

# DRAFT AIA® Document A102® - 2017

## Standard Form of Agreement Between Owner and Contractor

where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the << >> day of << >> in the year <<2024 >>  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, legal status, address and other information)

Town of Johnstown  
450 S. Parish Avenue  
Johnstown, CO 80534<< >><< >>  
Notices@JohnstownCo.gov<< >>  
<< >>  
<< >>

and the Contractor:  
(Name, legal status, address and other information)

Mark Young Construction, LLC, a Delaware limited liability company  
7200 Miller Place  
Longmont, CO 80504  
Email: [dwolfe@markyoungconstruction.com](mailto:dwolfe@markyoungconstruction.com)  
<< >><< >>  
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for the following Project:  
(Name, location and detailed description)

Town of Johnstown – Police Department Renovation

The Project entails a renovation and addition to the existing Johnstown Police Department Building, located at 430 S. Parish Avenue, Johnstown, CO 80534. The scope of the Project is set forth in the Contractor’s Proposal dated May 16, 2024 and attached hereto and incorporated herein by reference as Exhibit A (“MYC Proposal dated 5/28/24”).

<< >>  
<< >>

The Architect:  
(Name, legal status, address and other information)

D2C Architects, Inc.  
1212 S Broadway, Suite 250  
Denver, CO 80210<< >><< >>  
<< >>  
<< >>  
<< >>

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A102™-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

The Owner and Contractor agree as follows.

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### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, including Exhibit A, the General Conditions of the Contract for Construction (AIA Document 201-2017, as amended) (“General Conditions”), the Drawings prepared and stamped by the Architect dated \_\_\_\_\_, and the Specifications, and Addenda set forth in Article 16, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor’s skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner’s interests. The Owner agrees to furnish and approve, in a timely manner, information available to Owner that is required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ 4.1 The date of commencement of the Work shall be:  
(Check one of the following boxes.)

[  ] A date set forth in a notice to proceed issued by the Owner.

§ 4.2 The Contract Time shall be measured from the date of commencement of the Work.

**§ 4.3 Substantial Completion**

§ 4.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:  
(Check one of the following boxes and complete the necessary information.)

[  ] Not later than «two hundred and forty-three» ( «243 » ) calendar days from the date of commencement of the Work, which date shall be set forth in the notice to proceed issued by the Owner.

[  ] By the following date: « »

§ 4.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ 4.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 4.3, liquidated damages, if any, shall be assessed as set forth in Section 5.1.6.

**ARTICLE 5 CONTRACT SUM**

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor’s Fee.

§ 5.1.1 The Contractor’s Fee:  
(State a lump sum, percentage of Cost of the Work, or other provision for determining the Contractor’s Fee.)

«The Contractor’s Fee is set forth in Exhibit A. »

§ 5.1.2 The method of adjustment of the Contractor’s Fee for changes in the Work:

« Four percent (4%) of the Cost of the Work. . »

§ 5.1.3 Limitations, if any, on a Subcontractor’s overhead and profit for increases in the cost of its portion of the Work:

«N/A »

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed « » percent ( « » %) of the standard rental rate paid at the place of the Project. N/A

§ 5.1.5 Unit prices, if any: N/A

§ 5.1.6 Liquidated damages, if any:  
(Insert terms and conditions for liquidated damages, if any.)

«Time is of the essence for the Work specified in the Contract Documents and the Owner will incur substantial damages if the Work is not completed within the time fixed for the Substantial Completion, as extended, if at all by

consent of the Owner and the Architect in writing pursuant to the Contract Documents. Inasmuch as the actual damages for such delay are impossible to determine, the Contractor agrees that it and its surety shall be liable for and shall pay liquidated damages to the Owner. The Contractor and the Owner hereby agree that the liquidated damages of Five Hundred Dollars (\$500.00) per day are a reasonable estimate of Owners damages and are not a penalty. Liquidated damages shall not commence to accrue until thirty (30) days after the date fixed for Substantial Completion, as extended, if at all by consent of the Owner and the Architect.

. »

**§ 5.1.7 Other:**

*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

« »

**§ 5.2 Guaranteed Maximum Price**

**§ 5.2.1** The Contract Sum is guaranteed by the Contractor not to exceed «Five Million Eight Hundred Forty Eight Thousand Nine Hundred Sixty Nine Dollars » (\$5,848,969.00« » ), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

**§ 5.2.2 Alternates**

**§ 5.2.2.1** Alternates, if any, included in the Guaranteed Maximum Price:

Alternates 1, 4 and 6, set forth in Exhibit A, the MYC Proposal dated 5/28/24, are included in the Guaranteed Maximum Price.

**§ 5.2.2.2** Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance

**§ 5.2.3** Allowances, if any, included in the Guaranteed Maximum Price:

*(Identify each allowance.)*

Item	Price

**§ 5.2.4** Assumptions, if any, upon which the Guaranteed Maximum Price is based:

Assumptions are set forth in Exhibit A, the MYC Proposal dated 5/28/24.

**§ 5.2.5** To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 5.2.6** The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 5.2.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 5.2.4 and the revised Contract Documents.

**ARTICLE 6 CHANGES IN THE WORK**

**§ 6.1** Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Article 7 of AIA Document A201™–2017, General Conditions of the Contract for Construction.

**§ 6.2** Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 5, 7 and 8 of this Agreement.

Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the term "cost" as used in Article 7 of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or the Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## **ARTICLE 7 COSTS TO BE REIMBURSED**

### **§ 7.1 Cost of the Work**

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only the items set forth Exhibit A.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard paid at the place of the Project, except with prior approval of the Owner.

## **ARTICLE 8 COSTS NOT TO BE REIMBURSED**

§ 8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Contractor's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article 7;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Article 7; and
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

## **ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS**

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## **ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS**

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the

Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and the Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 10.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11.

#### **ARTICLE 11 ACCOUNTING RECORDS**

The Contractor shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. All accounting records shall be maintained in accordance with generally accepted accounting practices consistently applied.

#### **ARTICLE 12 PAYMENTS**

##### **§ 12.1 Progress Payments**

§ 12.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

«N/A »

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, lien waivers and releases as set forth in the General Conditions and any other evidence required by the Owner or the Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

§ 12.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 12.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 12.1.5.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 12.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 12.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 12.1.7.1.1 and 12.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 12.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation;
- .6 Amounts about which there is a legitimate dispute as to whether payment is due; and
- .7 Retainage withheld pursuant to Section 12.1.8.



**§ 12.1.8 Retainage**

**§ 12.1.8.1** For each progress payment made prior to Substantial Completion of the Work, the Owner shall withhold the following amount, as retainage, from the payment otherwise due:

«Five percent (5%). »

**§ 12.1.8.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

«N/A »

**§ 12.1.8.2** Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 12.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

«N/A »

**§ 12.1.8.3** Retainage shall be released to the Contractor pursuant to the Colorado Public Works Act, C.R.S. §§38-26-101, *et seq.*, and as described in the General Conditions.

**§ 12.1.9** If final completion of the Work is materially delayed through no fault of the Contractor, the Owner may pay the Contractor any additional amounts, if any, in accordance with the General Conditions.

**§ 12.1.10** Except with the Owner's prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

**§ 12.1.11** The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 12.1.12** In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that: (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 12.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 12.2 Final Payment**

**§ 12.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- .1 the Contractor has fully performed the Contract, except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .3 the Contractor has submitted complete and legally effective releases or waivers satisfactory to Owner of any and all lien rights, if any, arising out of the Work or in relation to the Project; and
- .4 a final Certificate for Payment has been issued by the Architect in accordance with Section 12.2.2.

**§ 12.2.2** Within 30 days of the Owner's receipt of the Contractor's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

**§ 12.2.2.1** If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

**§ 12.2.2.2** Within seven days after receipt of the written report described in Section 12.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 12.2.1 have been met, the

Architect will either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of AIA Document A201-2017. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

**§ 12.2.2.3** If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Contractor's final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

**§ 12.2.3** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment subject to the Colorado Public Works Act, C.R.S. §§38-26-101, *et seq.*

**§ 12.2.4** [Intentionally omitted]

### **§ 12.3 Interest**

Payments for undisputed amounts due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

«Five percent (5%). « »

## **ARTICLE 13 DISPUTE RESOLUTION**

### **§ 13.1 Initial Decision Maker**

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.

N/A« »

« »

« »

« »

### **§ 13.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

[ « » ]

[  ] Litigation in a court of competent jurisdiction in the County of Weld, State of Colorado

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## **ARTICLE 14 TERMINATION OR SUSPENSION**

### **§ 14.1 Termination**

**§ 14.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2017.

**§ 14.1.2 Termination by the Owner for Cause**

**§ 14.1.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor’s Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

**§ 14.1.2.2** The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

**§ 14.1.3** [Intentionally omitted]

**§ 14.2 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017.

**ARTICLE 15 MISCELLANEOUS PROVISIONS**

**§ 15.1** Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 15.2** The Owner’s representative:

*(Name, address, email address and other information)*

«Matt LeCerf, Town Manager »  
«450 S. Parish Avenue »  
« Johnstown, CO 80534 »  
« 970-587-4664 »  
«MLeCerf@JohnstownCo.gov »  
« »

**§ 15.3** The Contractor’s representative:

*(Name, address, email address and other information)*

«Dennis Wolfe  
7200 Miller Place  
Frederick, CO 80504  
dwolfe@markyoungconstruction.com »  
« »  
« »  
« »  
« »  
« »

**§ 15.4** Neither the Owner’s nor the Contractor’s representative shall be changed without ten days’ prior notice to the other party.

## **§ 15.5 Insurance and Bonds**

### **§ 15.5.1 Insurance**

**§ 15.5.1.1** For all phases of the Project, the Contractor and the Owner shall purchase and maintain the insurance required herein and as set forth in the General Conditions. The Contractor shall require that each Subcontractor procure and maintain, at its own cost and expense, the requisite insurance.

**§ 15.5.1.2** The Contractor shall provide and maintain during the performance of this Agreement the insurance described below, which insurance shall be placed with a company or companies authorized to do business in the State of Colorado with an A.M. Best's Insurance Report rating at not less than A-/VI.

**§ 15.5.1.3** Prior to commencement of Work, the Contractor shall furnish and deliver to the Owner proof that the following insurance shall be in force and effect for the duration of the Project. All Certificates of Insurance relating to Broad Form General Liability, Automobile Liability and Excess Liability, shall list the Owner, its officers and employees, as additional insureds. Additional insured endorsements shall be provided to the Owner by the Contractor's insurance company along with the Certificates of Insurance. The additional insured endorsement for the Comprehensive General Liability insurance 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 required insurance policies.

**§ 15.5.1.3.1** Standard Form Commercial General Liability and Property Damage insurance (as provided on an ISO CG 00 01 form) that includes coverage for: (a) Claims for bodily injury, including death, and property damage; and (b) contractual liability on an occurrence basis and shall include fire, explosion, collapse, underground hazard and product/completed operations coverages. Minimum limits: General Aggregate \$2,000,000; Products/Completed Operations Aggregate \$2,000,000; Personal and Advertising Injury \$1,000,000; Each Occurrence \$2,000,000.

**§ 15.5.1.3.2** Contractor's workers compensation insurance, at statutory limits, as required by Colorado law, covering all employees working on the site, and Employer's Liability Insurance with the following minimum limits; Each Accident \$500,000; Each Occupational Disease \$500,000; Occupational Disease Aggregate \$500,000.

**§ 15.5.1.3.3** Automobile Liability insurance, covering the use, operation and maintenance of any automobiles, trucks, trailers or other vehicle owned, hired, or non-owned by the Contractor providing bodily injury, including death, and property damage coverage. Minimum limits of liability provided by this coverage shall be a Combined Single Limit of \$1,000,000.

**§ 15.5.1.3.4** Excess Liability Insurance with a minimum limit of \$5,000,000 for each occurrence and aggregate of \$10,000,000.

**§ 15.5.1.3.5** Standard, all risk of loss Builder's Risk completed value insurance. The amount of the standard deductible under the Builder's Risk Policy shall not exceed \$10,000.00 and the amount of the deductible for flood and water damage shall not exceed \$25,000.00. The Builder's Risk Insurance shall be carried by the Contractor at 100% of the Contract amount, totaling the Guaranteed Maximum Price.

**§ 15.5.1.4** The full aggregate liability policy limits required above shall be available with respect to the Contractor's obligations hereunder, and the Contractor shall obtain a location specific aggregate limited endorsement confirming such coverages as to the Owner and additional insureds. The Contractor agrees to notify the Owner and additional insureds of any substantial claims, paid or resolved, applied against the aggregate of any of the required insurance policies.

**§ 15.5.1.5** All insurance provided by the Contractor hereunder shall be primary to any insurance policies held by the Owner and additional insureds. Any insurance carried by the Owner, its officers, or its employees, shall be excess and not contributory insurance to that provided by Contractor. The Contractor waives subrogation as to the Owner and its agents, representatives, affiliates, additional insureds, and assigns on all policies carried by the Contractor. 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.

**§ 15.5.1.6** All insurance shall include a provision prohibiting cancellation, termination or alteration (so as to affect the intent of this Agreement) without thirty (30) days' prior notice by certified mail to the Owner. In the event of

threatened cancellation for nonpayment or nonrenewal, the Owner may pay the same on behalf of the Contractor, at the Owner's discretion, and deduct the same from any amount of payment due to the Contractor hereunder.

**§ 15.5.1.7** Payments for services provided will be withheld from the Contractor until acceptable Certificates of Insurance and Additional Insured Endorsements are received by the Owner.

**§ 15.5.1.8** No Work will be conducted on the Project site until satisfactory evidence has been submitted that the Contractor has insurance that complies with the specific insurance and indemnity requirements listed in the Contract Documents.

## **§ 15.5.2 Bonds**

**§ 15.5.2.1** The Contractor shall furnish a performance bond and payment bond in an amount at least equal to the Contract Sum, as security for the faithful performance and payment of the Contractor's obligations under the Contract, including but not limited to the one-year warranty period provided herein. All bonds shall be in the forms approved by the Town. These bonds shall remain in effect at least until one year after the date of final payment. All bonds shall be in the forms prescribed by the Contract Documents and be executed by such sureties as (i) are licensed to conduct business in the State of Colorado and (ii) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570, amended, by the Audit Staff, Bureau of Account, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act. If the surety on any bond furnished by the Contractor is declared bankrupt or becomes insolvent, or its right to do business in the State of Colorado is terminated, or it ceases to meet the requirements of clauses (i) and (ii) of this section, the Contractor shall, within five (5) days thereafter, substitute another bond and surety, both of which shall be acceptable to the Owner.

**§ 15.6** Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given by electronic mail sent to the email address set forth above and shall be deemed effective and delivered upon receipt of a "read receipt" or acknowledgment of receipt by the intended recipient

**§ 15.7** Other provisions:

**§ 15.7.1 Appropriation of Funds:** Pursuant to C.R.S. § 24-91-103.6, as may be amended from time to time, the Owner has appropriated the money necessary to fund this Project. No change order or other form of directive shall be issued by the Owner 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 Owner provides written assurance to the Contractor that lawful appropriations have been made to cover the cost of the additional work or unless such work is covered under the remedy-granting provisions of this Agreement.

**§ 15.7.2 Colorado Public Works Act:** Notwithstanding any other provision of the Contract Documents, the Owner may withhold funds if required to do so pursuant to the Colorado Public Works Act, C.R.S. §§38-26-101, *et seq.*

**§ 15.7.3 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.

**§ 15.7.4 Non-Discrimination:** The Contractor agrees to comply with the provisions of 24-34-401 through 24-34-406 of Colorado Revised Statutes relating to employment practices. The Contractor particularly agrees to comply with the provisions governing "Unfair Employment Practices," as therein set forth and to insert this nondiscrimination clause, and require compliance therewith, in all subcontracts hereunder.

**§ 15.7.5 Governmental Immunity:** Nothing herein shall be construed as a waiver of the limitations on damages or any of the privileges, immunities or defenses provided to, or enjoyed by, the Owner under common law or pursuant to statute, including but not limited to the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as from time to time amended.

**§ 15.7.6 Warranty Period.** All Work performed by the Contractor and by any Subcontractor or person performing work on its behalf, shall be guaranteed against defective workmanship and materials for a period of one (1) year from the date of Substantial Completion, provided that such one (1) year period shall not begin with respect to any portion of the Work that is not completed on the date of Substantial Completion, but shall begin when the item is subsequently completed and Owner provides written notice of such completion. Notwithstanding the foregoing, the one (1) year warranty may be extended, at the Owner's discretion, by providing written notice to the Contractor for a reasonable period with respect to the portion of the Work, if any, for which remedial or repair work is done during the first one (1) year warranty period.

**§ 15.7.7 Project Schedule and Weekly Meetings.** The Contractor shall:

1. Prepare and update a consolidated project schedule on a weekly basis until Substantial Completion and provide copies to the Owner and the Architect as soon as the schedule is prepared.
2. Support value-engineering efforts to reduce costs and to identify reasonable equivalent materials and supplies.
3. Conduct weekly Project meetings with the Owner and/or Architect and with any other necessary Project participants.

**§ 15.7.8 Clean Premises.** The Contractor shall leave the Project site in a reasonably neat, clean, orderly and safe condition at the end of each day during construction of the Work.

**§ 15.7.9 Excess Materials.** Any purchased materials remaining after completion of the subject portion of the Work (such as, for example, extra paint, wall coverings or carpet) shall be properly stored and provided by the Contractor to the Owner for use in subsequent repairs. Materials should be labeled, sealed, boxed and protected as appropriate to ensure the materials remain in good condition.

**§ 15.7.10 Compliance with Facility Rules.** The Contractor agrees that at all times its employees and agents shall observe and comply with all regulations of the facility, including but not limited to, the no smoking and parking and security regulations. If the Contractor's employees, agents or Subcontractors violate these prohibitions, such person(s) may be denied access to the Project site.

**§ 15.7.11 Contractor Knowledge and Expertise.** The Contractor represents that it: (1) has sufficient knowledge and expertise to construct the Work in accordance with all applicable codes and regulations; (2) has reviewed, analyzed, and has current knowledge of the site; (3) has reviewed, analyzed and has found sufficient for construction and completion of the Work the Contract Documents listed in this Agreement; any exceptions to this statement have been specifically identified in this Agreement. The Contractor represents and warrants that it can and will complete the Work for the Contract Sum identified in this Agreement, and that no sums additional to the Contract Sum are required for Contractor's completion of the Work.

**§ 15.7.12 Costs and Attorney Fees:** In the event of litigation enforcing or interpreting the terms of the Agreement, the prevailing party, to the extent permitted by law (recognizing that the Owner is prohibited by the Colorado Constitution, Colorado state law, the Johnstown Home Rule Charter and the Johnstown Municipal Code from agreeing to payment obligations without appropriations in its budget, which it has not made for this Agreement), shall be entitled to an award of reasonable attorney fees and all costs of suit, including expert witness fees, court reporter fees and similar litigation expenses.

**§ 15.7.13 Consent.** Whenever the Contract Documents reference the requirement to obtain the Owner's or the Architect's approval or consent, such approval or consent must be obtained in writing. The writing requirement referenced herein may be satisfied by email communication properly delivered and received.

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## ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

**§ 16.1** This Agreement is comprised of the following documents:

- .1 AIA Document A102™–2017, as amended, Standard Form of Agreement Between Owner and Contractor
- .2 Exhibit A to the Agreement, MYC Proposal dated 5/28/24
- .3 AIA Document A201™–2017, as amended, General Conditions of the Contract for Construction

.4 Drawings prepared and stamped by the Architect dated \_\_\_\_\_.

6 Specifications

Johnstown Police Department Addition and Renovation Project Manual volumes 1 & 2 dated \_\_\_\_\_



.7 Addenda, if any:

Addendum 1 – dated 4/5/24 by the Architect  
Addendum 2 – dated 4/12/24 (labeled 4/8/24) by the Architect  
Addendum 3 – dated 5/1/24 by the Architect

.8 Other Exhibits:

Kumar and Associated Geotechnical Report dated 4/18/23 revised 9/1/23  
Architect’s bid question responses received in RFC #1 and RFC #2 dated 4/6/24  
Door and Hardware Schedule provided by Greeley Lock and Key 4/8/24

This Agreement entered into as of the day and year first written above.

TOWN OF JOHNSTOWN

MARK YOUNG CONSTRUCTION, LLC

\_\_\_\_\_  
**OWNER** (Signature)

Michael P, Duncan, Mayor « »

(Printed name and title)

\_\_\_\_\_  
**CONTRACTOR** (Signature)

« »

(Printed name and title)

Attest:

\_\_\_\_\_  
Hannah Hill, Town Clerk

