

PUBLIC BUILDING RESTORATION AND CONSTRUCTION CONTRACT

This Agreement, is made and entered this ____ day of _____, 2014, by and between the Town of Windsor, a Colorado Home Rule Municipality (“Town”) and [Contractor Name] (“Contractor”).

WHEREAS, the Town is the owner of the property known as the Chimney Park Pool, located at 421 Chimney Park Drive, Windsor, Colorado (hereinafter, “Property”); and

WHEREAS, Contractor is in the business of Building Construction and Renovation; and

WHEREAS, Contractor has indicated a willingness to undertake restoration and construction within the Property; and

WHEREAS, the Town has appropriated funds equal to or in excess of the payments due Contractor under this Agreement; and

WHEREAS, the Town wishes to authorize Contractor to undertake restoration and construction within the Property, under the terms set forth herein.

NOW, THEREFORE, IN LIGHT OF THE FOREGOING RECITALS, THE PARTIES AGREE AS FOLLOWS:

I. Scope of Work - Contract Documents.

Attached hereto and designated Exhibit A, entitled “[specifications or project manual or bid materials]” and dated [date], is a description of the scope and nature of the work contemplated under this Agreement. Exhibit A shall be the primary source of Contractor’s undertakings with respect to restoration and construction services under this Agreement. The parties understand that, given their mutual desire to complete restoration and construction within the Property at a cost defined herein, the scope of work under this Agreement will not be materially changed except as provided in Section II below with respect to Change Orders.

Contractor shall furnish all labor, services, materials, tools, and equipment for the construction and completion of the work described in Exhibit A, and in any Change Orders approved as provided in Section II below.

II. Change Orders

A. Any material change to the scope of work contemplated under Section I above shall be accomplished only as provided in this Section II.

B. Should either party determine that a material change to the scope of work contemplated under Section I of this Agreement is necessary or advisable, the particular change shall be set forth in a writing entitled “Change Order, [date]”, and shall bear the signatures of an authorized

representative of each party. Upon execution by both parties of any such Change Order, the scope of work contemplated under this Agreement shall be deemed modified and incorporated by this reference into this Agreement as if set forth fully herein. The Town will retain all original Change Orders approved pursuant to this Section II, and Contractor shall be provided a copy for its files.

C. The Town shall grant, deny or request a reasonable extension of time within twenty-four hours of a request for a Change Order by the Contractor. In the event a proposed change order adds to the compensable work to be performed by the Contractor, the Change Order so given shall contain written assurance by the Town that lawful appropriations to cover the costs of the additional work have been made and the appropriations are available prior to performance of the additional work.

III. Project Commencement, Progress and Completion

A. Contractor's restoration and construction services shall be commenced as soon as practicable following the pre-construction meeting of Contractor and Town representatives (including appropriate engineering, architectural, historic preservation and insurance consultants), but in no event later than [date], 2009. Such restoration and construction services shall be substantially completed no later than [date], subject to weather-related delays and agreed extensions of time as authorized by the Town. Contractor will undertake the work in a thorough and workmanlike manner in every respect and in compliance with all applicable Town construction codes and any applicable requirements to which the Property is subject. In case of any conflict between the Contractor's specifications and the applicable Town construction codes and/or applicable requirements, the latter shall control.

B. Given the need for governmental operations within the Property, timely completion of the restoration and construction services contemplated herein is essential. Time is of the essence in all respects regarding the undertakings of Contractor under this Agreement. Therefore, Contractor shall carry out restoration and construction services within the Property with all due diligence. Contractor agrees to furnish efficient business administration and superintendence, and to use its best efforts to furnish at all times an adequate supply of workers and materials to assure the expeditious and economical completion of the restoration and construction work contemplated herein.

C. Contractor shall be responsible for providing suitable site barricading and traffic control facilities for ensuring the safety of the public during the performance of the work and for maintaining access through and adjacent to the area in which the work is to be performed.

D. Until the final acceptance of the work by the Town in writing, Contractor shall have the charge and care thereof, and shall take every necessary precaution against injury or damage to any part thereof by the effects of the elements or from any other cause. Contractor, at its own expense, shall rebuild, repair, restore, and correct all injuries or damages to any portion of the work occasioned by any causes before its completion and acceptance. In case of suspension of work from any cause whatsoever, Contractor shall be responsible for all building materials and

shall properly store same, if necessary, and shall provide suitable drainage, barricades, and warning signs where necessary. Contractor shall correct or replace, at its own expense and as required by Town, any building material or portions thereof which may be destroyed, lost, damaged, or in any way made useless for the purpose and use intended by the contract documents, plans, and specifications prior to final acceptance of the work. Contractor shall be relieved of the responsibilities provided in this section upon final acceptance of the work by Town, except no such relief shall apply to damages or injuries caused by or related to actions of Contractor or its subcontractors.

E. Contractor shall at all times comply with applicable workplace and occupational safety requirements under state and federal law, including but not limited to those regulations within the authority of the United States Department of Labor Occupational Safety and Health Administration.

F. The project will be considered complete when all work has been finished, the final inspection made, and the work accepted by Town in writing, and all claims for payment of labor, materials, or services of any kind used in connection with the work thereof have been paid or settled by Contractor or its surety. Contractor will then be released from further obligation except as set forth in the surety bond, and except as required in this Agreement and the contract documents regarding the Contractor's guaranty of work.

IV. Relationship of Contractor to Town

A. Contractor acknowledges that it, its employees and sub-contractors, if any, are in the relationship of independent contractor, and not as employees of the Town. Nonetheless, Contractor accepts the relationship of trust and confidence established between it and the Town by this Agreement. Contractor covenants with the Town to furnish its best skill and judgment and to assure its restoration and construction services are undertaken and completed as contemplated herein.

B. The Town's Project Manager for all purposes under this Agreement is John Moore, and all communications from Contractor to Town arising out of this Agreement shall be directed to Mr. Moore's attention, except as he may specifically designate in writing.

V. Representations of the Parties.

A. Contractor's Representations.

1. The Contractor has familiarized itself with the nature and the extent of the contract documents, work, the locality, all physical characteristics of the area, including without limitation, improvements, soil conditions, drainage, topography, and all other features of the terrain, and with the local conditions and federal, state, and local laws, ordinances, rules, and regulations that in any manner may affect cost, progress, or performance of the work, or apply in any manner whatsoever to the work.

2. Contractor has given the Town written notice of all apparent conflicts, errors, discrepancies or inconsistencies it has discovered in the contract documents, and such documents are acceptable to the Contractor as incorporated herein.

B. Town's Representations.

1. The Town is a home rule municipal corporation, governed by the laws and Constitution of the State of Colorado.

2. The Town has given Contractor written notice of all apparent conflicts, errors, discrepancies or inconsistencies it has discovered in the contract documents, and such documents are acceptable to the Town as incorporated herein.

VI. Payment to Contractor.

A. Contractor agrees to accept the sum set forth in the attached Exhibit B (Bid Proposal dated [date]) as full payment for the performance of the restoration and construction services contemplated under this Agreement, which sum shall be increased only by the amount representing the associated cost of any and all Change Orders approved as provided in Section II above.

B. Notwithstanding the terms of sub-section VI (A) above, the Town shall be responsible for the payment of all building permit fees, inspection fees, plan review fees, engineering consultant fees and architectural fees.

C. No funds payable under this Agreement shall become due and payable until the Contractor shall provide the Town with satisfactory assurances that Contractor has fully settled or paid for all materials and equipment used in or upon the work and labor done in connection therewith, including written evidence that all persons who have done work or furnished material for work done on the Property have waived any lien rights. The Town may pay any or all such claims or bills, wholly or in part, and deduct the amount or amounts so paid from any funds due Contractor.

D. No later than the fifteenth day of each month, Contractor shall submit to the Town for review and approval an application for payment fully completed and signed by Contractor describing the work completed through the last day of the prior month and accompanied by such supporting documentation as may be requested by the Town. Materials on hand but not complete in place may be included for payment at the discretion of the Town. Each subsequent application for payment shall include a certification of Contractor that all previous progress payments received on account of the work have been applied to discharge in full all of Contractor's obligations reflected in prior applications for payment. The Town shall within fifteen days of receipt of Contractor's completed application for payment, pay an amount equal to ninety percent (90%) of the requested payment, with the remaining ten percent (10%) held as retainage.

E. Upon final completion of all restoration and construction services contemplated herein, the Town shall within ten (30) days pay to Contractor the retainage accumulated under sub-section VI (D) of this Agreement in addition to any other sums properly due Contractor upon final completion.

VII. Ownership of Plans, Specifications, and Documents.

All of the plans and the contract documents are and shall remain the property of the Town. Contractor shall be provided plans, specifications, permits, and other documents and materials required to perform the work. The plans and specifications are not to be used on other work, and upon final payment or termination of Contractor's services all plan sets shall be returned to Town.

VIII. Indemnification.

To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the Town, and its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the Work, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the Contractor or any subcontractor of the Contractor, or any officer, employee, or agent of the Contractor or any subcontractor, or any other person for whom Contractor is responsible. The Contractor shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands, and to bear all other costs and expenses related thereto, including court costs and attorneys' fees. The Contractor's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the Town.

IX. Insurance and Bonds.

A. Contractor shall not commence work under this Agreement until it has presented Certificates of Insurance as required by sub-section IX (C) below, confirming it has obtained all insurance and bonds required by the Section IX, and with the minimum insurance coverage as follows:

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

(2) Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including

completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

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

(4) Builder's Risk insurance with minimum limits of not less than the insurable value of the work to be performed under this contract at completion less the value of the materials and equipment insured under installation floater insurance. The policy shall be written in completed value form and shall protect the Contractor and the Town against risks of damage to buildings, structures, and materials and equipment not otherwise covered under Installation Floater insurance, from the perils of fire and lightning, the perils included in the standard coverage endorsement, and the perils of vandalism and malicious mischief. Equipment such as pumps, engine-generators, compressors, motors, switch-gear, transformers, panel boards, control equipment, and other similar equipment shall be insured under Installation Floater insurance when the aggregate value of the equipment exceeds \$10,000. The policy shall provide for losses to be payable to the Contractor and the Town as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against the Contractor or the Town.

(5) Installation Floater with minimum limits of not less than the insurable value of the work to be performed under this contract at completion, less the value of the materials and equipment insured under Builder's Risk insurance. The value shall include the aggregate value of any Town-furnished equipment and materials to be erected or installed by the Contractor not otherwise insured under Builder's Risk insurance. The policy shall protect the Contractor and the Town from all insurable risks of physical loss or damage to materials and equipment not otherwise covered under Builder's Risk insurance, while in warehouses or storage areas, during installation, during testing, and after the work under this contract is completed. The policy shall be of the "all risks" type, with coverage designed for the circumstances which may occur in the particular work to be performed under this contract. The policy shall provide for losses to be payable to the Contractor and the Town as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against the Contractor or the Town.

B. The policies required above, except for the Workers' Compensation insurance and Employers' Liability insurance, shall be endorsed to include the Town as additional insured's. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by Contractor. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible

losses under each of the policies required above.

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

D Failure on the part of the Contractor to procure or maintain policies as provided herein shall constitute a material breach of contract upon which the Town may immediately terminate the contract, or at its discretion 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/Town shall be repaid by Contractor to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Contractor from the Owner.

E. Contractor shall furnish a performance bond, payment bond, and warranty bond in an amount at least equal to the contract price, as security for the faithful performance and payment of all Contractor's obligations under the contract documents, including but not limited to the guarantee period provided in Section X. All bonds shall be in the forms approved by the Town's Project Manager.

F. In the event the surety on any contract, performance bond, payment bond, or warranty bond given by the Contractor becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in the state revoked, the Town may withhold payment of funds due Contractor until the Contractor has provided a bond or other security to the satisfaction of the City/Town in lieu of the bond so executed by such surety.

X. Contractor's Guarantee of Work.

Contractor shall guarantee all work under this Agreement as being free of defects for a period of one year from the date of final acceptance by the Town. Any roofing membrane and related systems will have minimum manufacturer and installation warranties of ten (10) years. If any unsatisfactory condition or damage develops within the time of Contractor's guarantee period due to defective or inferior materials or workmanship, or not constructed in accordance with the Agreement, then the Contractor shall upon notice by Town, immediately place such guaranteed work in a condition satisfactory to Town. The Town shall have all available remedies to enforce such guarantee. However, Town shall not have any work performed independently to fulfill contractor's guarantee and require Contractor to pay Town such sums as were expended by the Town for such work, unless the Town has first given notice to the Contractor of the deficiency and given the Contractor a reasonable opportunity to cure the same.

XI. Costs and Attorneys' Fees.

In the event of litigation enforcing or interpreting the terms of the within Agreement, and only in the event the Town is the prevailing party, the Town shall be entitled an award of reasonable attorney fees and all costs of suit, including expert witness fees, court reporter fees and similar litigation expenses.

XII. No Assignment.

This Agreement shall not be assigned by the Contractor without the prior written approval of the Town. However, Contractor shall have the right to employ such assistance as may be required for the performance of the project, including the use of subcontractors, which employment shall not be deemed an assignment of the Contractor's rights and duties hereunder.

XIII. Governing Law, Place of Trial.

The parties agree to the jurisdiction and venue of the courts of Weld County, Colorado, in connection with any dispute arising out of or in any matter connected with this Agreement. The parties further agree that the interpretation and enforcement of the within Agreement shall be in accordance with Colorado law.

XIV. Required Colorado Immigration Certification.

PURSUANT TO SECTION 8-17.5-101, C.R.S., *et. seq.*, Contractor by its signature hereto certifies and represents that at this time:

(i) Contractor does not knowingly employ or contract with an illegal alien who will perform work under this Contract; and

(ii) Contractor will participate in the E-VERIFY program authorized under 8 U.S.C., Section 1324(a), jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program (hereinafter, "E-VERIFY Program"), or the Colorado Department of Labor and Employment program established under § 8-17.5-102 (5) (c), C.R.S., in order to confirm the employment eligibility of all employees who are newly-hired for employment within the United States.

Unless the E-VERIFY Program has been discontinued as of the date of this certification, Contractor has confirmed the employment eligibility of all employees who are newly hired for employment in the United States through participation in the E-VERIFY program.

Contractor is prohibited from using the E-VERIFY Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.

If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, Contractor shall:

- (i) Notify such subcontractor and the Town within three days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- (ii) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

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

If Contractor violates any provision of this Contract pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the Town may terminate this Contract. If this Contract is so terminated, Contractor shall be liable for actual and consequential damages to the Town arising out of Contractor's violation of Subsection 8-17.5-102, C.R.S.

Contractor acknowledges the enforcement provisions of § 8-2-124, C.R.S., and further acknowledges that employment of illegal aliens in violation thereof may result in loss of Contractor's "business license" as defined therein, together with such other enforcement measures as authorized by law.

XV. Colorado Labor Clause.

Contractor agrees, pursuant to Title 8, Article 17, C.R.S., that Contractor shall employ Colorado labor (as defined below in this paragraph) to perform the Work to the extent of not less than eighty percent of each type or class of labor in the several classifications of skilled and common labor employed under this Agreement. "Colorado labor" as used in this Agreement means any person who is a resident of the state of Colorado, at the time of employment, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification.

TOWN OF WINDSOR, COLORADO

By: _____
Kelly Arnold, Town Manager

ATTEST:

Town Clerk

[CONTRACTOR]

By: _____
[Authorized Representative name, capacity]

SAMPLE