

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT (the "Contract") is made and entered into effective this ____ day of _____, 2014 (the "Effective Date"), by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality whose address is 7887 East 60th Avenue, Commerce City, CO 80022 (the "City"), and Golden Triangle Construction, Inc., a Colorado corporation whose principal business address is 700 Weaver Park Rd, Longmont, CO 80501 ("Contractor").

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. PROJECT – SCOPE OF WORK. Contractor shall commence and complete the construction of the Fronterra Park, Project Number PRG-03-2014 (the "Project"), in accordance with the Contract Documents, and shall execute the entire scope of Work set forth in the Contract Documents.
2. CHANGED CONDITIONS. Contractor specifically waives any claim for additional compensation for any changed condition, unless such changed condition is caused in whole or in part by acts or omissions within the control of the City or persons acting on behalf thereof, arising out of any of the following:
 - a. A physical condition of the site of an unusual nature;
 - b. Differing materially from those ordinarily encountered and generally recognized as inherent in work of the character and at the location provided for in the Contract Documents; or
 - c. As a result of any force majeure.
3. PROSECUTION OF THE WORK. Contractor shall, at its own expense, do all Work in a professional and workmanlike manner and furnish all labor, materials, tools, supplies, machinery, utilities and other equipment that may be necessary for the completion of the Project, as outlined in the Plans/Drawings, Specifications, General and Special Conditions and the Contract Documents.
4. RATE OF PROGRESS. 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.
5. COMMENCEMENT AND COMPLETION OF THE WORK. Contractor understands and agrees that the Work shall be commenced within ten (10) calendar days from and including the date of the Notice to Proceed, and Contractor shall have all work required under this Contract fully completed, as set forth in the Contract Documents, within two hundred (200) days from the date of the Notice to Proceed, subject to Change Orders executed in accordance with the Contract Documents.
6. CONTRACT PRICE. Contractor agrees to perform the Work described in the Contract Documents and to comply with the terms therein for the sum of Two Million Three Hundred Eighty-One Thousand Eight Hundred and Twenty-Three Dollars and Zero Cents (**\$2,381,823.00**) (the "Contract Price"), 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 such amounts as are required by the Contract Documents. The Contract Price is provisional based on the quantities contained in the Contract Documents attached hereto.

7. 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. In resolving inconsistencies among two or more of the Contract Documents, precedence will be given in the same order as enumerated here.

- a. Change Orders;
- b. Notice to Proceed;
- c. Construction Contract;
- d. The following Addenda, if any:

Number	Date	Pages
No. 1	October 9, 2014	1-1
No. 2	October 23, 2014	1-17
- e. General Conditions & Special Conditions/Technical Specifications;
- f. Specifications;
- g. Drawings;
- h. Notice of Award;
- i. Invitation to Bid;
- j. Information and Instructions to Bidders;
- k. Notice of Substantial Completion;
- l. Notice of Construction Completion;
- m. Proposal Forms, including Bid Schedules;
- n. Performance, and Labor and Material Payment Bonds;
- o. Performance Guarantee; and
- p. Insurance Certificates and Endorsements.

8. APPROPRIATION. The City confirms that the amount of money appropriated for this Contract is equal to or in excess of the contracted amount, and it is agreed that no Change Order, or other form of order or directive by the City requiring additional compensable work to be performed or that causes the aggregate amount payable under this Contract to exceed the amount appropriated for the original Contract, shall be issued unless Contractor is given written assurance by the City that lawful appropriations to cover the costs of the additional Work have been made or unless payment for such Work is otherwise provided for by the City.

9. Undocumented Workers.

a. Contractor hereby certifies that, as of the date of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in the E-verify Program or Department Program as defined in C.R.S. § 8-17.5-101 in order to confirm the eligibility of all employees who are newly hired to perform work under this Agreement.

b. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

c. Contractor is prohibited from using either the E-verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

d. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:

i. Notify the subcontractor and the City within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to this subparagraph d the subcontractor does not stop employing or contracting with the illegal alien; provided, however, that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

e. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department is undertaking pursuant to the authority established in Article 17.5 of Title 8, C.R.S.

f. If Contractor violates this Section, the City may terminate this Agreement for breach of contract. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the City.

10. NOTICES. Written notices required under this Contract and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the City:

Tony Jaramillo, Project Manager
City of Commerce City
6060 E. Parkway Drive
Commerce City, CO 80022

If to Contractor:

Golden Triangle Construction
700 Weaver Park Rd
Longmont, CO 80501

Nothing in this this Agreement shall be construed to restrict the transmission of routine communications between the Parties as provided in the Construction Documents.

10. SALES AND USE TAX. Unless specifically exempt, all equipment used and all materials provided or consumed in or for construction and services performed within the City are taxable, including construction and services performed on behalf of an exempt institution or governmental, religious, charitable, private or any other type of owner, including the City.

- a. Contractor Responsible for Tax. Contractor is subject to the tax on all purchases, fabrication, manufacture or other production of tangible personal property used, stored or consumed on such construction and services, including parking lots, roads, bridges, highways, building construction and remodeling of both public and private facilities.
- b. Specific Industry Standard. The Specific Industry Standard for Construction and Contractors (Regulation 20-S.I.15) can be provided upon request by contacting the City's Finance Department, Sales Tax Division, at 303-289-3628, and is available on the City's website at <http://www.c3gov.com/DocumentView.aspx?DID=115>.

- c. Equipment. Prior to or on the date Contractor locates equipment within the City to fulfill this Contract, Contractor shall file a declaration describing each anticipated piece of equipment the purchase price of which was two thousand five hundred dollars (\$2,500) or greater, stating the dates on which Contractor anticipates the equipment to be located within and removed from the boundaries of the City and stating the actual or anticipated purchase price of each such anticipated piece of equipment along with any other information deemed necessary by the City. When such declared equipment is located within the City for a period of thirty (30) days or less, Contractor may include sales and use tax calculated on one-twelfth (1/12) of the purchase price of such equipment in the contract amount, in compliance with Section 20-5-T of the Commerce City Sales & Use Tax Code. If Contractor fails to declare the equipment to the City prior to or on the date Contractor locates the equipment within the City, none of the sales and use tax due on the equipment shall be allowed as a contract expense.

11. GENERAL PROVISIONS.

- a. Definitions. The Definitions in the General Conditions apply to the entire Contract unless expressly modified within the Contract Documents.
- b. Counterparts. This Contract may be executed in two or more copies, each of which shall be deemed an original. The City shall retain one copy, and one copy shall be delivered to Contractor. Additional copies, if any, shall be provided to any additional parties
- c. Entire Agreement; Binding Effect. This Contract contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties. This Contract shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, personal representatives, successors and assigns.
- d. Independent Contractor; No Partnership or Agency. Notwithstanding any language in this Contract or any representation or warranty to the contrary, the relationship between Contractor and the City shall be as independent contractors, and neither the City nor Contractor shall be deemed or constitute an employee, servant, agent, partner or joint venturer of the other. **Contractor is obligated to pay federal and state income tax on any money earned pursuant to this Contract, and neither Contractor nor Contractor's employees, agents or representatives are entitled to workers' compensation benefits from the City.**
- e. Governing Law; Jurisdiction and Venue; Recovery of Costs. This Contract shall be governed by the laws of the State of Colorado without regard to its conflicts of laws provisions. Contractor consents to the exercise of jurisdiction by and venue in the County of Adams, State of Colorado. Contractor expressly waives any objection to jurisdiction or venue based on residence, including any right of removal based on diversity of citizenship. If legal action is brought to resolve any dispute among the parties related to this Contract, the prevailing party in such action shall be entitled to recover from the non-prevailing party reasonable court costs and attorney fees.
- f. Governmental Immunity. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits,

protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

- g. No Assignment. Contractor shall not assign or transfer any interest in this Contract without the City's prior written consent.
- g. No Third-Party Beneficiaries. The parties expressly understand and agree that enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the parties. The parties expressly intend that any person other than the City and Contractor shall be deemed to be only an incidental beneficiary under this Contract.
- h. No Continuing Waiver.
 - i. The waiver of any term, provision or requirement of this Contract shall not be construed or deemed as a waiver of any other term, provision or requirement of this Contract.
 - ii. The one-time waiver of any continuing obligation under this Contract shall not be construed or deemed as a continuing waiver of such obligation.
 - iii. The waiver of any breach of a term, provision or requirement of this Contract shall not be construed or deemed as waiver of any subsequent breach thereof.
- i. Severability. In the event a court of competent jurisdiction holds any provision of this Contract invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Contract.
- j. Rules of Construction. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement will be construed or resolved in favor of or against the City or Contractor on the basis of which party drafted the uncertain or ambiguous language. Where appropriate, the singular includes the plural and neutral words and words of any gender will include the neutral and other gender. Paragraph headings used in this Contract, are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Contract.
- k. Acknowledgement of Open Records Act – Public Document. Contractor hereby acknowledges that the City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.* (the "Act"), and as such, this Contract and any exhibits or attachments hereto, and any documents or reports produced pursuant to this Contract, are subject to public disclosure under the Act.

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

CITY OF COMMERCE CITY

Brian K. McBroom, City Manager

ATTEST:

Laura J. Bauer, CMC, City Clerk

Approved as to form:

Robert Sheesley, Senior Assistant City Attorney

Recommended for approval:

Carolyn J. Keith, CPRP
Director of Parks, Recreation & Golf

GOLDEN TRIANGLE CONSTRUCTION, INC.

Jeff Nading, Chief Executive Officer

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing Agreement was acknowledged before me this ____ day of _____, 20____,
by _____.

Witness my hand and official seal.

My Commission Expires .

Notary Public