rubbish,

tools, construction equipment, machinery and surplus materials, and shall clean all glass surfaces and shall leave the Project "broom clean" or its equivalent, except as otherwise specified.

Article 9 Subcontractors

- 9.1 A subcontractor is a person who has a contract with the Contractor to perform any of the Work on the Project.
- 9.2 Unless otherwise specified in this Contract or in the instructions to bidders, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the City's Representative in writing a list of the names of subcontractors proposed for the principal portions of the Work. The Contractor shall not employ any subcontractor to whom the City may have a reasonable objection. The Contractor shall not be required to employ any subcontractor to whom he has a reasonable objection. Contracts between the Contractor and the subcontractor shall be in accordance with the terms of this Contract insofar as applicable.

Article 10 Separate Contracts and City Work

- 10.1 The City reserves the right to award other contracts in connection with other portions of the Project or other work on the site or to perform such work itself.
- 10.2 The Contractor shall afford other contractors or the City reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate its efforts with theirs.
- 10.3 Any costs caused by defective or untimely work shall be borne by the party responsible therefore.

Article 11 Performance and Payment Bonds

- 11.1 If the Contract Price exceeds Fifty Thousand Dollars, a Performance and a Payment Bond shall be submitted by the Contractor.
 - 11.1.1 Each bond shall be in the amount of the Contract Price and shall either be in the form supplied by the City or shall be in such other form as approved by the City.

11.1.2 Each bond shall comply with the requirements of C.R.S. §§ 38-26-105 and 106.

11.2 If the Contract Price is Fifty Thousand Dollars or less, at the City's discretion, a clean irrevocable letter of credit to the City from a bank acceptable to the City may be substituted for Performance and Payment Bonds. Such letter of credit shall not expire prior to one year following final settlement.

11.3 The City reserves the right to require Performance and Payment Bonds if a Change Order increases the Contract Price in excess of Fifty Thousand Dollars.

Article 12 Time

12.1 All time limits stated in this Contract are of the essence.

12.2 If the Contractor is delayed at any time in the progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in transportation, unavoidable casualties, causes beyond the Contractor's control, or by any cause that the City's Representative may determine justifies the delay, then the contract time shall be extended by change order for such reasonable time as the City's Representative may determine.

12.3 In strict accordance with C.R.S. § 24-91-103.5, the City shall not amend the Contract Price to provide for additional compensation for any delays in performance that are not the result of acts or omission within the control of the City or person acting on behalf of the City. The City shall extend the time of performance; however, to correspond to the length of any delay suffered by Contractor due to activities or circumstances that are unforeseen or unforeseeable in the construction industry, and so long as such delay is not attributable to Contractor's acts or omissions, or those of any person or entity or subcontractor controlled or selected and contracted for by Contractor.

Article 13 Liquidated Damages

The time of completion of the construction of the Project is the essence of this Contract. Should the contractor neglect, refuse or fail to complete the construction within the time agreed upon, after giving effect to extensions of time, if any, then, in that event and in view of the difficulty of estimating with exactness the damages caused by such delay, the City shall have the right to

deduct from and retain out of such moneys which may be then due, or which may become due and payable to the contractor the sum of \$ _____ per day for each and every day that construction is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty.

Article 14 Protection of Persons and Property and Risk of Loss

14.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. He shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (a) all employees on the Work and other persons who may be affected thereby, (b) all of the Work and all materials and equipment to be incorporated therein, and (c) other property at the site or elsewhere.

14.2 Contractor shall bear all risk of loss to the Work, or materials or equipment for the Work due to fire, theft, vandalism, or other casualty or cause, until the Work is fully completed and accepted by the City. The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. All damage or loss to any property caused in whole or in part by the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor.

Article 15 Indemnification

The Contractor agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this contract, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, Contractor error, mistake, negligence, or other fault of the Contractor, any subcontractor of the Contractor, or any officer, employee, representative, or agent of the Contractor or of any subcontractor of the Contractor, or which arise out of any worker's compensation claim of any employee of the Contractor or of any employee of any subcontractor of the Contractor. The Contractor agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Contractor, or at the

option of City, agrees to pay City or reimburse City for the defense costs incurred by City in connection with, any such liability, claims, or demands. The Contractor also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent. The obligation of this section shall not extend to any injury, loss, or damage caused solely by the act, omission, or other fault of the City, its officers, or its employees.

Article 16 Insurance

The Contractor agrees to procure and maintain, at its own cost, during the entire period of this Contract, a policy or policies of liability insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Contractor pursuant to this Contract including property, bodily injury and death, as well as claims worker's compensation and other employee benefit law. Such insurance shall be a combined single limit of not less than one million dollars (\$1,000,000) per occurrence for bodily injury or death, and two hundred fifty thousand dollars (\$250,000) for property damage. Such insurance shall name the City as additional, incurred, and shall provide for a minimum thirty (3) days' written notice of cancellation. Proof of such insurance shall be filed Contractor with the City prior to the execution of the Construction Contract by the City.

- 16.1 Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate this contract, or at its discretion the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Contractor to City upon demand, or City may offset the cost of the premiums against any monies due to Contractor from the City.
- 16.2 The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- 16.3 This Contract shall not be executed, and no Notice to Proceed shall be given until the certificates required above, are submitted and approved by the City.

Article 17 Governmental Immunity

The parties understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act (C.R.S. §§ 24-10-101 et seq.), or otherwise available to the City, its officers, or its employees.

Article 18 Changes in the Work

- 18.1 The City without invalidating this contract may order changes in the Work consisting of additions, deletions, or modifications with the contract sum and the contract time being adjusted accordingly. All such changes in the Work shall be authorized by written change order signed by the City.
- 18.2 The contract sum and the contract time may be changed only by Change Order.
- 18.3 The cost or credit to the City, if any, from a change in the Work shall be determined by unit prices if specified in this Contract, or by mutual agreement.

Article 19 Correction of the Work

- 19.1 The Contractor shall correct any of the Work that fails to conform to the requirements of this Contract where such failure to conform appears during the progress of the Work, and shall remedy any defects due to faulty materials, equipment or workmanship which appear within a period of one (1) year from the date of final settlement of the contract or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by this Contract.
- 19.2 The provisions of this Article apply to the Work done by subcontractors as well as to the Work done by the Contractor, and are in addition to any other remedies or warranties provided by law.

Article 20 Termination by the Contractor

If the City's Representative fails to issue a certificate of payment for a period of thirty (30) days through no fault of the Contractor, or if the City fails to make payment thereon for a period of thirty (30) days, the Contractor may,

upon seven (7) days' written notice to the City and the City's Representative, terminate the Contract and recover from the City payment for all Work executed and for any proven loss sustained upon any materials, equipment tools, and construction equipment and machinery, including reasonable profit and damages.

Article 21 Illegal Aliens

- 21.1 Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract.
- 21.2 Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract.
- 21.3 The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either (a) the E-Verify Program, (the electronic employment verification program jointly administered by the U.S. Department of Homeland Security and the Social Security Administration, or its successor program) or (b) the Department Program (the employment verification program established pursuant to C.R.S. § 8-17.5-102(5)(c)).
- 21.4 The Contractor shall not use the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.
- 21.5 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 be required to: (a) notify the Subcontractor and the City within three (3) 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 (3) days of receiving the notice, the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

- 21.6 The Contractor shall comply with any reasonable request by the Department of Labor and Employment in the course of an investigation that the Department undertakes pursuant to C.R.S. § 8-17.5-102(5).
- 21.7 If the Contractor violates these illegal alien provisions, the City may terminate this Contract for a breach of contract. If this Contract is so terminated, the Contractor shall be liable for actual and consequential damages to the City. The City will notify the Office of the Secretary of State if the Contractor violates these provisions and the City terminates this Contract for that reason.
- 21.8 The Contractor shall notify the City of participation in the Department Program and shall within twenty (20) days after hiring an employee who is newly hired for employment to perform work under this Contract affirm that the Contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 USC § 1324a, and not altered or falsified the identification documents for such employee. Contractor shall provide a written, notarized copy of the affirmation to the City.

Article 22 Termination by the City

- 22.1 This Contract is contingent upon the City's issuance of a Notice to Proceed to the Contractor, which shall only be issued upon the City's approval of a submitted design by the Contractor, pursuant to separate contractual arrangement with the City. Should the City not approve of the design as submitted, the City is not obligated to issue a Notice to Proceed with this contract and reserves the right to terminate this contract accordingly, with no payment or penalty obligation whatsoever.
- 22.2 If the Contractor defaults or neglects to carry out the Work in accordance with this Contract or fails to perform any provision of the contract, the City may, after seven (7) days' written notice to the Contractor and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor or, at its option, may terminate the Contractor's work under the contract and take equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method it may deem expedient, and if the unpaid balance of the contract sum exceeds the expense of finishing the Work, such excess shall be paid to the Contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the City. These rights and remedies are in addition to any right to damages or other rights and remedies allowed by law.
- 22.3 Notwithstanding any other provisions in this Contract, the City may terminate this contract, with or without cause, with seven days written notice to the Contractor. Upon receiving such written notice from the City terminating the Contract, Contractor shall cease providing services related to the Work immediately. The City shall only be liable for payment to Contractor for Contractor's services related to the Work that were performed prior to receipt of the notice. In addition, the City shall only be liable for materials acquired by Contractor prior to receipt of the notice. Materials paid for by the City under this provision shall be the property of the City and shall be immediately deliverable by Contractor upon such payment by the City. The City shall not be liable for any services performed or materials acquired after receipt of the notice.

Article 23 Miscellaneous Provisions

- 23.1 Each party agrees to take such actions and sign such documents, certificates and instruments reasonably requested by the other party in

order to complete the transactions contemplated by this Contract and to enable the requesting party to enjoy the full benefits conferred upon such party by this Contract.

- 23.2 This instrument contains the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding. This contract may not be enlarged, modified, or altered except in writing signed by the parties and endorsed on this Contract.
- 23.3 This Contract is expressly subject to the provision of C.R.S. § 29-1-110(1), and Contractor acknowledges that neither the City nor any employee or agent thereof is authorized to expend or contract for the expenditure of any monies in excess of those appropriated by the Ouray City Council for payment of the Contract. The City acknowledges and agrees that sufficient funds have been appropriated to pay the Contract Price, but Contractor shall not rely upon the appropriation of any monies or other funds in addition to those already appropriated unless and until the same are lawfully appropriated by the Ouray City Council.
- 23.4 This Contract shall inure to the benefit of and be binding on the parties, their successors and assigns.
- 23.5 If any part, term, or provision of this contract is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term or provision held to be invalid.
- 23.6 This Contract shall be governed by the laws of the State of Colorado, both as to interpretation and performance. The courts of the State of Colorado shall have exclusive jurisdiction to resolve any disputes arising out of this Contract and venue shall be in Ouray County, Colorado.
- 23.7 No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law.

- 23.8 The rights and remedies available under this contract shall be in addition to any rights and remedies allowed by law.
- 23.9 The terms of this Contract shall remain in full force and effect following final payment.
- 23.10 This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
- 23.11 For the convenience of the parties, signatures to this Contract may be provided through facsimile transmission. The signature of a party to this Contract supplied by facsimile transmission shall be as binding as an original.
- 23.12 Wherever in this Contract, words, including pronouns, are used in the masculine, they shall be read and construed in the feminine or neuter whenever they would so apply, and wherever in this Contract, words, including pronouns, are used in the singular or plural, they shall be read and construed in the plural or singular, respectively, wherever they would so apply. This contract is governed by the laws of the State of Colorado.

CITY:

CONTRACTOR:

**, City of Ouray Mayor

**

Attest:

** , City of Ouray Clerk