

TRADE CONTRACTOR AGREEMENT

THIS AGREEMENT is made this 30th day of April 2025 between the Town of Elizabeth, Colorado (the "Town") and RME Ltd LLC/d/b/a Elite Surface Infrastructure, ("Contractor").

In consideration of the mutual covenants, agreements, conditions and undertakings hereinafter specified, the Town and Contractor agree as follows:

Section 1. Scope of Work. Contractor shall perform all work in accordance with **Exhibit A**, which is attached hereto and incorporated by this reference, including furnishing all supervision, labor, equipment, and materials therefor (the "Project").

Section 2. Contract Documents. The Contract Documents, which comprise the entire agreement and contract between the Town and Contractor, consist of this Agreement and Exhibit A; any special conditions measurement and payment technical specifications and drawings; and any modifications, change orders or other such revisions properly authorized after the execution of this Agreement.

Section 3. Agreement Price. The Town has appropriated the money necessary to fund this project. The Town shall pay the Trade Contractor in current funds for the performance of the work, subject to any additions and deletions, by written change order, the total sum not to exceed One million-three hundred twenty-seven thousand-four hundred twenty- three dollars and thirteen cents. (\$1,327,423.13) (the "Original Contract Amount"). Notwithstanding anything to the contrary contained in this Agreement, no change order or other form of directive by the Town requiring additional compensable work to be performed, which causes the aggregate amount payable under this Agreement, to exceed the amount appropriated for the Original Contract Amount, unless the Trade Contractor is given written assurance by the Town that lawful appropriations have been made by the Town to cover the cost of the additional work.

Section 4. Times and Methods of Payment.

a. Progress payments shall be made in proportion to services rendered and shall be due and owing within thirty (30) days of Contractor's submittal of his monthly invoice. The contractor shall submit invoices prior to the twenty-fourth (24th) day of each month for payment the following month. Payment of any invoice that is received after the twenty-fourth (24th) day of each month may be delayed up to a period of sixty (60) days. If the Town objects to any invoices submitted by Contractor, the Town will so advise Contractor in writing giving the reason within fourteen (14) days of receipt of such invoice.

b. If the Town fails to make payments due Contractor within sixty (60) days after receipt and acceptance of Contractor's bill, Contractor may, after giving seven (7) days written notice to the Town, suspend services under this Agreement until Contractor's outstanding bills have been paid in full.

Section 5. Retainage. An amount equal to ten percent (10%) of all progress payments shall be retained by the Town until the Project is completed satisfactorily and finally accepted by the Town at the conclusion of the warranty period.

Section 6. Final Payment. The Town shall make final payment to the Contractor when the Project is complete and finally accepted by the Town, which final acceptance shall occur at the conclusion of the warranty period.

Section 7. Probationary and Final Acceptance. Probationary acceptance of the Project shall follow the inspection and approval of Contractor's performance by the Town, along with inspection by appropriate government officials pursuant to local, state and federal requirements, if necessary. The Town shall have the right and authority to determine the acceptability of the Contractor's performance for conformity with this Agreement, which determination should be conclusive and binding upon Contractor. Upon such a determination, the Town shall accept the Project on a probationary basis. Final acceptance by the Town shall then occur upon the termination of the Warranty Period and the completion of punch list items, if any. Final acceptance shall be subject to the provisions of this Contract and Colo. Rev. Stat. Section 38-26-107, as amended, and in no manner affects or releases any warranties or guarantees with Contractor or manufacturers of Project equipment.

The Project, when presented to the Town for final acceptance, shall be delivered free from all claims or encumbrances whether then in existence or later established by law, statute, ordinance or otherwise. No claim or encumbrance against the Project or the Project site shall be outstanding or otherwise unsettled at the time of final acceptance. The right to assert any claim or encumbrance against the Project, after final acceptance by the Town and final payment to Contractor, is hereby waived by Contractor on behalf of itself and any subcontractor, laborer, materialman, equipment supplier, manufacturer or other person.

Section 8. Commencement and Completion of Performance. The services called for shall commence on May 1, 2025, and end on September 10, 2025. The Contractor shall commence any work requested by the Town within ten (10) days of notification by the Town. In the event Contractor fails to commence work within this time period, the Town may take over the work

and prosecute the same to completion. The date of beginning and the time for completion of the work are essential conditions of this Agreement. The contractor shall proceed with the work at such a rate of progress to ensure full completion within the contract time. It is expressly understood and agreed by and between the Town and Contractor that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work during the period such work is to be performed. If Contractor shall fail to complete the work within the contract time, or extension of time granted by the Town, then Contractor shall pay to the Town the amount of liquidated damages and not as penalty the sum of One thousand-five hundred dollars and no cents (\$1,500.00) for each calendar day that Contractor shall be in default after September 10, 2025. The Town will charge the Contractor and may deduct from the partial and final payment for the work, all architectural, engineering and construction management expenses incurred by the Town in connection with any work accomplished after the specified completion date.

Contractor will not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to the following, and Contractor has promptly given written notice of such a delay to the Town:

- a. to any preference, priority or allocation order duly issued by the Town; and
- b. to unforeseeable causes beyond the control and without the fault or negligence of Contractor including, but not restricted to, unforeseen conditions, acts of God or of the public enemy, acts of the Town, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather.

Section 9. Termination.

a. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided, that no such termination may be affected unless the other party is given:

- i. not less than ten (10) calendar days written notice of intent to terminate, and
- ii. an opportunity for consultation with the terminating party prior to

termination.

b. This Agreement may be terminated in whole or in part in writing by the Town for its convenience.

c. Upon receipt of a termination action pursuant to paragraphs a. and b. above, Contractor shall promptly discontinue all services affected (unless the notice directs otherwise) and the Town may take over the work and prosecute the same to completion by agreement with another party or otherwise.

Section 10. Taxes, Licenses, Permits and Regulations. In all operations connected with the Project, Contractor shall pay all fees, charges and taxes imposed by law and shall obtain all licenses and permits necessary for completion of the Project, paying all fees therefore unless otherwise specified by the Town. The Town shall assist the Contractor to determine which licenses and permits are required for completion of the Project.

The Town is exempt from Colorado state sales and use taxes on materials to be permanently incorporated in the work. Accordingly, taxes for which the Town is exempt shall not be included in the Agreement Price. The Town shall, upon request, furnish Contractor with a copy of its Certificate of Tax Exemption. Contractors and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an exemption certificate and purchase the materials tax free. Pursuant to C.R.S. §39-26-114(1)(a)(XIX), Contractor and subcontractors shall be liable to the State of Colorado for exempt taxes paid due to failure to apply for exemption certificates or for failure to use said certificates. Contractors shall comply with all laws, ordinances, codes, rules and regulations of all governmental authorities, whether local, state or federal, relating to the performance of work on the Project and, particularly, in complying with those laws concerning the environment, workers' compensation, safety and health, state labor and materials, and equal employment opportunity.

Section 11. Insurance.

The Trade Contractor agrees to obtain and maintain during the life of this Contract, a policy or policies of insurance against all liability, claims, demands, and other obligations assumed by the Trade Contractor pursuant to Section 1 above. Such insurance shall be in addition to any other insurance requirements imposed by this Contract or by law. The Trade Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section 1 above, by reason of its failure to obtain and maintain during the life of this Contract insurance in sufficient amounts, durations, or types.

The Trade Contractor shall obtain and maintain during the life of this Contract and shall cause any subcontractor to obtain and maintain during the life of this Contract the minimum insurance coverage listed below. Such coverages shall be obtained and maintained with forms and insurers acceptable to the Town. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Trade Contractor pursuant to Section 1 above. In the case of a claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

Worker's Compensation Insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of the 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.

General Public Liability Insurance to be written with a limit of liability of not less than one million dollars (\$1,000,000) for all damages arising out of bodily injury, personal injury (including coverage for employee and contractual acts), including death, at any time resulting therefrom, sustained by any one person and not less than one million, five hundred, thousand dollars (\$1,500,000) for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by two or more persons in any one accident. This policy shall also include coverage for blanket contractual and independent contractor risks.

The limits of General Public Liability Insurance for broad form property damage (including products and completed operations) shall be not less than one million dollars (\$1,000,000) for all damages arising out of injury to or destruction of property in any one accident and not less than one million, five hundred, thousand dollars (\$1,500,000) for all damages arising out of injury to, or destruction of property, including the Town's property during the policy period.

The General Public Liability Insurance policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interest's provision.

Protective Liability and Property Damage insurance covering the liability of the Town, including any employee, officer or agent of the Town with respect to all operations under the Contract by the Trade Contractor or his sub-contractors shall be obtained and maintained during the life of the contract. The limits of the Town's Protective Liability Policy, to be provided by the Trade Contractor, as described in this Section 2, shall be increased to the same limits as described above for the Trade Contractor's General Public Liability Insurance.

Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate with respect to each of the Trade Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interest's provision. If the Trade Contractor has no owned automobiles, the requirements of this paragraph shall be met by each employee of the Trade Contractor providing services to the Town under this contract.

All Insurance Policies and Certificates of Insurance issued for this project shall name as additional insured(s), the Town, whether private or governmental, the Town's officers and employees, and the Engineer and its agents and employees, and any other person(s), company(ies), or entity(ies) deemed necessary by the Town. The Trade Contractor shall be solely responsible for any deductible losses under any policy required herein.

The insurance provided by the Trade Contractor shall be primary to insurance carried by the Town, the Engineer, and all other additional insureds, and the principal defense of any claims resulting from the Trade Contractor's obligations under the Contract shall rest with the Trade Contractor's Insurer.

The certificate of insurance provided by the Trade Contractor shall be completed by the Trade 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 reviewed and approved by the Town prior to commencement of the contract. No other form of certificate shall be used. The certificate shall identify this Contract 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. The completed certificate of insurance shall be sent to:

Patrick Davidson
Town of Elizabeth
Box 159
151 South Banner Street
Elizabeth, Colorado 80107

Failure on the part of the Trade 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 this contract, or at its discretion the Town 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 the Trade Contractor to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to the Trade Contractor from the Town.

The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

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.

Section 12. Warranties and Guarantees. Contractor hereby represents, warrants and guarantees to the Town all workmanship, equipment and materials on or made a part of the Project and its structures for a period of two (2) years from and after the date of probationary acceptance of the work by the Town as provided by this Agreement.

Section 13. Indemnification. Contractor shall indemnify, defend and hold the Town, its agents, employees, engineers, and attorneys harmless from and against all claims, damages, judgments, losses and expenses of every nature, including reasonable attorney fees, arising at any time out of any act or omission of Contractor, its employees, subcontractors and their employees, and all other persons directly or indirectly involved in or performing work for Contractor on the Project.

Section 14. Subcontractors. All contracts between Contractor and subcontractors shall conform explicitly to all applicable provisions of this Agreement. Contractor shall require any subcontractors to provide the Town with a certificate of insurance which provides insurance coverage as provided by Section 11 of this Agreement. The certificate of insurance shall name the Town as an additional insured and provide that the policy shall not be terminated without ten (10) days' written notice to the Town. In all events, Contractor shall be responsible and held liable for any bonding, insurance, warranties, indemnities, progress payments and completion of performance of or to such subcontractors. Upon receipt of progress and final payments from the Town, the Contractor shall disburse the same immediately to subcontractors without any requirement of the Town to supervise the same. The Town may, but shall not be obligated to, require Contractor to furnish lien waivers for the work performed or materials furnished by subcontractors or materialmen prior to payment of progress payments or final payment. No

contractual relationship shall exist between the Town and any subcontractor because of the subletting of any part of the Project work.

Section 15. Change Order. There shall be no increase in price or change in the scope of work described herein without a written change order issued by the Town along with the Town's written assurance that lawful appropriations have been made by the Town to cover the cost of any additional work or materials described in the change order.

Section 16. Work Rules.

a. Contractor shall perform all work hereunder in keeping with the rules and regulations that the Town may promulgate at any time for the safe, orderly, and efficient conduct of all operations.

b. The Town shall have the right to require of Contractor the immediate removal from the Project of any employee of Contractor or of his subcontractors who, in the discretion of the Town, is not qualified to perform the work assigned to him, is guilty of improper conduct, or is not working in harmony with the other trades.

c. Nothing contained in this Agreement shall constitute Contractor as being an employee of the Town, nor shall any employment relationship between the Town and Contractor be created by the terms hereof.

d. Contractor is responsible for the safety of any of its materials, tools, possessions, and rented items stored on the job site and for protection of the Project and shall hold the Town and its authorized representatives harmless from any damage or loss incurred thereto.

e. Contractor shall promptly pay in full for any and all damage caused to the Project site by Contractor or by any subcontractor or other person or entity of any nature furnishing materials, equipment, machinery, supplies, labor, skilled services, or instruments for whose actions Contractor is responsible hereunder.

f. No material, equipment, tools, supplies, or instruments other than those belonging to or leased by Contractor will be removed from the Project site by Contractor without the prior written approval of the Town.

g. Contractor agrees to report immediately to the Town, in writing, any and all property damage and/or personal injury that occurs on the Project site during the course of Contractor's performance.

Section 17. Assignment. Contractor shall not, at any time, assign any interest in this Agreement or the other Contract Documents to any person or entity without the prior written consent of the Town. The terms of this Agreement shall inure to and be binding upon the successors and assigns of the parties hereto.

Section 18. Amendment. This Agreement may be amended from time to time by agreement between the parties hereto. No amendment, modification, or alteration of this Agreement shall be binding upon the parties hereto unless the same is in writing and approved by the duly authorized representatives of each party hereto.

Section 19. Severability. If any term, section, or other provision of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, section or other provision shall not affect any of the remaining provisions of this Agreement.

Section 20. Waiver. No waiver any either party of any right, term or condition of this Agreement shall be deemed or construed as a waiver of any other right, term or condition, nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

Section 21. Remedies. None of the remedies provided to either party under this Agreement shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which such party may then be entitled. Every obligation assumed by, or imposed upon, either party hereto shall be enforceable by any appropriate action, petition or proceeding at law or in equity. In addition to any other remedies provided by law, this Agreement shall be specifically enforceable by either party. This Agreement shall be construed in accordance with the laws of the State of Colorado, and particularly those relating to governmental contracts.

Section 22. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.

Section 23. Entirety. This Agreement constitutes the entire agreement between the parties concerning the subject matter herein, and all prior negotiations, representations, contracts, understandings, or agreements pertaining to such matters are merged into, and are superseded by this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

TOWN OF ELIZABETH, COLORADO

By: _____
Angela Ternus, Mayor of Elizabeth

ATTEST:

Michelle M. Oeser, Town Clerk

CONTRACTOR

By: _____

Name: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this _____ day of _____, 2025, by _____ as the _____ of _____.

My commission expires: _____

(S E A L)

Notary Public