

SECTION 00501

CONSTRUCTION AGREEMENT

**Welker Avenue, 5th Street North of Palmer, and the Alley East of 2nd Street
Sanitary Sewer Rehabilitation
Engineer Project Number 1015.6e (“Project”)**

THIS AGREEMENT, entered into as of the ___ day of _____, 2022, by and between the **Town of Mead**, hereinafter called “Town” or “Owner”, and **Insituform Technologies, LLC**, a Delaware limited liability company with a principal office street address of 17988 Edison Avenue, Chesterfield, MO 63005-3700, hereinafter called “Contractor.”

In consideration of the mutual covenants and obligations hereinafter set forth, it is agreed by and between the parties hereto as follows:

Article 1. Contract Documents. The contract documents consist of this Agreement, exhibits to this agreement, the conditions of the contract (general, supplementary, and other conditions), the drawings consisting of 3 sets of sheets (Welker Avenue – 8 sheets; 5th Street North of Palmer – 6 sheets; Alley East of 2nd Street – 6 sheets), specifications, Notice of Award, Notice to Proceed, Contractor’s Bid, and all addenda issued prior to, and all modifications issued after execution of this Agreement. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement.

Article 2. Contractor’s Representations. In order to induce the Town to enter into this Contract, Contractor makes the following representations:

- A. Contractor has familiarized itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the work.
- B. 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 the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect to 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 Section 4.03 of the General Conditions.
- C. Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

- D. Contractor has given the Engineer, JVA, Inc., written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by JVA, Inc., is acceptable to Contractor.

Article 3. Assignment. It is understood that the Town enters into this Agreement based on the special abilities and representations of the Contractor and that this Agreement shall be considered as an agreement for professional services. Accordingly, the Contractor shall neither assign any responsibilities, nor delegate any duties arising under this Agreement without the prior written consent of the Town.

Article 4. Scope of Work. Contractor shall furnish all necessary labor, supervision, equipment, tools, and materials for rehabilitation of damaged sanitary sewer pipe with obstructions in the main and lateral flow lines. The work shall include all associated site work relating to the project.

Article 5. Time of Completion. Contractor shall begin work within thirty (30) days after notice to proceed and agrees to substantially complete all work within one hundred twenty (120) calendar days. Final completion is required after sixty (60) additional calendar days from Substantial Completion. Any extensions of the time limit set forth above must be agreed upon in writing by the parties hereto.

Article 6. Liquidated Damages. It is specifically recognized by and between the parties hereto that the Town will suffer certain unspecified damages in the event the project is not completed within the time set forth above. In recognition of the difficulty of ascertaining the actual damages to be sustained by the Town, the parties agree that the assessment of liquidated damages shall be appropriate. In the event the project is not completed within the specified time, there shall be assessed against the Contractor, and the Contractor hereby authorizes the Town to retain from any monies due the Contractor, the sum of Nine Hundred Dollars (\$900.00) per calendar day for each and every calendar day the project remains unfinished for Substantial Completion until the work is Substantially Complete. In no event shall liquidated damages exceed ten percent (10%) of the total project cost.

Article 7. Contract Price. Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds that shall not exceed the sum set forth below:

For all Work, an amount not to exceed: One Hundred Ninety-Two Thousand Three Hundred Seventeen Dollars and No Cents (\$192,317.00).

All specific cash allowances are included in the above price in accordance with Paragraph 11.02 of the General Conditions.

Article 8. Payment Procedures. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by the Town's Engineer, JVA Incorporated as provide in Article 14 of the General Conditions.

- A. Progress Payments. All progress payments will be on the basis of the progress of the Work measured by the schedule of values as established in the Section 2.07 of the General Conditions.
- B. Retainage. The Town shall retain from progress payments, until payment is due under the terms and conditions governing final payments, amounts as follows:
 - (1) The Town shall authorize partial payments of the amount due at its next regularly scheduled meeting or as soon thereafter as practicable if the Contractor is satisfactorily performing the Contract. The Town shall withhold five percent (5%) of the calculated value of the completed work. The Town shall retain the five percent (5%) until the Contract is completed satisfactorily and finally accepted by the Town.
 - (2) Upon completion and acceptance of the Work, all retained amounts will be released to Contractor under the terms and conditions governing final payment. Consent of the Surety shall be obtained before retainage is paid by Town. Consent of the Surety, signed by an agent, must be accompanied by a certified copy of such agent's authority to act for the Surety.
 - (3) Retainage shall apply to materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing upon which Contractor requests progress payment.
 - (4) Retainage withheld by the Town shall not be subject to substitution by the Contractor with securities or any arrangements involving an escrow or custodianship therefore.

Article 9. Hazardous Materials. The parties shall deal with hazardous materials and environmental conditions at the work site in accordance with Section 4.06 of the General Conditions.

Article 10. Final Payment. The Town shall make a final settlement in accordance with 24-91-103 C.R.S. within sixty (60) days after the Contract is completed satisfactorily and finally accepted by the Town.

Article 11. Change Orders. The Town may order changes within the scope of the Work without invalidating this Agreement. If such changes increase or decrease the amount due under the contract documents, or the time required for the performance of the Work, such alteration shall be approved by the parties in writing for the change order. The Contractor shall not proceed with any work covered by a proposed change order until he receives a properly executed change order form.

Article 12. Performance Guarantee.

- A. The Contractor shall fully and faithfully comply with all terms of this contract for the Work described herein and hereby guarantees the workmanship and materials for a period of two years, commencing on the date of the Town's final acceptance of the Work. Contractor agrees to repair or replace, any workmanship or materials that become defective, within said two year period, even though notice thereof be given by the Town after said two year period. Repairs or replacement shall be at the Contractor's sole cost and expense. The necessity of repairs or replacement is at the sole determination of the Town.
- B. The Contractor shall fully and faithfully discharge the Contractor's obligation with respect to the Work during the installation and construction period and with respect to those that may arise as a result of the Contractor's two year guaranty.
- C. The performance and completion of the warranty work are to be further guaranteed by Performance, Payment and Guarantee Bonds in an amount at least equal to the Contract Price, in the form and substance attached herewith.

Article 13. Indemnification and Release of Liability.

- A. General Liability. The Contractor will indemnify and hold harmless the State and the Town and all its officers, agents and employees against all liability and loss, and against all claims and actions based upon or arising out of damage or injury, including death, to persons or property, caused by any acts or omissions of the contractor or sustained in connection with the performance of any contract related to the project or by conditions created thereby, or based upon any violation of any statute, ordinance, regulation, and the defense of any such claims or actions.
- B. Governmental Immunities Act. The Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any rights, immunities and protection provided by the Colorado Governmental Immunities Act (C.R.S. § 24-10-101 et seq.) as from time to time amended, or otherwise available to the Town, its officers, agents, employees, attorneys, engineers, planners, indemnifiers and insurers.

Article 14. Construction Completion. The Town shall have the right, but shall have no obligation or duty, to perform or pay for the performance of any of the Contractor's obligations hereunder, including, without limitation, payment of any subcontractor or supplier of labor or materials, anything herein to the contrary notwithstanding.

Article 15. Independent Contractor. The Contractor in performing the Work hereunder is an independent contractor and reserves the right to control Contractor's employees and representatives, and the Town reserves only the right of inspection to ascertain that the completed

Work conforms with the requirements of this Agreement. Contractor acknowledges that no governmental immunity is waived and that no specific relationship with, or duty of care to, the Contractor or third party is assumed by such review or approval. The following disclosure is provided in accordance with Colorado law:

CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE TOWN PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.

Article 16. Town Representative. The Town's project representative is JVA Incorporated, who shall make, within the scope of their authority, all necessary and proper decisions with reference to the project. All requests for contract interpretations, change orders, and other clarification or instructions shall be directed to the District representative.

Article 17. Notice. Any notice to be sent pursuant to this Agreement shall be deemed delivered if mailed to the other party at the following addresses. Any such notice shall be sent certified or registered mail, return receipt requested, postage prepaid.

CONTRACTOR: Insituform Technologies, LLC
1900 W. Littleton Boulevard
Littleton, CO 80120

ENGINEER: John McGee, P.E.
JVA, Incorporated
213 Linden Street, Suite 200
Fort Collins, CO 80524

TOWN: Town of Mead
Attn: Robyn Brown
441 3rd Street
Mead, CO 80542

Article 18. Public Employee Financial Interest. The signatories hereto aver that to their knowledge, no employee of the State or municipality has any personal or beneficial interest whatsoever in this contract as prescribed by C.R.S. § 24-18-201 and C.R.S. §24-50-507.

Article 19. Colorado Labor Preference. In accordance with C.R.S. § 8-17-101, et. seq., Colorado labor shall be employed to perform the work as provided by law.

Article 20. Bid Preference - Public Projects. In accordance with C.R.S. § 8-19-101, et. seq., Colorado resident bidders shall be allowed a preference against a nonresident bidder from a state or foreign country equal to the preference given are required by the state or foreign country in which the nonresident bidder is a resident to perform the work as provided by law.

Article 21. Discrimination and Affirmative Action. The Contractor agrees to comply with the letter and spirit of all applicable state and federal laws respecting discrimination and unfair employment practices

Article 22. Bribery and Corrupt Influences; Abuse of Public Office. The signatories hereto aver that they are familiar with C.R.S. § 18-8-301, et. seq. (Bribery and Corrupt Influences) and C.R.S. § 18-8-401. et. seq.,(Abuse of Public Office), and that no violation of such provisions is present.

Article 23. Workmen's Compensation Coverage. The Contractor is responsible for providing Workmen's Compensation Coverage for all of its employees to the extent required by law, and for providing such coverage or requiring its subcontractors to provide such coverage for the subcontractor's employees. In no case is the Owner responsible for providing Workmen's Compensation Coverage for any employees or subcontractors of Contractor pursuant to this Agreement, and Contractor agrees to indemnify the Owner for any costs for which the Owner may be found liable in this regard.

Article 24. Workers Without Authorization. The Contractor shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement. The Contractor shall not contract with a subcontractor that fails to certify that the subcontractor does not knowingly employ or contract with any workers without authorization. By entering into this Agreement, the Contractor certifies as of the date of this Agreement it does not knowingly employ or contract with a worker without authorization who will perform work under this public contract for services and that the Contractor will participate in the e-verify program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement. The Contractor is prohibited from using the e-verify program to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, the Contractor shall be required to notify the subcontractor and the Town within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or contracting with a worker without authorization. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the worker without authorization within three (3) days of receiving the notice regarding the Contractor's actual knowledge. The Contractor shall not terminate the subcontract 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. The Contractor is required to comply with any reasonable request made by the Colorado Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the Town may terminate this Agreement, and the Contractor may be liable for actual and/or

consequential damages incurred by the Town, notwithstanding any limitation on such damages provided by this Agreement.

Article 25. Archeological Artifacts. In the event archaeological artifacts or historical sources are unearthed during construction excavation of the project, Contractor shall stop or cause to be stopped, construction activities and will notify the State Historical Conservation Office and the Town of such unearthing.

Article 26. No Lobbying. No portion of the payments received for the Work may be used for lobbying, or propaganda as prohibited by 18 U.S.C. §1913 or Section 607 (a) of Public Law 96-74.

Article 27. Binding on Successors. Except as herein otherwise provided, this Contract shall inure to the benefit of and be binding upon the parties, or any subcontractors hereto, and their respective successors and assigns in respect of all covenants, agreements and obligations contained in the Contract Documents.

Article 28. Attorney Fees. If the Contractor breaches this Agreement, then it shall pay the Town's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

Article 29. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Contract and the exhibits and attachments hereto which may require continued performance or compliance beyond the termination date of the Contract shall survive such termination date and shall be enforceable by the Owner as provided herein in the event of such failure to perform or comply by the Contractor or its subcontractors.

Article 30. Complete Agreement. This Agreement constitutes the sole agreement between the parties concerning the subject matter hereunder and all prior negotiations, representations, understandings, or agreements concerning the subject matter hereunder are hereby canceled. No modification, change, or alteration of the Agreement shall be of any legal force or effect unless in writing, signed by all the parties hereto.

Article 31. Compliance with Applicable Laws. At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable Federal and State laws that have been or may hereafter be established.

Article 32. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado. Venue for any and all legal matters regarding or arising out of the transactions covered herein shall be solely in the District Court in and for Weld County, State of Colorado.

Article 33. Partial Invalidity. If any provision of this agreement are in violation of any statute or rule of law of the State of Colorado, then such provision shall be deemed null and void to the extent that they may be violative of law, but without invalidating the remaining provisions hereof.

Article 34. Original Counterparts. This Agreement may be executed in counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument. This Contract is to be executed in quadruplicate.

Article 35. Appropriations. Pursuant to C.R.S. §24-91-103.6, the following applies:

- A. The amount of money appropriated by the Town is equal to or in excess of the contract amount.
- B. No change order shall be permitted requiring additional compensable work to be performed which work causes the aggregate amount payable under the contract to exceed the amount appropriated for the original contract, unless the contractor is given written assurance by the Town that lawful appropriations to cover the costs of the additional work have been made and the appropriations are available prior to performance of the additional work or unless such work is covered under another provision for a remedy-granting provision in this contract; and
- C. For any form of change order or directive by the Town requiring additional compensable work to be performed, the Town shall reimburse the contractor for the contractor's costs on a periodic basis, as those terms are defined in this contract, for all additional directed work performed until a change order is finalized. In no instance shall this periodic reimbursement be required before the contractor has submitted an estimate of cost to the Town for the additional compensable work to be performed. This provision shall only apply when additional compensable work is required on an emergency basis and it is necessary that work begin without a change order as required by Article 11 of this Construction Agreement.

Article 36. Miscellaneous.

- A. Terms used in this Contract which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

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

TOWN OF MEAD:

Board of Trustees (*for contracts exceeding \$25,000 pursuant to Sec. 4-2-20 of the Mead Municipal Code*)

ATTEST:

By: _____
Mary Strutt, Town Clerk, MMC

By: _____
Colleen G. Whitlow, Mayor

Date of Execution: _____, 2022

OR

Town Manager (*for contracts \$25,000 or less pursuant to Sec. 4-2-20 of the Mead Municipal Code*)

By: _____
Helen Migchelbrink, Town Manager

Date of Execution: _____

CONTRACTOR: Insituform Technologies, LLC, a Delaware limited liability company

By: _____

Printed Name: _____

Title: _____

Date of Execution: _____

STATE OF _____)
COUNTY OF _____)ss.

The foregoing Construction Agreement was acknowledged before me this ____ day of _____, 2022, by _____ (printed name) as _____ (title) of Insituform Technologies, LLC, a Delaware limited liability company.

Witness my hand and official seal.

My commission expires: _____.

Notary Public
(Required for all contracts pursuant to C.R.S. § 8-40-202(2)(b)(IV))

[SEAL]