**Date of RFP Issuance:** 8/10/2023

**Project Number:** 23-008

**RFP Title: Old PW Remodel – Phase 1 Construction**

**Proposals Due:** September 11, 2023, 4:00 p.m., Local Time

**Submit Proposals to:**

Town of Bennett

Town Hall, 207 Muegge Way, Bennett, CO 80102-7806

**For Additional Information Please Contact:** Daymon K. Johnson

(303) 644-3249 Ext. 1005

Email: **djohnson@bennett.co.us**

**Documents Included in This Package**: RFP Cover Sheet

Project Background and Specifications

RFP Instructions

Terms and Conditions

Special Terms and Conditions

Pricing Form

Submission Form

Substitute Form W-9

Sample Agreement

If any of the documents listed above are missing from this package, they may be requested via email or picked up at Town Hall, 207 Muegge Way, Bennett, Colorado.

The undersigned hereby affirms that (1) he/she is a duly authorized agent of the Proposer, (2) he/she has read all terms and conditions and technical specifications which were made available in conjunction with this RFP and fully understands and accepts them unless specific variations have been expressly listed in his/her offer, (3) the offer is being submitted on behalf of the Proposer in accordance with any terms and conditions set forth in this RFP, and (4) the Proposer will accept any awards made to it as a result of the offer submitted herein for a minimum of ninety calendar days following the date of submission.

**PRINT OR TYPE YOUR INFORMATION**

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Name of Company: | | | | |  | | | | | Fax: |  |
| Address: |  | | | | | City/State: | | |  | Zip: |  |
| Contact Person: | | | |  | | Title: | |  | | Phone: |  |
| Authorized Representative’s Signature: | | | | | | |  | | | Phone: |  |
| Printed Name: | |  | | | | Title: | |  | | Date: |  |
| Email Address: | | |  | | | | | | |  | |

### PROJECT BACKGROUND AND SPECIFICATIONS

**I BACKGROUND**

The Town of Bennett (“Town”) desires to solicit proposals from interested firms or persons to complete and perform the Phase I Construction work (“Project”) for the remodel of the Old PW facility located at 365 Palmer Ave. in Bennett, Colorado. This document sets forth general information and requirements for persons and firms (“Proposers”) interested in submitting “Proposals” in response to this Request for Proposals (“RFP”).

**II PROJECT DESCRIPTION**

The Old PW facility, being initially constructed sometime in the 70’s, was in use for many years serving many purposes for Town Staff over the years. Most recently it was the Public Works facility and housed all the Public Works staff, equipment and materials.

The Town recently completed construction of a new Public Works facility on the very North end of 4th street, located proximately to the Waste Water Treatment Facility. This new space provides better operational capabilities for the Public Works staff, and more area for the larger equipment the Town continues to acquire as we’ve grown. With Public Works leaving the Old PW facility, located at 365 Palmer Ave., the Town now has a space that is in need of remodel.

The plans as a part of this RFP are to be considered Phase 1 plans, and are focused primarily on the interior remodel of the building.

**There will be a mandatory pre-bid job walk on Wednesday August 23, 2023 at 2:00PM MST, at the project located at 365 Palmer Ave., Bennett, CO. 80102**

**III SCOPE OF WORK**

The proposed project will be built in Bennett, CO. The building is currently one story, with a floor plan size of roughly 6100SF. Of that, the approximate area of finish as specified in the documents as drawn by Allred Architects is 2731SF.

This work will include, but will not be limited to:

* Demolition and removal of existing interior structure(s)
* Demolition and removal of existing building systems – HVAC, Plumbing, Electrical, etc..
* Demolition and removal of overhead doors, some existing man doors, and other structural elements
* Installation of new building systems – HVAC, Plumbing, Electrical, etc..
* Installation of new building structural elements – Framing, Awnings, etc..
* Installation of tenant interior finish systems including drywall, flooring, doors & door hardware, glass & glazing, millwork, etc..

The general parameters upon which this estimate should be based are listed below:

* Please include one form of contingency; 1) Construction Contingency. The amount and/or percentage of contingency are at your discretion. Any amount of construction contingency that is unused will be returned to the Town.
* Construction Commencement is anticipated to occur on or before October 15, 2023. Please include a construction schedule depicting construction activities required to construct the Old PW Phase I remodel project (as described within this narrative).
* All applicable State, County, Town sales taxes, Use taxes and other taxes pertaining to the construction of the building should NOT be included within the construction budget. The Town of Bennett is Tax Exempt.
* Prevailing wages will be NOT be required for this project.
* Performance Bonds, Material, and Labor Payment Bonds on general contractor’s work shall be included (as an additional line item) in construction budget.
* Insurance costs for general contractor(s) and all sub¬contractors for general liability, excess liability, auto, workers compensation, and difference of coverage should be included within the construction budget.
* Builder’s risk insurance should be included within the construction budget.
* Building permit costs will be waived as a part of this project. There will be fees to make sure your firm is compliant with the Town of Bennett requirements. Those costs should be coordinated directly with the Town of Bennett planning staff. To determine those costs, please speak with one of the following:
  + Savannah Vickery, Community & Development Manager, [svickery@bennett.co.us](mailto:svickery@bennett.co.us)
  + Andrew Burgardt, Community & Development, [aburgardt@bennett.co.us](mailto:aburgardt@bennett.co.us)

As a part of this solicitation, the Town would like to solicit to Bid Add Alternates as described below:

* ***Bid Add-Alternate 1:***

Please include pricing to complete a resheet of the entire metal building exterior to include roof and exterior walls. Add two (2) 3’x3’ cupolas on the roof. Additionally, this pricing should encompass a stone or wood veneer wainscot on the front (South) and sides (East & West) of the building. Per the International Building Code, 2018 edition, which is the Town-adopted building code, it’s required to have 3 clearly defined substrates in any new construction build. Review the International Building Code to confirm alignment with those requirements it’s required to have 3 clearly defined substrates in any new construction build. Review town code to confirm alignment with those requirements.

* ***Bid Add-Alternate 2:***

Please include pricing to complete a two-toned exterior paint job, using materials and types of paint best suited to cover sheet metal raised panel siding. All sides of the building should be completed.

* ***Bid Add-Alternate 3:***

Provide costs to resheet only the roof of the building. Provide gauge options for Town review. Color TBD, however it will be a standard and available color.

**IV PROJECT SCHEDULE**

Estimated milestones for the Project are as follows:

RFP Issuance 8/10/23

Mandatory Job Walk with Architect @ 2:00PM MST 8/23/23

Bids Due to TOB 9/11/23

Board Meeting for pricing approval 9/26/23

Notice of Final Award 9/27/23

Contract Issuance 10/5/23

**RFP INSTRUCTIONS**

**I QUESTIONS ABOUT RFP**

All technical inquiries regarding this RFP shall be made in writing to **Daymon Johnson, Director of Capital Projects –** [**djohnson@bennett.co.us**](mailto:djohnson@bennett.co.us)no later than five (5) days before Proposals are due. Non-technical inquiries may be directed to **Daymon Johnson – 303.644.3249 x.1005**

**II AMENDMENTS TO RFP**

The Town reserves the right to amend this RFP by an addendum at any time prior to the date set for receipt of Proposals. Addenda or amendments will be posted on the Town’s website as soon as available and shall be the responsibility of the Proposer to obtain all addenda. If revisions are of such a magnitude to warrant, in the Town’s opinion, the postponement of the date for receipt of Proposals, an addendum will be issued announcing the new date.

**III CONTENTS OF PROPOSAL**

The Proposal shall contain, at a minimum, the following information:

1. Statements of Qualifications including:
   * 1. General firm information including length of time in business
     2. Resumes of key project personnel and percent of team that is local
     3. Location of key project personnel and availability
2. Proposed Project team including Project Manager and proposed subcontractors (if any). Include information on subcontractors, including subcontractor personnel who will be working on the project and their specific roles.
3. Approach to completing the Project, including addressing the elements of the Scope of Services contained within this RFP, and any additional anticipated issues and proposed strategies for addressing the issues based on additional insight, capabilities or perspectives of the Proposer.
4. Project descriptions and references from at least three projects with similar size, type, and scope. These projects should demonstrate the experience of the project team and should have been completed during the past five years. The descriptions should include whether the project was completed on time and within budget per the original schedule and budget; any discrepancies should be explained.
5. Proposed schedule to complete the Project.
6. Detailed fee schedule tied to the Scope of Services, innclidng a “Not to Exceed” contract amount and hourly rates of key personnel.
7. Signed copy of the cover page of this RFP (page 1 of this RFP)
8. Completed Pricing Form (form attached)
9. Completed Submission Form (form attached)
10. Completed Sample W-9 (form attached)
11. List any requested deviations from the attached Sample Agreement

**IV INSTRUCTIONS FOR SUBMITTING PROPOSAL**

One (1) copy of the Proposal shall be submitted via hand-delivery to:

Town of Bennett

Attn: Daymon Johnson

RFP: 23-008

Town Hall

207 Muegge Way

Bennett, CO 80102-7806

Email: [**djohnson@bennett.co.us**](mailto:djohnson@bennett.co.us)

Hand-delivered Proposals shall be submitted in a sealed envelope and clearly marked with the title of the RFP.

For emailed Proposals, include the RFP title in the subject line. **Please note that email responses are limited to a maximum of 25 MB capacity. It is the sole responsibility of the Proposer to ensure their Proposal is received before the Proposal deadline. The Town does not accept responsibility under any circumstance for delayed or failed email or mail submittals.**

**Email proposals must be sent to Daymon Johnson at** [**djohnson@bennett.co.us**](mailto:djohnson@bennett.co.us) **as well as submitted to this project link:**

<https://app.smartsheet.com/b/form/efc2e7031002488a99b23c1734664982>

Proposals received after the Proposal deadline shall be considered non-responsive.

**V MODIFICATIONS TO OR WITHDRAWAL OF PROPOSALS.**

Proposals may only be modified in the form of a written notice on company letterhead and must be received prior to the Proposal deadline.

Proposals may be withdrawn prior to Proposal deadline. Such requests must be made in writing on company letterhead. Proposals may not be withdrawn after the Proposal deadline for a period of ninety (90) calendar days. If a Proposal is withdrawn during this ninety-day period, the Town may, at its option, choose not to accept any Proposal from the Proposer for a six-month period following the withdrawal.

**VI EVALUATION CRITERIA**

Proposals shall be reviewed and evaluated by Town staff and/or consultants who may request additional information from Proposers or request interviews with one of more Proposers. Final evaluation and selection may be based on, but not limited to any of the following:

1. Qualifications of the Proposer
2. Reference checks
3. Total cost or proposed pricing
4. Ability of the Proposer to provide quality and timely services and products

**VII ANTICIPATED SCHEDULE**

The following activities and dates are just a tentative outline of the process to be used by the Town.

August 10, 2023 Issue Request for Proposal

August 23, 2023 Mandatory Job Walk with Architect

September 11, 2023 Proposal Submittal Deadline

October 5, 2023 Award Contract

**TERMS AND CONDITIONS**

1. **Responses to RFP.** All Proposals shall become the property of the Town upon receipt and will not be returned to the Proposer. Selection or rejection will not affect this right. Any confidential/proprietary information submitted in response to this request shall be readily identified, clearly marked and separated from the rest of the response. Co-mingling of confidential/proprietary and other information is not acceptable. Submittals will be handled in accordance with applicable federal and state public records laws and procurement regulations. Neither cost information nor the total Proposal will be considered confidential/proprietary.
2. **Rejection Rights**. The Town reserves the right to reject all Proposals and re-solicit if deemed by the Town to be in its best interests, and to abandon the Project and this RFP at any time for any or no reason. The Town is not obligated to accept the lowest cost proposed, is not obligated to accept any Proposal, and will make its determination based on the best interests of the Town. The Town reserves the right to determine, in its sole discretion, whether any Proposal meets the needs or purposes intended and is within the approved budget. The Town does not base its award on price alone. Also, to be considered are: quality of services; past experience with the Proposer; qualifications of the Proposer and/or subcontractors; services offered; equipment capability; maintenance considerations; long-range costs, delivery; and similar criteria.
3. **Other Conditions; Reservation of Rights**. This is a solicitation and not an offer to contract. The provisions in this RFP and any procurement or purchasing policies or procedures of the Town are solely for the fiscal responsibility of the Town and confer no rights, duties, or entitlements to any party submitting responses to this solicitation. The Town reserves the right to issue clarifications and other directives concerning this RFP, to make and issue modifications to the RFP schedule; to require clarification or further information with respect to any response or Proposal received; to waive any informalities or irregularities; and to determine the final scope and terms of any contract, and whether to enter any contract. The provisions herein confer no rights, duties or entitlements to any Proposer.
4. **Proposer’s Responsibilities.**  Proposer shall make all investigations necessary to thoroughly inform themselves regarding the Project and are expected to examine the drawings, specifications, schedule of delivery, and all instructions. Failure to do so is at the risk of the Proposer.

1. **Costs of Response Preparation and Other Charges**. Proposers are solely responsible for all costs of preparing their proposals and participation in this RFP, and the Town assumes no responsibility for payment of any expenses incurred by a Proposer as part of this process. For the selected firm, no reimbursement will be made by the Town for any costs incurred prior to full execution of a contract and issuance of written notice by the Town to commence Project services.
2. **Agreement Required.** A written agreement will be required between the Town and the selected Proposer, which agreement will be in the form and substance required by the Town. A sample agreement is included with this RFP, but the Town reserves the right to modify the terms and conditions thereof. The agreement shall include insurance requirements for both general liability and errors and omissions.
3. **Taxes.** Proposers shall not include federal, state, or local excise or sales taxes in prices offered, as the Town is exempt from payment of such taxes. Town tax identification numbers will be made available to the selected contractor.
4. **Pricing.** Proposers may offer a cash discount for prompt payment. Discounts will be considered in determining the lowest net cost for the evaluation of Proposals; discounts for periods of less than twenty days, however, will not be considered in making the award. Proposers are encouraged to provide their prompt payment terms in the space provided on the Pricing Form. If no prompt payment discount is being offered, the Proposer shall enter a zero (0) for the percentage discount to indicate net thirty days.
5. **No Collusion.** The Proposer, by affixing its signature to this RFP, certifies that its Proposal is made without previous understanding, agreement, or connection either with any persons, firms or corporations making a Proposal for the same items, or with the Town. The Proposer also certifies that its Proposal is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action. To ensure integrity of the Town’s public procurement process, all Proposers are hereby placed on notice that any and all Proposers who falsify the certifications required in conjunction with this section will be prosecuted to the fullest extent of the law.
6. **Elimination from Consideration.** A Proposal may not be accepted from, nor any contract be awarded to, any person or firm which is in arrears to the Town upon any debt or contract or which is a defaulter as surety or otherwise upon any obligation to the Town.A Proposal may not be accepted from, nor any contract awarded to, any person or firm which has failed to perform faithfully any previous contract with the Town, for a minimum period of three years after this previous contract was terminated for cause.
7. **Equal Opportunity.** The Town intends and expects that the contracting processes of the Town and its vendors provide equal opportunity without regard to gender, race, ethnicity, religion, age, disability or any other protected class and that its vendors make available equal opportunities to the extent third parties are engaged to provide goods and services to the Town as subcontractors, vendors, or otherwise. Accordingly, the vendor shall not discriminate on any of the foregoing grounds in the performance of the contract, and shall make available equal opportunities to the extent third parties are engaged to provide goods and services in connection with performance of the contract.

**SPECIAL TERMS AND CONDITIONS**

**COMPETENCY OF CONTRACTORS - MINIMUM YEARS OF EXPERIENCE AND OPERATIONAL FACILITIES REQUIRED:** Responses will only be considered from Proposers that have been engaged in the business of performing services as described in this RFP for a minimum period of five (5) years prior to the date of this RFP. The Proposer must be able to produce evidence that they have an established satisfactory record of performance for a reasonable period of time and have sufficient financial support, equipment and organization to ensure that they can satisfactorily execute the services if awarded a contract. The term 'equipment and organization' as used herein shall be construed to mean a fully equipped and well established company in line with the best business practices in the industry and as determined by the proper authorities of the Town. The Town reserves the right, before awarding the contract, to require a Proposer to submit such evidence of its qualifications as it may deem necessary, and may consider any evidence available to it (including, but not limited to, the financial, technical and other qualifications and abilities of the Proposer, including past performance and experience with the Town) in making the award in the best interests of the Town.

**QUALIFICATIONS OF CONTRACTOR:** The Town may make such investigations as deemed necessary to determine the ability of the Proposer to perform work, and the Proposer shall furnish all information and data for this purpose as the Town requests. Such information includes but not limited to: current/maximum bonding capabilities, current licensing information, audited financial statements, history of the firm on assessments of liquidated damages, contracts cancelled prior to completion and/or lawsuits and/or pending lawsuits against the firm and/or its principals. The Town reserves the right to reject any Proposal if the evidence submitted by, or investigation of, such Proposer fails to satisfy the Town that such Proposer is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional bids will not be accepted.

**MATERIAL PRICED INCORRECTLY:** As part of any award resulting from this process, Proposer(s) will discount all transactions as agreed. In the event the Town discovers, through its contract monitoring process or formal audit process, that material was priced incorrectly, Proposer (s) agree to promptly refund all overpayments and to pay all reasonable audit expenses incurred as a result of the non-compliance.

PRICING FORM

**I PRICING (FOR EACH PARTICIPANT)**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **QTY** | **UNIT** | DESCRIPTION | **UNIT PRICE** | **EXTENDED PRICE** |
| **1** |  |  |  |  | $0.00 |
| **2** |  |  |  |  | $0.00 |
| **3** |  |  |  |  | $0.00 |
| **4** |  |  |  |  | $0.00 |
| **5** |  |  |  |  | $0.00 |
| **6** |  |  |  |  | $0.00 |
| **7** |  |  |  |  | $0.00 |
| **8** |  |  |  |  | $0.00 |
| **9** |  |  |  |  | $0.00 |
| **10** |  |  |  |  | $0.00 |
|  |  |  |  |  |  |
|  |  |  | **Total** |  | **$0.00** |

Not to Exceed Total:

**SUBMISSION FORM**

**SUBMISSION:** It is imperative, when submitting a bid/proposal, that you address the envelope as follows:

Town of Bennett

ATTN: Purchasing

207 Muegge Way

Bennett, CO 80102

Attn: Daymon Johnson

Director of Capital Projects

RFP: 23-008

Does your proposal comply with all the terms YES / NO

and conditions? If no, indicate exceptions

Does your proposal meet or exceed all YES / NO

specifications? If no, indicate exceptions

State percentage of prompt payment discount, if offered \_\_\_\_\_\_\_\_\_\_ %

State total bid price (include all items bid) \_\_\_\_\_\_\_\_\_\_\_\_

State total bid price with discount \_\_\_\_\_\_\_\_\_\_\_\_

**The Town of Bennett must have on file a completed W-9 prior to doing business with Contractors. Please submit the attached form with your Proposal.**

**SUBSTITUTE FORM W-9** Vendor#

**REQUEST FOR TAXPAYER**

**IDENTIFICATION NUMBER AND CERTIFICATION**

**(A copy of the W-9 instructions is available upon request)**

**1 NAME OF FIRM:**

NAME (Legal Name)

BUSINESS NAME (If different from above e.g. DBA)

**2 ADDRESS WHERE NOTIFICATIONS, PURCHASE ORDERS ETC. SHOULD BE MAILED**

(if different from above):

NAME (As it appears on invoice)

ADDRESS

CITY, STATE, ZIP

**3. PAY TO OR REMITTANCE INFORMATION**

(If more than one remit to address, please attach on additional page.)

STREET ADDRESS

CITY, STATE, ZIP

The Internal Revenue Service requires that you submit a Taxpayer Identification Number to comply with this regulation, please fill in the required information on this form, sign and return it to:

By fax (303) 644-4125

By mail Town of Bennett

ATTN: Danette Ruvalcaba

207 Muegge Way

Bennett, CO 80102

**TAXPAYER IDENTIFICATION NUMBER (TIN)**

Social Security Number \_\_\_\_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_\_\_\_

OR

Federal Identification Number \_\_\_-\_\_\_\_\_\_\_\_\_\_

Name of Business Owner (please print)

Check Appropriate Box:

[ ] Corporation [ ] Partnership [ ] Government

[ ] Individual/Sole Prop [ ] Non-Profit Organization [ ] Other \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Must explain)

**CERTIFICATION**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct Tax Identification Number, and
2. I am not subject to backup withholding.
3. I am a US person (including a US resident alien)

Signature\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone Number ( )\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**NOTICE! CHECKS OR PURCHASE ORDERS WILL NOT BE ISSUED BY THE TOWN OF BENNETT UNTIL YOUR TAX PAYER ID NUMBER IS ON FILE IN THIS OFFICE!**

FOR OFFICE USE ONLY:

Individual/Sole Proprietorships: For Corporation:

|  |  |  |
| --- | --- | --- |
| [ ] Merchandise Only | [ ] Services | [ ] Attorney |
| [ ] Employee expense reimbursement | [ ] Contract Labor | [ ] Non Attorney |
| [ ] Garnishment / Child Support | [ ] Other (Explain) |  |
| [ ] Damage awards & other reimb | [ ] Sale of Land |  |

Approved:

Town Administrator Date

**SAMPLE AGREEMENT**

**CONSTRUCTION CONTRACT**

This Agreement, is made and entered this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ by and between the Town of Bennett (“Town”), a Colorado municipal corporation and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[insert Contractor’s legal name]* (“Contractor”).

**THE PARTIES AGREE AS FOLLOWS:**

**1. Scope of Work – Price.** The Contractor agrees to perform for the Town all of the work set forth in Exhibit A attached hereto and incorporated herein by reference (hereinafter the “Work”). The Town agrees to pay, in full payment for the performance of the Work in compliance with this Agreement, an amount not to exceed $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[insert lump sum contract amount]*. Unit prices and unit costs for the Work shall not exceed those shown in Exhibit A. Contractor shall furnish, except as may otherwise be provided in writing, all labor, services, materials, tools, and equipment for the completion of the Work. Contractor will construct and complete the Work in a thorough and workmanlike manner in every respect to the satisfaction and approval of the Town, within the time specified herein.

**2. Contract Documents.** The Work shall be done in strict accordance with all scope of Work documents attached hereto as Exhibit A and with the following additional documents: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*[insert a list of all documents that apply to the work, such as utility plans and specifications, site plans, engineering plans, architectural drawings, etc. The list should reference the name of the drawing, date prepared, number of pages and, if noted, job or reference number].* All of such documents are hereby made a part of this Agreement and form the contract documents as fully as if the same were set forth at length herein.

**3. Compliance and Licensing.** a. Contractor shall be responsible for providing any measures necessary for insuring the safety of the public during the performance of the work, such as barricading and traffic control, in accordance with the requirements of the Town.

b. Contractor shall be responsible for obtaining and complying with all necessary permits, ordinances, and laws, including but not limited to grading permits and laws concerning the control of fugitive dust. The Contractor shall not be required to pay any grading permit fees, cut fees, water tap fees, or use taxes required by the Town of Bennett.

c. Contractor and all subcontractors performing the Work provided for in this Agreement shall be licensed contractors in the Town of Bennett in accordance with the Bennett Municipal Code and shall pay the required fees for such license.

d. Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Work site at all times during performance of the Work. The superintendent shall represent the Contractor and communications given to the superintendent shall be binding as if given to the Contractor. Contractor shall not employ a proposed superintendent to whom the Town has made reasonable and timely objection. Contractor shall not change the superintendent without the Town’s consent, which shall not unreasonably be withheld or delayed. The Town reserves the right to revoke its acceptance of the superintendent at any time on the basis of a reasonable objection. Upon such revocation, the Contractor shall submit an acceptable replacement for the rejected superintendent.

**4. Relationship of Contractor to Town.** Contractor covenants to furnish its best skill and judgment and to cooperate with the Town's Project Manager and Field Manager, as identified herein, and all other persons and entities in furthering the interests of the Town. Contractor agrees to furnish efficient superintendence and to use its best efforts to furnish at all times an adequate supply of workers and materials, and to perform the Work in the best way and in the most expeditious and economical manner consistent with the interests of the Town.

**5. Project and Field Manager.** The Town's Project Manager for the purposes of the Work is the following or such other person as the Town may designate in writing: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Town’s Field Manager for the purposes of communicating with Contractor in the field and coordinating Town efforts in the field is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Change orders may only be authorized by the persons listed in Section 17.

**6. Time of Commencement and Completion.** a. No Work shall be commenced until after a pre-construction meeting of the Contractor and Town representatives as appropriate, and until the Town has in writing instructed the Contractor to commence work.

b. The Contractor shall finally complete all Work in a manner acceptable to the Town, and in compliance with this Agreement, on or before \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_*.* Prompt completion of the Work is essential to the Town, and time is of the essence in all respects regarding this Agreement and the Work. Payment for the Work shall only be made after the Work has been finally completed and accepted by the Town.

**7. Price of Work - Payment.**

**[For a lump sum contract use the following subsection (a)]**

a. Payments of the entire contract price shall be made to Contractor in a single, lump sum payment within 30 days after final completion of the Work and acceptance thereof by the Town. Except as provided in Section 7.b, the contract price set forth in Section 1, shall be inclusive of all costs of whatsoever nature associated with the Contractor's Work efforts, including but not limited to salaries, benefits, expenses, overhead, administration, profits, and outside fees. The scope of Work and payment therefor shall only be changed by a properly authorized amendment to this Agreement.

**[For progress payments use the following subsection (a)]**

a. By the 25th day of each month, Contractor shall submit to the Town for review and approval, an application for payment fully completed and signed by Contractor covering the Work completed through the last day of the prior month and accompanied by such supporting documentation as is required by these contract documents, including without limitation, time sheets, invoices, receipts, bills of lading, and all other documents the Town may require. Materials on hand but not complete in place may not be included for payment at the discretion of the Town. Each subsequent application for payment shall include an affidavit of Contractor providing 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. Notwithstanding the progress payments, if the contract price set forth in Section 1 exceeds $150,000, it is the intent and purpose of the Town to withhold five percent (5%) of payments to Contractor in accordance with Article 91, Title 24, C.R.S.

b. The contract price does not include the following costs: (1) water service, electric service, and associated utilities; and (2) the cost of the performance, payment and warranty bonds that may be required for the Work pursuant to Section 14, the cost of which bonds shall not exceed 2.5 percent of the amount set forth in Section 1.

**8. Scope of Payment.** The Contractor shall accept the compensation, as herein provided, in full payment for furnishing all materials, equipment, labor, tools, services, and incidentals necessary to complete the Work and for performing all Work. The Town’s payment for the Work shall not relieve the Contractor of any obligations to correct any defective Work or materials. No funds payable under this Agreement shall become due and payable, if the Town so elects, until the Contractor shall satisfy the Town that it has fully settled or paid for all materials and equipment used in or upon the Work and labor done in connection therewith. 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. 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 Town in lieu of the bond so executed by such surety.

**9. Observation of All Laws.** It is assumed that Contractor is familiar with all laws, codes, ordinances, and regulations which in any manner affect those engaged or employed in the Work or the material or equipment used in or upon the site, or in any way affect the Work. No pleas or claims of misunderstanding or ignorance by Contractor shall in any way serve to modify the provisions of the Agreement. Contractor shall at all times observe and comply with all federal, state, county, local, and municipal laws, codes, ordinances, and regulations in any manner affecting the conduct of the Work.

**10. Contractor's Responsibility for Work.** 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 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 material which may be destroyed, lost, damaged, or in any way made useless for the purpose and use intended prior to final acceptance of the Work, or portions thereof. 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.

**11. Termination of Contractor's Responsibility.** The Work 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 any surety bond, and except as required in this Agreement regarding the Contractor's guaranty of work.

**12. 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.

**13. Insurance and Bonds.** a. The Contractor shall not begin the Work until it has obtained all insurance required by this Section and such insurance has been approved by Town. The Contractor shall not allow any subcontractor to begin any efforts on the Work until all similar insurance required of the subcontractor has been obtained and approved. For the duration of this Agreement, the Contractor must maintain the insurance coverage required in this Section.

b. The Contractor agrees to procure and maintain, at its own cost, the following policy or policies of insurance. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types. Contractor shall procure and maintain, and shall cause each Subcontractor of the Contractor to procure and maintain (or shall insure the activity of Contractor's Subcontractors in Contractor's own policy with respect to), the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

(1) Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract.

(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 FIVE HUNDRED THOUSAND DOLLARS ($500,000) each occurrence and ONE MILLION DOLLARS ($1,000,000) aggregate with respect to each of Contractor's owned, hired and/or non-owned vehicles assigned to or used in performance of the Work. The policy shall contain a severability of interests provision.

c. The policies required above, except for the Workers' Compensation insurance, shall be endorsed to include the Town, and its officers and employees, as additional insureds. 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.

d. Certificates of insurance shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, 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 Work and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Town reserves the right to request and receive a certified copy of any policy.

e. 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 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 Town shall be repaid by Contractor to the Town upon demand, or the Town may offset the cost of the premiums against monies due to Contractor.

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

g. If the contract price set forth in Section 1 exceeds $50,000, the Contractor shall furnish a performance bond, payment bond, and warranty bond in an amount determined by the Project Manager, but in any event at least equal to the contract price, as security for the faithful performance and payment of all Contractor's obligations hereunder, including but not limited to the guaranty period provided in Section 16. These bonds shall remain in effect at least until one year after the date of final payment. All bonds shall be in forms acceptable to the Town and executed by such sureties licensed to conduct business in Colorado that are acceptable to the Town.

**14. Evidence of Satisfaction of Liens.** Contractor shall provide Town with written evidence that all persons who have done and portion of the Work or have furnished material under this Agreement and are entitled to liens therefor under any laws of the State of Colorado have been fully paid or are not entitled to such liens. Final payment shall not be made to Contractor until the Town is reasonably satisfied that all claims or liens have been satisfied by Contractor or have been secured against as provided in C.R.S. section 38-26-101 et seq.

**15. Acceptance of Work**. No act of the Town, or of any representative thereof, either in superintending or directing the Work, or any extension of time for the completion of the Work, shall be regarded as an acceptance of such Work or any part thereof, or of materials used therein, either wholly or in part. Acceptance shall be evidenced only by the final certificate of Town. Before any final certificate shall be issued, Contractor shall execute an affidavit on the certificate that it accepts the same in full payment and settlement of all claims on account of Work done and materials furnished under this contract, and that all claims for materials provided or labor performed have been paid or set aside in full. No waiver of any breach of this contract by Town or anyone acting on their behalf shall be held as a waiver of any other subsequent breach thereof. Any remedies provided herein shall be cumulative.

**16. Guaranty of Work.** Contractor agrees to guarantee all Work under this Agreement for five years from the date of final acceptance by the Town. If any unsatisfactory condition or damage develops within the time of this guaranty due to materials or workmanship that are defective, inferior, or not in accordance with the Agreement, as reasonably determined by Town, then the Contractor shall, when notified by Town, immediately place such guaranteed Work in a condition satisfactory to Town. The Town shall have all available remedies to enforce such guaranty, except that Town shall not have any work performed independently to fulfill such guaranty 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.

**17. Timing of Change Orders.** The Town shall use reasonable efforts to grant or deny change orders requested by the Contractor in as timely a manner. Contractor shall provide all supporting documentation for any requested change order prior to Town action thereon.

**18. No Assignment.** This Agreement and any rights and obligations hereunder, including but not limited to rights to moneys due or that may become due, shall not be assigned by the Contractor without the prior written approval of the Town.

**19. Governing Law.** This Agreement shall be deemed entered into in Adams County, Colorado, and shall be governed by the laws of the State of Colorado. The parties agree to the jurisdiction and venue of the courts of Adams County in connection with any dispute arising out of or in any matter connected with this Agreement.

**20. Equal Opportunity Employer.** a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.

b. The Contractor shall be in compliance with the appropriate provisions of the American with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal regulation. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of any purchase order or contract and with any new purchase order or contract issued by the Town.

**21. Independent Contractor.**

a. Contractor and any persons employed by Contractor for the performance of Work hereunder shall be independent contractors and not employees or agents of the Town. Nothing herein shall be construed as establishing a quality standard for any individual, or as establishing any right on the part of the Town to oversee the actual work of the Contractor or to instruct any individual as to how the Work will be performed.

b. Contractor shall have the right to employ such assistance as may be required for the performance of Work under this Agreement. Said Contractor shall be responsible for the compensation, insurance, and all clerical detail pertaining to such assistants, and shall be solely responsible for providing any training, tools, benefits, materials, and equipment.

c. **THE PARTIES HERETO UNDERSTAND THAT THE CONTRACTOR AND THE CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS ARE NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS UNDER ANY WORKERS' COMPENSATION INSURANCE POLICY OF THE TOWN, AND THAT CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX AND OTHER APPLICABLE TAXES AND OTHER AMOUNTS DUE ON ANY MONEYS PURSUANT TO THIS AGREEMENT.**

**22. Execution.** The person executing this Agreement on behalf of Contractor represents and warrants that he or she has been duly authorized to execute this Agreement on Contractor’s behalf and has the power to bind Contractor to the terms and conditions hereof.

BY THEIR SIGNATURES, the parties agree to the terms of this Agreement this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

## TOWN OF BENNETT CONTRACTOR:

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Town Clerk