

CONSTRUCTION CONTRACT AGREEMENT

THIS CONSTRUCTION CONTRACT AGREEMENT (“Agreement”) is made and entered into effective this ____ day of _____, 2023 (“Effective Date”), by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality whose address is 7887 East 60th Avenue, Commerce City, Colorado 80022 (“City”), and ELITE INDUSTRIES, INC., a Colorado corporation whose principal business address is 535 South Gilbert Street, Castle Rock, CO 80104 (“Contractor”).

WHEREAS, the City desires to retain the services of Contractor, and Contractor desires to provide services to the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

I. Project.

A. Project. Contractor shall commence and complete the **MONACO PARK RENOVATION, Project PRG-02-2023** (“Project”), in accordance with the Contract Documents, and shall execute the entire scope of Work set forth in the Contract Documents, as defined below. Contractor shall, at its own expense, do all Work in a professional and workmanlike manner and furnish all labor, materials, tools, supplies, machinery, utilities, permits, licenses, and other equipment that may be necessary for the completion of the Project, as outlined in the Contract Documents.

B. Commencement and Completion of the Project. Contractor understands and agrees that all Work required under this Contract shall be fully completed, as set forth in the Contract Documents, within **180** calendar days of the date of the Notice to Proceed. Contractor acknowledges and understands that it is an essential term of this Contract that Contractor maintain a rate of progress in the Work that will result in completion of the Project in accordance with the Contract Documents, and to that end, Contractor agrees to proceed with all due diligence to complete the Work in a timely manner in accordance with the Contract Documents.

C. Contract Documents; Priority. The term “Contract Documents” includes the following, each and all of which are a part thereof and have the same force and effect as if spread at length herein. The following documents are attached and incorporated into this Agreement by reference. In resolving inconsistencies among two or more of the Contract Documents, precedence will be given in the same order as enumerated here. Additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher level document (i.e., it is not possible to comply with both requirements). Unless specifically stated, lower priority documents affected by Addenda shall not take priority through the Addenda.

1. Change Orders (by date);
2. Notice to Proceed;
3. Construction Contract Agreement;
4. The following Addenda, if any:

Addendum #1

August 4, 2023

- 5. Special Conditions of the Contract;
- 6. General Conditions;
- 7. The following Specifications;

Section	Title
Monaco Park Tech specs and Geotech report	Technical Specs

- 8. The following Drawings:

Number	Title	Date
1	Monaco Park Drawings	6/22/2023

- 9. Notice of Intent to Award;
- 10. Request for Bids;
- 11. Instructions to Bidders;
- 12. Notice of Substantial Completion;
- 13. Notice of Construction Completion;
- 14. Submitted Bid Forms;
- 15. Performance and Labor and Material Payment Bonds; and
- 16. Insurance Certificates and Endorsements.

II. COMPENSATION.

A. Contract Price. As compensation for performance of the Work described in the Contract Documents and any other obligations under this Agreement, the City will pay Contractor, for work actually performed, a sum not to exceed **Two Million, Five Hundred Sixty Two Thousand, Nine Hundred and Seventy Dollars and Zero Cents (\$2,562,970.00)**, subject to Change Orders executed in accordance with the Contract Documents. The City shall make payment(s) to Contractor in the manner and at such times as set forth in the General Conditions of such amounts as are required by the Contract Documents.

B. IRS Form W-9. If not on file with the City, Contractor will provide to the City a current, completed Internal Revenue Service Form W-9 with or before Contractor’s first invoice. Failure to submit a W-9 may result in delay or cancellation of payment under this Agreement.

III. NOTICES.

Except for routine communications and as provided in the General Conditions, written notices required under this Agreement and all other correspondence between the parties will be directed to the following and will be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested, unless the parties agree to electronic delivery of correspondence:

If to the City:

Parks Capital Project Manager
 Parks, Recreation & Golf
 City of Commerce City
 13905 E. 112th Ave.

If to Contractor:

Brad Bensko, President
 Elite Industries, Inc
 535 S. Gilbert Street
 Castle Rock, CO 80401

Commerce City, CO 80022
Cc: City Attorney's Office
7887 E. 60th Ave.
Commerce City, CO 80022

Brad@eliteindustriesinc.com

IV. GENERAL PROVISIONS.

- A. Authority. The parties represent and warrant that they have taken all actions necessary to legally authorize the undersigned signatories to execute this Agreement for the parties and to bind the parties to its terms. The signatories represent and warrant that each has legal authority to execute this Agreement for the party he or she represents and to bind that party to its terms.
- B. Entire Agreement. This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.
- C. Severability. A holding by a court of competent jurisdiction that any term of this Agreement is invalid or unenforceable will not invalidate or render unenforceable any other term of this Agreement.
- D. Survivability. The following provisions of this Agreement shall survive termination of this Agreement for any reason: I(C); II; III; IV. The obligations of any surety under any bond provided pursuant to this Agreement will survive termination.
- E. Counterparts; Execution. This Agreement may be executed in any number of counterparts, each deemed to be an original, and, taken together will constitute one and the same instrument. Signature pages may be executed via "wet" signature or electronic mark and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means.

[The remainder of this page is intentionally left blank – Signature Page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CITY OF COMMERCE CITY

Jason Rogers, City Manager
City Manager's Office

ATTEST:

APPROVED AS TO FORM:

Dylan A. Gibson, City Clerk

John-Patrick Sansom, Assistant City Attorney

Recommended for approval:

Chad Redin, Interim Director, PRG

ELITE INDUSTRIES, INC.

Brad Bensko, President