

**SECTION 00 52 43**

**AGREEMENT – GUARANTEED MAXIMUM PRICE**

THIS AGREEMENT is dated as of the \_\_\_\_\_ day of \_\_\_\_\_  
in the year 20\_\_\_\_ by and between the

TOWN OF JOHNSTOWN, COLORADO, a Colorado home rule municipal corporation,  
(hereinafter called TOWN) and

CONNELL RESOURCES, INC., a Colorado Corporation  
(hereinafter called CONTRACTOR)

TOWN and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1. WORK**

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**NORTH SEWER EXPANSION - PHASE 1**

**ARTICLE 2. ENGINEER**

The project has been designed by IMEG Corporation, a Delaware corporation (“IMEG), who is hereinafter called “ENGINEER” and who will assume all duties and responsibilities and have the rights and authority assigned to “ENGINEER” in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents. Notwithstanding the foregoing, the Town, by and through the Town’s Public Works Director, in its discretion, may assume certain of the duties and responsibilities of “ENGINEER” and have the rights and authority assigned to “ENGINEER” in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

**ARTICLE 3. CONTRACT TIME**

3.1 The Work shall meet Substantial Completion no later than December 31 2023 and shall be finally completed and ready for final payment by March 31, 2024.

3.2 Liquidated Damages: TOWN and CONTRACTOR recognize that time is of the essence of this Agreement and that TOWN will suffer financial loss if the Work is not substantially complete within the time specified in Paragraph 3.1 above plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by TOWN if the Work is not completed on time. Accordingly, instead of requiring any such proof, TOWN and CONTRACTOR agree that, as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay TOWN Five Hundred Dollars (\$500.00) for each day that expires after the time specified in Paragraph 3.1 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in Paragraph 3.1 plus any proper extension thereof granted by TOWN, CONTRACTOR shall pay TOWN Five Hundred dollars (\$500) for each day that expires after the time specified in Paragraph 3.1 above for final completion and readiness for final payment.

#### ARTICLE 4. CONTRACT PRICE

TOWN shall pay CONTRACTOR for completion of the Work in current funds in accordance with the Contract Documents.

For all Work, at the prices stated in CONTRACTOR's Bid, attached hereto as an exhibit, for a Guaranteed Maximum Price of:

Twenty-Nine Million Seven Hundred Twenty-Five Thousand, Six Hundred Fifty Dollars and Twenty-Five Cents (\$29,725,650.25)

#### ARTICLE 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for payment will be processed by TOWN as provided in the General Conditions and Supplementary Conditions.

5.1 Progress Payments. TOWN shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in paragraph 2.05 of the General Conditions (and in case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Conditions.

5.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or TOWN may withhold, in accordance with Paragraphs 15.01.C.5 and 15.01.C.6 of the General Conditions:

- a. 95% of Cost of Work completed (with the balance being retainage).
- b. 95% of the cost of materials and equipment not incorporated in the Work, but delivered, suitably stored and accompanied by documentation satisfactory to TOWN as provided in Paragraph 15.01.B.1 of the General Conditions (with the balance being retainage).

5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, TOWN shall pay the retainage described above and the remainder of the Contract Price as recommended by ENGINEER as provided in said Paragraph 15.06, as amended by the Supplementary Conditions, and in accordance with the Colorado Public Works Act, § 38-26-101, *et seq.*, C.R.S.

#### ARTICLE 6. INTEREST

All moneys not paid when due hereunder as provided in Article 15 of the General Conditions shall bear interest at the maximum rate of two percent (2%) per year.

#### ARTICLE 7. CONTRACTOR'S REPRESENTATIONS

In order to induce TOWN to enter into this Agreement, CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and with all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.
- 7.2 CONTRACTOR has studied carefully all reports of explorations and test of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in Paragraph 5.03 of the General Conditions, if any, and accepts the determination set forth in Paragraph SC-5.03 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to reply.
- 7.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies (in addition to or to supplement those referred to in Paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 5.03 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.
- 7.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for accurately locating said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 5.04 of the General Conditions.
- 7.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- 7.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

#### ARTICLE 8. CONTRACT DOCUMENTS

The Contract Documents, which comprise the entire agreement between TOWN and CONTRACTOR concerning the Work, consist of the following:

- 8.1 This Agreement (Pages 00 52 43 – 1 to 00 52 43 - 9, inclusive).
- 8.2 [omitted]
- 8.3 Performance Bond, Payment Bond (a/k/a Labor and Material Bond)
- 8.4 Notice of Award.

- 8.5 Notice to Proceed.
- 8.6 General Conditions (Pages 1 to 65, inclusive) being the Standard EJCDC General Conditions of the Construction Contract (2013 Edition).
- 8.7 Supplementary Conditions (Pages 1-1-22\_\_\_\_, inclusive).
- 8.8 Drawings and Specifications bearing the title: North Sewer Expansion - Phase 1, 90% GMP Set, dated March 25 2022.

**NORTH SEWER EXPANSION - PHASE 1 (MARCH 2022)**

- 8.9 [omitted]
- 8.10 CONTRACTOR's GMP Bid, dated April 18 2022 (attached)
- 8.11 [omitted]
- 8.12 The following which may be delivered or issued after the Effective Date of the Agreement: All written amendments and other documents amending, modifying, or supplementing of the Contract Documents pursuant to Paragraph 11.01 of the General Conditions.

The documents listed in this Article 8 are attached to this Agreement (except as expressly noted otherwise above and except for those listed in Paragraph 8.12).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in Paragraph 11.01 of the General Conditions.

In case of discrepancy, the order of precedence of the following Contract Documents is as follows (i.e., the document with the lower numerical value shall govern over the documents with a higher value):

1. Change Orders
2. Agreement
3. Drawings – North Sewer Expansion - Phase 1, 90% GMP Set, dated March,25 2022.
4. Supplementary Conditions
5. Specifications
6. General Conditions
7. Geotechnical Report titled, Proposed Wastewater System Interceptor North Alignment Overall by IMEG Corp dated August 25 2021.

**ARTICLE 9. COMPLIANCE WITH LAWS AND IMMIGRATION STATUS OBLIGATIONS.**

- 9.1 CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work, including, without limitation, any preference for Colorado Labor as may be required pursuant to Article 17, of Title 8 of the Colorado Revised Statutes (the "Keep Jobs in Colorado Act"). Except where otherwise expressly required by applicable Laws and Regulations, neither TOWN nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

- 9.2 CONTRACTOR certifies, through signature of its authorized representative executing this Agreement, that it does not knowingly employ or contract with a worker without authorization who will perform work under the public contract for services and that the CONTRACTOR will participate in the United States Government's E-Verify Program or the State of Colorado Department of Labor and Employment Program ("Department Program") in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services.
- 9.3 CONTRACTOR shall not:
- 1) Knowingly employ or contract with a worker without authorization to perform work under this Agreement; or
  - 2) Enter into a contract with a subcontractor that fails to certify to the CONTRACTOR that the subcontractor shall not knowingly employ or contract with a worker without authorization to perform work under the public contract for services.
- 9.4 CONTRACTOR shall affirm as required by C.R.S. § 8-17.5-102 (c) (II) the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.
- 9.5 CONTRACTOR is prohibited from using the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.
- 9.6 If CONTRACTOR obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with a worker without authorization, CONTRACTOR shall be required to:
- 1) Notify the subcontractor and the TOWN within three days that the CONTRACTOR has actual knowledge that the subcontractor is employing or contracting with a worker without authorization; and
  - 2) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-subparagraph 9.2 2) required the subcontractor does not stop employing or contracting with the worker without authorization; except that the CONTRACTOR shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization.
- 9.7 CONTRACTOR shall comply with all rules and regulations and any reasonable request by the State Department of Labor and Employment made in the course of the Department's performance of its lawful duties pursuant to C.R.S. 8-17.5-101 et seq., as amended from time to time.
- 9.8 If CONTRACTOR violates any of the provisions set forth in this section, the TOWN may terminate the Agreement and CONTRACTOR shall be liable for all actual and consequential damages incurred by the TOWN.

## ARTICLE 10. MISCELLANEOUS

- 10.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- 10.2 Reference to the General Conditions shall include modifications thereof by the Supplementary Conditions.
- 10.3 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge that assignor from any duty or responsibility under the Contract Documents.
- 10.4 Except for the intended beneficiaries of the Labor and Material Payment Bond executed in conjunction with the Contract, nothing in the Contract shall be construed to give any rights or benefits by virtue of the Contract to anyone other than TOWN and CONTRACTOR, and all duties and responsibilities undertaken pursuant to the Contract will be for sale and exclusive benefit of TOWN and CONTRACTOR and not for the benefit of any other party.
- 10.5 TOWN and CONTRACTOR each binds itself, its successors, assigns and legal representatives to the other party hereto, its successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 10.6 Any provision or part of the Contract Documents held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon TOWN and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 10.7 The TOWN and CONTRACTOR acknowledge and agree that the payments hereunder shall constitute current expenditures of the TOWN payable in the fiscal years for which funds are appropriated for the payment thereof. The TOWN's obligations under the Contract shall be from year to year only and shall not constitute a multiple-fiscal year direct or indirect debt or other financial obligation of the TOWN, or an obligation of the TOWN payable in any fiscal year beyond the fiscal year for which funds are appropriated for the payment thereof, or payable from any funds of the TOWN other than funds appropriated for the payment of current expenditures. No provision of the Contract shall be construed to pledge or to create a lien on any class or source of TOWN monies, assets or properties.
- 10.8 To the extent this Contract may be construed to be a "sole source contract" within the meaning of sections 15 through 17 of Article XXVIII of the Colorado Constitution, and to the extent these constitutional provisions have not been enjoined or invalidated by a court of competent jurisdiction, the requirements and limitations of these constitutional provisions are hereby incorporated in this Contract, including the following:

Because of a presumption of impropriety between contributions to any campaign and sole source government contracts, contract holders shall contractually agree, for the duration of the contract and for two years thereafter, to cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on behalf of the contract holder or on behalf of his or her immediate family member and for the benefit of any political party or for the benefit of any candidate for any elected office of the state or any of its political subdivisions.



Address For Giving Notices:

TOWN:  
TOWN of JOHNSTOWN  
450 S. Parish Avenue  
JOHNSTOWN, CO 80534  
Att'n: Ellen Hilbig

CONTRACTOR:  
Connell Resources, Inc.  
7785 Highland Meadows Pkwy. Suite 100  
Fort Collins, CO 80528  
Attn: Bill Anderson