



REQUEST FOR PROPOSALS FOR GENERAL CONTRACTOR SERVICES

CIRCLE PARK and MEEKER RIVERFRONT PROJECT

Release Date:
August 15, 2023

Contact:
Town of Meeker
345 Market Street
Meeker, Colorado 81641
Phone – 970-878-5344

Mandatory pre-bid site visit:
Friday, September 15, 2023 @ 11:00 am
Or
Friday, September 22, 2023 @ 11:00 am

Submission deadline:
Tuesday, October 17, 2023 @ 5:00 pm

Request For Proposal Summary

The Town of Meeker, a statutory municipality of the State of Colorado ("**Town**"), and the Eastern Rio Blanco Metropolitan Recreation and Park District, a political subdivision of the State of Colorado ("**ERBM**", and collectively with the Town, the "**Clients**"), invite proposals from qualified River/Riparian and Landscape Construction firms ("**Contractor(s)**") to submit a proposal for the construction and project management of the Circle Park / Meeker Riverfront Project ("**Project**").

A complete set of plans, specifications, and contract documents may be obtained after August 15, 2023 from Meeker Town Hall or online at townofmeeker.org/current-rfps. Two opportunities to attend a mandatory pre-bid site visit will be held: one on Friday, September 15, 2023 at 11:00 am and one on Friday, September 22, 2023 at 11:00 am. Prospective bidders must be present at either (not both) site visits to submit a proposal; proposals will not be accepted without attendance at one of the site visits.

Requests For Information will be accepted until 5:00 PM on Friday, September 29, 2023. Prospective firms that attend the mandatory pre-bid site visit will be automatically added to the RFI response list.

Proposals must be received by the Town by 5:00 p.m. on October 17, 2023. Proposals shall be mailed or hand delivered to Meeker Town Hall at 345 Market Street in a sealed envelope with "Circle Park Proposal" written on the front. Any proposal received after the Submission Deadline will not be considered.

Each proposal must be accompanied by a bid bond or a check in the amount of 10% of the bid price made payable to the Town of Meeker as bid security, along with 3 references for similar work. Performance and Payment Bonds will be required. The successful Contractor must maintain workers' compensation and general and auto liability and insurance in the amount of no less than \$1,000,000 during the project.

The Clients reserve the right to reject any and all proposals; to change, add, or amend the specifications or Construction Agreement (**Attachment A**); to waive any informalities; and the right to disregard all non-confirming, conditional, or counter proposals. Each proposal shall be reviewed and considered consistent with the provisions of the Town of Meeker Purchasing Policy.

All proposals and supporting documentation shall become the property of the Clients and will constitute a public record, unless at the time of submitting a proposal, a contractor specifically identifies the portion(s) of the proposal that contains proprietary information or trade secrets, which portion(s) shall be segregated from the other portions of the proposal, so as to allow disclosure of the non-confidential portion(s) of the proposal in accordance with all Applicable Law.

Background and Introduction

The purpose of the Project is to promote public connection and access to the ecologic, economic, and recreational benefits of the White River by accomplishing the following objectives:

- a. Improving public safety and accessibility of river and adjacent park amenities through construction of three in-Town access points (3rd Street, Circle Park, and 10th Street), accessibility ramp at park, parking/circle drive, and valuable trail connections;
- b. Improving water quality through bank stabilization and arresting harmful erosion impacts;
- c. Improving riparian environment by cleaning up 600' of bank, adding natural storm drainage features, and implementing park landscaping and overall vegetation plan;
- d. Encouraging public involvement through outreach and education efforts in partnership with local stakeholders and civic groups.

The Project is a substantial public improvement that is a collaborative effort between the Clients and is expected to have a positive impact toward advancing the Clients' outdoor recreation-focused community vitality efforts. In 2020, the Clients partnered to assess existing conditions and perform a fluvial geomorphological assessment of the river, specifically at Circle Park, located at 1 South 5th Street. This assessment formed the basis for the initial conceptual design of the river access points at 3rd Street and 10th Street and construction ready documents for the park. The Clients then secured an Aquatic Resources Inventory Report in 2021 and engaged SWCA Environmental Consultants in 2022 to provide full design and engineering services. In early 2023, SWCA worked to secure NWP 13 – Streambank Stabilization, NWP 18 – Minor Discharges, and NWP 42 – Recreational Facilities for the work at all three river access points. The Clients also contracted with SWCA to provide additional Project Management and oversight of the river/riparian construction.

Scope of Work

A complete set of plans, specifications, and contract documents may be obtained after August 15, 2023 from Meeker Town Hall at 345 Market Street, Meeker Colorado or online at townofmeeker.org/current-rfps.

The Clients shall have the right to modify the Scope of Work at any time in their sole discretion, provided that the Clients and the Contractor mutually agree to any adjustments in the compensation or the time for achieving substantial completion.

Proposal Requirements

The following information must be provided in the proposal:

- a. Name, Title and Contact Information Include the name of the person or persons who will be authorized to make representations on behalf of the contractor, with all contact information.
- b. Certificate(s) of Insurance; Endorsement(s) Show evidence of insurance through appropriate certificates, and if applicable, endorsements, including workers' compensation, general liability, auto liability, and any other required coverages.
- c. Bid Security Each bid must be accompanied by a bid bond or a check in the amount of 10% of the proposed total cost made payable to the Town of Meeker.
- d. Qualifications and Related Experience Demonstrate the qualifications of the Contractor's specialized experience and competence to provide services required. Provide the names and qualifications of any outside subcontractors and/or associates that will be employed to assist on the work to be performed under your proposal.
- e. References Provide a list of names and contact information for at least three (public sector preferred) clients for which the Contractor has successfully completed similar projects within the past five years and include a description of each project.
- f. Description of Proposed Approach Provide detailed information on the tasks that must be accomplished to complete the Project and how the contractor will be able to do so in a timely fashion. Include any foreseeable challenges this Project presents and the approach for addressing these challenges. **Specifically describe the approach for accessing the park across the 5th street bridge given load weight restrictions and trip number limits.**
- g. Project Schedule Include a detailed proposed timeline for the completion of the project, including specific areas of concentration (i.e. bank stabilization, cement, paving, landscaping). The Clients' preferred deadline for Project completion is June 30, 2025.
- h. Project Pricing Provide an itemized Guaranteed Maximum Price. The Project pricing must be broken out on the Project Itemization Sheet (**Attachment B**) with unit pricing, and total pricing per line item; lump-sum line-item pricing is not acceptable. Clients reserve the right to scale the Project according to pricing. Total price shall include labor, materials, equipment, mobilization and demobilization, and any incidental items to complete the project in accordance with the specifications. The Guaranteed Maximum Price must include the cost of Performance and Payment bonds in accordance with General Provisions item (e).

Selection Criteria and Process

Selection of the Contractor will be based upon a number of factors, including but not limited to:

- a. Qualifications and relevant experience
- b. Proposed cost
- c. Contractor's references and past performance
- d. Ability to work within a prescribed time frame
- e. Knowledge and understanding of local conditions
- f. The Contractor's approach to the Project and the services provided

All proposals received by the stated submission deadline will be opened and read aloud at a public meeting. The Clients reserve the right to reject any or all proposals; to change, add, or amend the specifications; to waive informalities or irregularities in the proposals received, to reject non-conforming, non-responsive or conditional proposals, and to accept the proposal, if any, that in the Clients' judgment best serves the interest of the Clients and the community.

General Provisions

- a. **Substitutions** Proposals may include substitutions or alternatives to the Project specifications. Any substitutions or alternatives must be listed separately and described in detail. The Clients may, in their sole discretion, consider any substitution or alternative to the extent they deem appropriate in the decision process based on selection criteria.
- b. **Estimations** All estimated quantities stipulated in the proposal are approximate and to be used as a basis for estimating probable cost of the work. It is understood that the actual amounts of work done and materials furnished under unit price may vary from estimated quantities depending on environment conditions, however the unit price proposed will remain firm and will not be renegotiated and any increase in the actual quantities shall not form a basis for increasing the Guaranteed Maximum Price unless approved by the Clients through a written Change Order. Any statement that indicates "price in effect at time of delivery" will not be considered.
- c. **Proposal Mistakes and Irregularity** Contractors may be requested to provide clarification on any part of a proposal that appears incongruous. Any minor irregularity in the proposal that is a matter of form and not substance can be clarified and corrected without prejudice to the bid process. In no event is a Contractor allowed to change a proposed price or total cost after the submission deadline.

- d. Insurance Requirements The successful contractor is required to maintain worker's compensation as required by Colorado law, and general liability and auto liability insurance in the amount of no less than \$1,000,000 per occurrence and \$2,000,000 aggregate during the Project. The general liability and auto liability shall, by endorsement or otherwise, include the Clients as additional insureds and shall state that the Contractor's insurance is primary and non-contributory from the Clients' insurance.
- e. Performance and Payment Bonds The successful Contractor is required to furnish a Performance Bond in the amount of 100% of the Guaranteed Maximum Price as security for the performance of the contract documents, and a Payment Bond in the amount of 100% of the Guaranteed Maximum Price as security for the payment of all persons performing labor and furnishing materials in connection of the Project.
- f. Project Liaison Contractors shall work in coordination with the Project engineer and the US Army Corps of Engineers' Office to ensure proper implementation of all Nationwide Permits.
- g. Laws and Regulations Contractors are solely responsible for complying with all applicable federal and state laws, municipal ordinances, and any other regulations having jurisdiction over the Project.
- h. Process and Termination The Clients have the right to terminate, suspend, or modify this selection process at any time; reject any and all proposals at any time; and waive any informalities, irregularities, or omissions in proposals at any time; all in the best interests of the Clients. The Contractor is solely responsible for all costs associated with the preparation of the proposal and any other costs incurred during the selection process.

Construction Agreement

The Clients' acceptance of a proposal is conditioned upon the Clients and the Contractor executing an agreement in a form similar to the sample Construction Agreement (**Attachment A**). Changes or additions may be made to this Agreement by the Clients prior to signature by the Clients and the Contractor. If a Contractor has objections to any aspect of the Agreement, those objections must be identified in writing and included separately with the proposal. The objections will be considered by the Clients during the selection process, along with the additional factors listed above, and any additional factors the Clients deem appropriate. If the parties have not signed an agreement within 30 days of the Clients' conditional award of the Project to the Contractor, the Clients may withdraw the conditional award and award or initiate discussion with any other Contractor that submitted a proposal; or the Clients may terminate this RFP process and initiate a new RFP process or take such other action as deemed appropriate in the Clients' best interests.

ATTACHMENT A

CIRCLE PARK and MEEKER RIVERFRONT PROJECT

OWNER-CONTRACTOR AGREEMENT

This Owner-Contractor Agreement ("*Agreement*") is entered into by and between the Town of Meeker and the Eastern Rio Blanco Metropolitan Recreation and Park District, ("*Owners*"), and [REDACTED] ("*Contractor*"). The Owners and Contractor shall be referred to collectively as the "*Parties*" and individually as a "*Party*".

PART 1 – SCOPE OF WORK AND PROJECT

Contractor agrees to the landscaping and riverbank improvements at Circle Park, 3rd Street, and 10th Street in accordance with the Contract Documents defined in Part 2, below ("*Project*"). Contractor agrees to furnish all labor, materials, equipment, tools, and services necessary to perform and complete in a workmanlike manner construction of the Project in strict compliance with the Contract Documents defined in Part 2, below, and the Contract Time stated in Part 4, below ("*Work*").

PART 2 – CONTRACT DOCUMENTS

The following documents comprise the entire agreement between the Parties (collectively, "*Contract Documents*") and, in the event of a conflict, shall control in the order listed:

- A. This Agreement and any written amendment to this Agreement signed by the Parties; then,
- B. The construction drawings and specifications (collectively, the "*Specifications*") attached as Appendix A; then,
- C. Any Change Order properly executed after this Agreement; then,
- D. The Contractor's Proposal/Bid dated [REDACTED] ("*Contractor's Proposal*"), attached as Appendix B; then,
- E. Shop Drawings, Product Data, Samples, or similar submittals furnished by Contractor during performance of the Work and approved by the Owner.

There are no Contract Documents other than those listed above in this Part 2.

PART 3 – GUARANTEED MAXIMUM PRICE, CONTRACTOR'S FEE AND BOND

- A. Owner shall pay Contractor for satisfactory performance of the Work and completion of the Project in strict accordance with the Contract Documents the total price of [REDACTED] Dollars (\$ [REDACTED]) ("*Contract Price*"), which is comprised of the total cost of the labor, materials, services, contractor fees, and other expenses necessary to complete the Project and the cost of the Performance and Payment Bond (see, subparagraph B, Below). The Parties expressly agree that the Contract Price shall constitute the Guaranteed Maximum Price, meaning that all Contractor Fees or other fees, Cost of Work, or other costs and expenses associated with the Project that are not agreed to by the Owners in writing through a Change Order, and that would cause the Contract Price to be exceeded, shall be paid by the Contractor without reimbursement by the Owners. All costs and expenses contemplated, authorized, or permitted under this Agreement or the other Contract Documents shall be invoiced to the Owners "at cost" with no markup.
- B. The Contractor shall purchase a Performance and Payment Bond in an amount equal to the total Cost of Work and the cost of the Performance and Payment Bond shall be included in the Contract Price set forth in Paragraph A, above.

ATTACHMENT A

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PART 4 – CONTRACT TIME AND LIQUIDATED DAMAGES

A. The period for the Contractor to complete the Project ("*Contract Time*") shall be determined as follows:

Fixed Substantial Completion Date. The period for the Contractor to achieve Substantial Completion (defined in Part 11, below) of the Project shall commence on the date the last Party signs this Agreement ("*Commencement Date*"). The Work will be completed according to the following schedule:

Substantial Completion	_____ days from the Commencement Date
Final Punch List Complete	30 calendar days from Substantial Completion

- B. The Contractor shall be liable for liquidated damages of \$ _____ per day if the Project is not completed within the Contract Time specified in Paragraph A, above. The Parties recognize and agree that this provision for liquidated damages is not in the nature of a penalty but is assessed by the Parties by reason of the inability of a judge or jury to determine the amount of compensation due the Owners in the event the Contractor fails to complete the Project within the Contract Time. For purposes of assessing liquidated damages, a partial day shall be deemed a full calendar day. Liquidated damages shall not apply where the Contractor is unable to complete the Project within the Contract Time as a result of any delay in construction caused by an act of God, strike, war, any act or failure to act of any governmental or quasi-governmental agency, or any other cause or condition beyond the control of the Contractor.
- C. Except for the liquidated damages specifically provided for above, the Contractor and Owners waive all claims against each other for all consequential or special damages arising out of or relating to this Agreement, the other Contract Documents, the Work and the Project.

PART 5 – PAYMENT

- A. **Method of Payment.** On or before the 1st day of each month, the Contractor shall submit to the Owners a Pay Application for the cost of the Work performed during the preceding month. The Owners shall pay 95% of any undisputed portion of a Pay Application within 30 calendar days of receiving it. Upon satisfactory completion of the Final Punch List, the Owners shall set a date for Final Settlement Payment. Unless a Verified Statement of Claim has been filed with the Owners before, or is filed on, the date set for Final Settlement Payment, the Owner shall pay the Contractor the remaining balance of the Contract Price on the date set for Final Settlement Payment
- B. **Payment of Subcontractors Vendors and Suppliers.** The Contractor shall comply with the provisions of C.R.S. §24-91-103(2) with respect to the payment of subcontractors, vendors, and suppliers, even if that Statute would not otherwise apply to this Agreement. The Contractor shall obtain a complete release and waiver from the subcontractors, vendors, and suppliers, and shall provide a copy of each release and waiver to the Owners. The Owners shall not have an obligation to pay or to see to the payment of money to a subcontractor, vendor, supplier or manufacturer. Neither a payment nor the Owners' partial or entire use of the Project shall constitute acceptance of Work not in accordance with the Contract Documents.
- C. **No Liens.** The Contractor warrants that it shall keep all Work free and clear of liens, claims, security interests or encumbrances by Contractor, subcontractors, vendors or suppliers, or other persons or entities providing labor, materials and equipment relating to the Work.

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- D. **Interest on Undisputed Amounts.** Any undisputed payment that is not paid within the time provided in this Part 5 shall bear interest at eight percent (8%) per annum compounded annually from the due date until paid.
- E. **Verified Statement Of Claim.** If at any time prior to the date and time for Final Settlement Payment, a Verified Statement Of Claim is filed with the Owners, the Owners will take such actions as are required by C.R.S. § 38-26-107, including withholding from payments to the Contractor funds sufficient to ensure payment of the claim for the period set forth in C.R.S. § 38-26-107, unless the Contractor submits to the Owners a Certificate of Release of such claim by the Clerk of the Rio Blanco County District Court in accordance with C.R.S. § 38-26-108.

PART 6 – CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

- A. The Contractor has familiarized itself with the nature and extent of the Contract Documents, the Work and the site, has performed all necessary investigations, tests, subsurface investigations, and is familiar with all federal, state and local laws, ordinances, rules and regulations, that in any manner may affect cost, progress or performance of Project.
- B. For a period of one year from the date of Substantial Completion, the Contractor warrants all materials and equipment on the Project. Materials and equipment furnished under the Contract will be of good quality, without defect and new (unless the Contract Documents require or permit otherwise). The Contractor's warranty of materials and equipment set forth in the preceding paragraph is in addition to, and separate from, any express or implied warranty provided by any subcontractor, sub-subcontractor, vendor, or supplier. If required by the Owners, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. In addition, the Contractor warrants without time limitation the workmanship of the Work and that the Work, materials, and equipment will conform to the requirements of the Contract Documents. ‘

The Contractor's foregoing warranties exclude remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.

The Contractor shall serve as the Warranty Administrator for the Project. The Warranty Administrator shall be responsible for all aspects of the timely and effective administration of all warranties, including but not limited to: 1) receiving all warranty claims from the Owners, 2) identifying and contacting the individual(s) or entity(ies) issuing the warranty under which the claim is being made; 3) arrange for all warranty work; and 4) processing all documents necessary and appropriate for the proper and timely processing of each warranty claim.

PART 7 – ILLEGAL ALIENS

Pursuant to C.R.S. §8-17.5-101, *et seq.*, the Contractor represents and warrants to the Owners that:

- A. Contractor will not knowingly employ or contract with an illegal alien in performing the Work or the Project; nor will Contractor enter into a contract with a subcontractor who fails to certify that it will not knowingly employ or contract with an illegal alien to perform Work in connection with the Project.
- B. Pursuant to C.R.S. §8-17.5-102, Contractor certifies that it does not knowingly employ or contract with an illegal alien who will perform Work in connection with the Project, and that Contractor will participate in the E-Verify Program or the State Department of Labor and Employment Program

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("Department Program") in order to confirm the employment eligibility of all employees newly hired by Contractor for the purpose of performing the Work and the Project. Under no circumstances will the Contractor use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants during the course of performing the Work or the Project.

- C. If, during the course of performing the Work or the Project, Contractor acquires actual knowledge that a subcontractor performing Work in connection with the Project knowingly employs or contracts with an illegal alien, Contractor will (a) notify the subcontractor and Owner within three (3) business days that Contractor has actual knowledge the subcontractor is employing or contracting with an illegal alien; and (b) terminate the subcontractor's contract if within three (3) business days of receiving the notice required in (a), above, the subcontractor does not stop employing or contracting with the illegal alien; except, the Contractor will not terminate the Subcontractor's contract if during the three (3) business days the Subcontractor provides information establishing the subcontractor has not knowingly employed or contracted with an illegal alien.
- D. The Contractor will comply with any reasonable request by the Colorado Dept. of Labor & Employment made during an investigation pursuant to C.R.S. § 8-17.5-102(5).
- E. The Contractor agrees that, if it violates one of the foregoing provisions, Owners may terminate this Agreement and the Contractor's services, and may seek all appropriate remedies. The Contractor acknowledges Owners also will notify the Secretary of State, which may take further action against the Contractor.

PART 8 – GENERAL CONDITIONS**A. The Owner's Obligations and Authority.**

1. In accordance with C.R.S. § 24-91-103.6, and Article X, Section 20 of the Colorado Constitution, the Owner states that it has currently appropriated funds sufficient to meet its financial obligations under this Agreement. Further, the Owners shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that it has appropriated funds to meet its financial obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owners shall not materially vary such financial arrangements without prior notice to the Contractor.

2. The Owners will ensure Contractor has access to Project site reasonably necessary for performance of the Work. Information or services required of the Owners by the Contract Documents shall be furnished by the Owners with reasonable promptness. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owners but shall exercise proper precautions relating to the safe performance of the Work.

3. If the Contractor fails to correct Work that is not in strict accordance with the requirements of the Contract Documents ("*Non-Conforming Work*"), or persistently fails to carry out Work in accordance with the Contract Documents, the Owners may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The Owners' right to stop the Work shall not give rise to a duty by the Owners to exercise this right for the benefit of the Contractor or any other person or entity.

4. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a 7-day period after receipt of written notice from the Owners to commence

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and continue correction of such default or neglect with diligence and promptness, the Owners may, without prejudice to any other remedies it may have, correct the deficiencies. The Owners shall issue a Change Order deducting from payments then or thereafter due the Contractor the reasonable cost of correcting the deficiencies, including Owners' expenses and any additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owners.

B. The Contractor's Obligations and Authority.

1. The Contractor shall perform the Work in strict accordance with the Contract Documents and shall not be relieved of the obligations by either the Owners' activities or duties in administering the Contract Documents, or by tests, inspections or approvals required or performed by persons other than the Contractor.

2. The Contractor shall supervise and direct the Work as necessary, using its best skill and attention, and shall enforce strict discipline and good order among the Contractor's employees, subcontractors and other persons carrying out the Contract Documents. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract Documents, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owners and shall not proceed with that portion of the Work without further written instructions from the Owners.

3. The Contractor shall be responsible to the Owners for the intentional or negligent acts and omissions of the Contractor's employees, vendors, suppliers and subcontractors, and their agents and employees, and all other persons or entities performing portions of the Work for or on behalf of Contractor or any of its subcontractors. Nothing in this Agreement or any other Contract Documents shall relieve the subcontractors, vendors and suppliers from any duty owed the Owners under federal, state and local law.

4. The Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor may make substitutions if the Owners and Contractor have signed a written Change Order.

5. As a unit of local government, the Owners are tax exempt. The Contractor is responsible for ensuring that neither it nor its subcontracts, vendors, or suppliers incur any taxes that could be avoided as a result of the Owners' tax-exempt status, including but not limited to completing and filing with the Colorado Department of Revenue, prior to commencing the Work, a Contractor Application for Exemption Certificate (Form DR 0712) pursuant to C.R.S. § 39-26-708(1)(a) to seek the exemption from sales tax of construction and building materials purchased for use in performing the Work, if applicable. Upon Contractor's request, Owners will provide its exemption number and such other information as is reasonably required by Contractor to complete the Contractor Application for Exemption Certificate. The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor legally enacted (regardless of the effective date) prior to the Parties signing this Agreement. The Contractor shall secure and pay for any building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

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6. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify Owners in writing, and necessary changes shall be accomplished by Change Order. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Owners, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

7. The Contractor shall maintain at the site for the Owners one record copy of the Specifications and Change Orders in good order and accurately marked to reflect all changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals required by the Contract Documents. The Contractor shall deliver all of the foregoing data, drawings, samples and documents to the Owner upon completion of the Work.

8. The Contractor shall review for compliance with the Contract Documents, approve and submit to the Owners Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work. By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents it has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within the submittal with the requirements of the Work and the Contract Documents. The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the Owner has approved the submittal. The Owners' approval of Shop Drawings, Product Data, Samples, or similar submittals shall not relieve the Contractor of liability for deviations from the Contract Documents, unless the Contractor specifically informed the Owners in writing of the deviation at the time of submittal and a Change Order was issued authorizing the deviation. The Contractor shall be responsible for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, notwithstanding the Owners' approval.

9. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish resulting from its performance of the Work. At completion of the Work, the Contractor shall remove from the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials. If the Contractor fails to clean up as provided in the Contract Documents, the Owners may do so and the cost thereof shall be charged to the Contractor.

10. The Contractor shall provide the Owners access to the Work in preparation and progress wherever located.

11. The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract Documents; the accounting and control systems shall be satisfactory to the Owners. The Owners and the Owners' accountants shall be afforded access to the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Contractor shall preserve these for a period of 3 years after final payment, or for such longer period as may be required by law.

PART 9 - DISPUTES

A. The Parties shall engage in mediation to resolve any dispute arising from or relating to this Agreement, the other Contract Documents, the Work or the Project. Unless the Parties mutually agree

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otherwise, the mediation shall be conducted through the American Arbitration Association or its successor. Request for mediation shall be filed in writing with the American Arbitration Association or its successor, with a copy to the other Party. The Parties shall share the mediator's fee and any filing fees equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

B. If mediation is unsuccessful, either Party may commence a civil action. Jurisdiction and venue for a civil action involving a dispute arising from or relating to this Agreement, the other Contract Documents, the Work, or the Project, shall lie exclusively in the District Court for Rio Blanco County. In any civil action, the prevailing Party shall be awarded its reasonable attorneys' fees, costs, and expenses, including the reasonable attorneys' fees, costs and expenses incurred in collecting or executing upon any judgment, order or award.

PART 10 - INSPECTIONS, CHANGE ORDERS AND CORRECTIONS TO THE WORK

A. Change Order. Changes in the Work may be accomplished after execution of this Agreement by a Change Order. No Change Order that which would increase the Contract Price shall be signed by the Owners and the Contractor unless the Owners give the Contractor written assurance that lawful appropriations have been made for the costs of the additional Work, or such Work is covered under a remedy granting provision of the Contract Documents.

B. Corrections to the Work. The Contractor shall promptly correct Work that does not conform to the Contract Documents or, if not covered by the Contract Documents, best industry practices ("**Non-Conforming Work**") The Contractor shall pay all professional fees, and all other costs and expenses, of correcting Non-Conforming Work. The Owners may, in their sole discretion, choose to accept Non-Conforming Work by sending the Contractor written notice of its election to accept the Non-Conforming Work. If the Owners choose to accept Non-Conforming Work, the Contract Price shall be adjusted as appropriate and equitable, regardless whether Final Settlement payment has been made to the Contractor.

PART 11 – SUBSTANTIAL COMPLETION, FINAL ACCEPTANCE AND FINAL SETTLEMENT PAYMENT

A. Substantial Completion and Final Punch List. (*This subparagraph A only applies of the Parties have selected a Contract Time that includes Substantial Completion and a Final Punch List*)

1. "**Substantial Completion**" of the Project shall be deemed to have occurred when the Work is sufficiently complete in accordance with the Contract Documents that the Owners can use the Work for its intended purpose. When the Contractor believes the Work is substantially complete, the Contractor shall meet with the Owners and Project Engineer to prepare a comprehensive list of items to be completed or corrected prior to Final Settlement ("**Final Punch List**"). Failure to include an item on the Final Punch List does not alter the Contractor's responsibility to complete all Work in accordance with the Contract Documents.

2. Upon receipt of the Contractor's proposed Final Punch List, the Owners, or their agent, will inspect the Work to determine if it is substantially complete. If the inspection discloses any item, whether or not included on the proposed Final Punch List, that is not sufficiently complete in accordance with the Contract Documents for the Owners to use the Work for its intended purpose, the Contractor shall, before issuance of the Notice of Substantial Completion, complete or correct such item upon notification by the Owners or the Owners' agent. The Contractor shall then submit a request for another inspection by the Owners to determine Substantial Completion.

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3. When the Work is substantially complete, the Owners will issue a Notice of Substantial Completion that shall establish the date of Substantial Completion.

B. Final Acceptance.

1. Upon completing the Project (or all of the items on the approved Final Punch List, if applicable), the Contractor shall send the Owners written request for final inspection and acceptance of the Work. If after inspecting the Work, the Owners find the Work acceptable under the Contract Documents and the Contract Documents fully performed, the Owners will promptly issue a Notice of Final Completion.

2. Final Settlement Payment shall not become due until the Contractor submits to the Owners (a) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owners or the Owners' property might be responsible or encumbered (less amounts withheld by Owners) have been paid or otherwise satisfied, b) a certificate evidencing that insurance required by the Contract Documents to remain in force after Final Settlement Payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owners, (c) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (d) other data, in a form acceptable to the Owners, establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of or relating to the Work or the Project.

C. Final Settlement Payment.

1. Pursuant to C.R.S. § 38-26-107, the Owners shall provide the Contractor with written Notice of Final Settlement Payment, which shall occur at least 10 calendar days after the date of the Notice of Final Settlement Payment. If a Verified Statement Of Claim is filed before or at the date and time of the Final Settlement Payment, the Owners shall withhold from the Final Settlement Payment sufficient funds to pay the claim until the claim is paid or withdrawn. The Owners' obligations thereafter shall be governed by C.R.S. § 38-26-107.

2. Acceptance of Final Settlement payment by the Contractor, a subcontractor, vendor or supplier shall constitute a waiver of claims by that payee except those previously made by submitting a Verified Statement of Claim to the Owners.

PART 12 – GOVERNMENTAL IMMUNITY AND INDEMNIFICATION

A. This Agreement and the other Contract Documents are not intended, and shall not be construed, as a waiver of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by, the Owners and their current and former directors, officers, employees, volunteers, representatives and agents under federal or state constitutional, statutory or common law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

B. The Contractor and its employees, agents and representatives shall indemnify, defend, and hold harmless the Owners and their current and former directors, officers, agents, employees, volunteers, representatives and agents from and against any loss, liability, damage, claim, cost or expense (including reasonable attorneys' fees, costs and expenses) of any kind or nature whatsoever arising from or relating to any intentional or negligent act or omission of the Contractor, or any subcontractor, vendor or supplier or other person or entity performing this Agreement, the other Contract Documents, the Work or the Project. The Owners have the right to select their legal counsel, even though the Contractor is solely responsible for the payment of the defense costs.

CIRCLE PARK and MEEKER RIVERFRONT PROJECT

PART 13 - INSURANCE

The Contractor shall purchase from and maintain in a company(ies) lawfully authorized to do business in Colorado the following insurance:

- A. workers' compensation insurance in the amount required by Colorado law;
- B. general commercial liability insurance in the amount of \$1,000.000 per occurrence; The Owner shall be named as an additional insured and the policy shall include a provision prohibiting cancellation, termination, or alteration without 30 days' prior notice by certified mail to the Owners.
- C. motor vehicle insurance in the amount of \$1,000.000 per occurrence.

Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of Final Settlement payment and termination of any coverage required to be maintained after Final Settlement payment. Certificates of insurance evidencing compliance with the foregoing requirements shall be provided to the Owners prior to commencement of the Work.

PART 14 – ADDITIONAL TERMS

A. Colorado law governs this Agreement. This Agreement is the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may only be amended by a document signed by the Parties. Course of conduct, no matter how long, shall not constitute an amendment to this Agreement. If any provision is held invalid or unenforceable, all other provisions shall continue in full force and effect. Waiver of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach of this Agreement. This Agreement is not assignable. This Agreement shall inure to the benefit of and be binding upon the Parties and their legal representatives, and successors. This Agreement is not intended to, and shall not, confer rights on any person or entity not named as a party to this Agreement. This Agreement may be executed in several counterparts and by facsimile or electronic PDF, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

B. Unless otherwise expressly provided, any reference herein to days shall mean calendar days. All times stated in the Contract Documents are of the essence.

C. Any written notice required or permitted under the Contract Documents shall be given by: (1) delivery in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended; or (2) registered or certified mail to the last business address known to the Party giving notice. Notice by registered mail shall be deemed given on the date received, or within 3 business days of the date sent, if not accepted by the Party to whom it was sent, whichever is earlier.

D. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available at law or in equity.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

CIRCLE PARK and MEEKER RIVERFRONT PROJECT
PROJECT ITEMIZATION SHEET

CIRCLE PARK	\$ _____
IRRIGATION	\$ _____
3RD STREET	\$ _____
10TH STREET	\$ _____
GUARANTEED MAXIMUM PRICE	\$ _____

CIRCLE PARK	UNITS	QUANTITY	UNIT PRICE	COST
Permitting	LS	1		
Mobilization	LS	1		
Construction observation and stakeout	LS	1		
Remove/Dispose of cable fence & bollards	LF	500		
Remove/Dispose of concrete curb	LF	600		
Remove/Dispose of asphalt paving	SY	7500		
Erosion controls	LS	1		
Curb & Gutter	LF	680		
Asphalt base course	SY	1600		
Asphalt pavement	SY	1600		
Pavement marking - pedestrian crossing	SF	26		
Pavement marking - handicap	LS	900		
Pavement marking - parking stalls	LS	2		
Concrete flatwork (non-ramp)	SF	3220		
Overhead parking light	EACH	8		
3' x 3' storm drain box	EACH	1		
18" reinforced concrete pipe	LF	96		
Retaining wall	LF	50		
Landscape installation	LS	1		
Electrical conduit & conductor	LS	1		
Park entry sign	EACH	1		
Portalet	EACH	2		
Concrete ADA ramp	SY	100		
Riprap to protect ramp	CY	267		
Geotextile filter fabric	SY	400		
Soil lifts	LF	440		
Large Rocks (24")	EACH	25		
Live willow staking	EACH	56		
Tree planting	EACH	12		
Boulder step river access #1	CY	7		
Boulder step river access #2	CY	7		
Stone amphitheater river access	CY	76		

ATTACHMENT B

Signage	EACH	1		
Gravel path to park	SF	600		
Earthwork - shape 3:1 slope	CY	205		
Earthwork - haul off excess material	CY	205		
Parking lot drainage swale - riprap	CY	32		
Parking lot drainage swale - geotextile	SY	27		
Seed mix (riparian)	ACRE	0.08		

10TH STREET	UNITS	QUANTITY	UNIT PRICE	COST
Permitting	LS	1		
Mobilization	LS	1		
Erosion controls	LS	1		
Compacted gravel parking	SY	200		
Gravel path	SY	83		
Concrete access ramp	SY	28		
Riprap to protect ramp	CY	18		
Geotextile filter fabric	SY	56		
Soil lifts	LF	110		
Live willow staking	EACH	27		
Large rocks	EACH	10		
Earthwork - shapre 3:1 slope	CY	100		
Earthwork - grade gravel path	CY	50		
Earthwork - grade parking lot	CY	59		
Earthwork - haul off excess material	CY	0		
Traffic control - flagging	DAY	2		
Traffic control - inspection	DAY	2		
Traffic Control - management	DAY	2		
Seed mix (riparian)	ACRE	0.02		

* LEGEND

LS	Lump Sum
LF	Linear Feet
SY	Square Yards
SF	Square Feet
CY	Cubic Yards
FT	Feet