

## RESOLUTION NO. 25-13

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, AWARDED A BID TO LA WESTERN CONSTRUCTION MANAGEMENT, INC., DOING BUSINESS AS NICHOLAS CONSTRUCTION, INC., FOR THE CASTLE PINES EAST GATEWAY MONUMENT (PROJECT NO. 2024-PW-006)**

WHEREAS, the City of Castle Pines, Colorado (the “City”) is authorized to enter into contracts for the performance of general municipal governance and services; and

WHEREAS, the City solicited bids in December 2024 for the construction of the Castle Pines East Gateway Monument, Project No. 2024-PW-006 (the “Project”) for an ample amount of time in accordance with Colorado law by posting an invitation for bid (the “IFB”); and

WHEREAS, it is the desire and intent of the City Council to award the bid to the lowest responsible bidder who submitted a bid in compliance with the reasonable and stated specifications contained within the IFB; and

WHEREAS, City staff evaluated the unit price bids received from bidders together with the specific criteria set forth in the IFB to determine the lowest responsible bidder for the Project; and

WHEREAS, the City Council, after consideration of the bid submitted and the recommendations of City staff, finds that LA Western Construction Management, Inc., doing business as Nicholas Construction, Inc. (the “Contractor”), submitted the lowest responsible bid for the Project; and

WHEREAS, it is in the best interests of the City to award the bid for the Project to the Contractor in the not-to-exceed amount of Three Hundred Seventy-Eight Thousand Ninety Dollars and Ninety-Seven Cents (\$378,090.97), based on the unit price(s) set forth in the Contractor’s bid and the estimated work quantities associated with the Project; and

WHEREAS, the City Council desires to approve a construction contract with the Contractor for the Project (“Construction Contract”) and further desires to authorize the City Manager to execute the Construction Contract once in final form.

### **THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, THAT:**

**Section 1.** The City Council hereby: (a) awards the Project to the Contractor in the not-to-exceed amount of Three Hundred Seventy-Eight Thousand Ninety Dollars and Ninety-Seven Cents (\$378,090.97); (b) approves the Construction Contract with the Contractor in substantially the same form as **Exhibit A**, attached hereto and incorporated herein by reference; (c) authorizes the City Attorney, in consultation with the City Manager, to make such changes to the Construction Contract as may be necessary to correct any non-material errors that do not increase the obligations of the City; and (d) authorizes the City Manager to execute the Construction Contract once in final form.

**Section 2.** If any section, paragraph, clause, or provision of this Resolution is held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of

such section, paragraph, clause, or provision shall not affect any of the remaining sections, paragraphs, clauses, or provisions of this Resolution.

**Section 3.** This Resolution shall take effect upon its approval by the City Council.

**INTRODUCED, READ, AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES BY A VOTE OF 6 IN FAVOR, 1 AGAINST, AND 0 ABSENT THIS 11<sup>th</sup> DAY OF FEBRUARY, 2025.**

  
Tracy Engerman (Feb 27, 2025 17:39 MST)

Tracy Engerman, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**



Tobi Duffey, MMC, City Clerk



Linda C. Michow, City Attorney

**EXHIBIT A**  
**CONSTRUCTION CONTRACT BETWEEN THE CITY OF CASTLE PINES AND LA**  
**WESTERN CONSTRUCTION MANAGEMENT, INC., D/B/A NICHOLAS**  
**CONSTRUCTION, INC., FOR THE CASTLE PINES EAST GATEWAY MONUMENT**  
**(PROJECT NO. 2024-PW-006)**



City of Castle Pines Project No

2024-PW-006

**CONSTRUCTION CONTRACT  
FOR THE FOLLOWING PROJECT:**

**Castle Pines – East Gateway Monument**

This Construction Contract (“Contract”), effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, is made and entered into by and between **LA Western Construction Management, Inc., d/b/a Nicholas Construction, Inc.** (hereinafter, “Contractor”), a Colorado corporation having a principal office address of 3200 S. Federal Blvd, Suite 6-1, Denver, CO 80236 and the **CITY OF CASTLE PINES** (hereinafter, “City” or “Owner”), a municipal corporation of the State of Colorado, having an address of 7437 Village Square Lane, Suite 200, Castle Pines, Colorado 80108 (collectively, the City and Contractor are referred to herein as the “Parties”).

In consideration of the mutual covenants hereinafter set forth, the Parties agree as follows:

**PART 1 – WORK; TIME**

1.01 The Contractor agrees to furnish all of the technical, administrative, professional, and other labor, all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources necessary to perform in a workmanlike manner all Work required by the Contract Documents.

1.02 The Contractor agrees to undertake the performance of the Work within **Fourteen (14)** days following the issuance of the Notice to Proceed and agrees that the Work will be completed by **July 15, 2025** unless the contract time is extended by the City as provided in the Contract Documents.

1.03 The Parties agree that, in any section in which the Contractor prepares any document for “the approval of the City,” such subsequent approval by the City does not mean that City is responsible for the accuracy, thoroughness, or judgment contained in the document. The City does not waive the right to hold the Contractor responsible for the accuracy, thoroughness, or judgment expressed in the document, as it is expressly agreed by the Parties that the City is relying on the expertise of the Contractor for the timely completion of the Work required by the Contract Documents.

**PART 2 – CONTRACT PRICE AND PAYMENT**

2.01 The City shall pay the Contractor for performance of the Work in accordance with the Contract Documents the amount(s) shown on Contractor's Form of Bid, not to exceed **Three Hundred Seventy-Eight Thousand Ninety Dollars and 97/100 Cents (\$378,090.97)**.

2.02 The City shall make payments as set forth in Article 9 of the General Conditions, subject to the City's obligation to retain a portion of the payments until final completion and acceptance by the City of all Work included in the Contract Documents.

2.03 Prior to final payment, all Work specified by the Contract Documents must be completed. Payment

shall be made only after the procedure specified by the General Conditions is completed.

2.04 The City represents that either an appropriation for the price specified in this Construction Contract has been made by the City Council or that sufficient funds have otherwise been made available for the payment of this Construction Contract.

2.05 The Parties understand and acknowledge that the City of Castle Pines is subject to Article X § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Contract. It is understood and agreed that this Contract does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Contract to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of the funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City of Castle Pines and other applicable law. Upon the failure to appropriate such funds, this Contract shall be terminated.

### **PART 3 – CONTRACTOR'S REPRESENTATIONS**

3.01 In order to induce the City to enter into this Construction Contract, the Contractor makes the following representations:

(a) The Contractor has familiarized itself with the nature and the extent of the Contract Documents, Work, the location and site of the Work and any and all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

(b) Contractor has carefully studied all physical conditions at the site and existing facilities affecting cost, progress or performance of the Work.

(c) Contractor has given the City written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and, if applicable, the written resolution(s) thereof by the City is/are acceptable to the Contractor.

(d) RESERVED.

3.02 Contractor agrees to remedy all defects appearing in the Work or developing in the materials furnished and the workmanship performed under this Construction Contract for a period of one (1) year or such other time that is specified in the Contract Documents after the date of acceptance of the Work by the City, and further agrees to indemnify and save the City harmless from any costs encountered in remedying such defects. Contractor shall provide a performance, payment, maintenance and warranty bond that shall remain in effect until all defects are corrected as required by this paragraph.

3.03 Contractor is an independent contractor, and nothing herein contained shall constitute or designate the Contractor or any of its employees or agents as agents or employees of the City.

### **PART 4 - CONTRACT DOCUMENTS**

4.01 The Contract Documents, which comprise the entire Construction Contract between the City and the Contractor, are attached to this Construction Contract and made a part hereof, including:

Invitation for Bids  
Instructions to Bidders  
Bid Bond  
Bid Form  
Notice of Award  
Notice to Proceed  
Construction Contract

Other:  
Technical Specifications (Exhibit F)  
Reports (Exhibit G) and Permits (Exhibit H)  
Castle Pines Parkway – East Monument Construction Drawings  
Incorporated in Contract Documents but not attached:  
CDOT Standard Specifications for Road and  
Bridge Construction (2023)

Construction Drawings  
Specifications  
Performance, Payment, Maintenance and  
Warranty Bond  
General Conditions, including table of contents  
Special Provisions (Exhibit C)  
Addendum  
Change Orders  
Insurance Certificates  
Tax-Exempt Certificates

In the event of an inconsistency between any provisions of the Contract Documents, the more specific provisions shall govern the less specific provisions, and written addenda, change orders, or other modifications approved in writing by both Parties subsequent to the date of this Contract as set forth on page 1 hereof shall govern the original Contract Documents.

4.02 There are no Contract Documents other than those listed above. The Contract Documents may only be altered, amended, or repealed by a modification, in writing, executed by the City and the Contractor.

## **PART 5 - PROJECT MANAGER**

5.01 The Project Manager, for the purposes of the Contract Documents, is the following, or such other person or firm as the City may designate in writing:

Name: Dole Grebenik, P.E.  
Address: 7437 Village Square Lane, Suite 200 Castle Pines, Colorado 80108  
Telephone: 303-746-0974  
Email: Dole.Grebenik@castlepinesgov.com

The Project Manager is authorized to represent and act as agent for the City with respect to City's rights and duties under the Contract Documents, provided, however, the Project Manager shall not have any authority to approve any Change Order or approve any amendment to the Construction Contract or Contract Documents, except for those minor Change Orders defined in paragraph 7.4.1 of the General Conditions, such authority being specifically reserved to the duly authorized official of the City having such approval authority pursuant to the City's Charter and ordinances. In the event of doubt as to such authority, the Contractor may request a written representation from the City Manager resolving such doubt and designating the person with authority under the circumstances, which written representation shall be conclusive and binding upon the City.

## **PART 6 - ASSIGNMENT**

6.01 No assignment by a party hereto of any rights under or interest in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. This restriction on assignment includes, without limitation, assignment of the Contractor's right to payment to its surety or lender.

6.02 It is agreed that this Construction Contract shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, assigns and successors.

## **PART 7 - GOVERNING LAW AND VENUE**

7.01 This Construction Contract shall be governed by the laws of the State of Colorado and the Charter and ordinances of the City of Castle Pines.

7.02 This Construction Contract shall be deemed entered into in Douglas County, State of Colorado, as the City is located in said county. The location for settlement of any and all claims, controversies and disputes arising out of or related to this Construction Contract or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in Douglas County.

#### **PART 8 - LIQUIDATED DAMAGES**

8.01 The City and the Contractor recognize that time is of the essence in this Construction Contract and that the City will suffer financial loss if the Work is not substantially completed within the time specified in paragraph 1.02 above, plus any extensions thereof allowed by the City by written Change Order. They also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City if the Work is not substantially complete on time. Accordingly, rather than requiring any such proof, the City and the Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay the City the applicable amount set forth in the General Conditions for each day that expires after the time specified in paragraph 1.02 until the Work is complete. It is agreed that this is a reasonable estimate of the damages likely to be suffered by the City for late completion of the Work. If the Contractor shall fail to pay such liquidated damages promptly upon demand therefor, the Surety on the Performance, Payment, Maintenance and Warranty Bond shall pay such damages. In addition, and at the City's option, the City may withhold all or any part of such liquidated damages from any payment due the Contractor.

#### **PART 9 - MODIFICATIONS**

This Construction Contract shall be modified only by written Change Orders or Addenda agreed upon by the Parties hereto, duly issued in form approved by the City Attorney and in conformance with the other Contract Documents.

#### **PART 10 - CONTINGENCY**

This Construction Contract is expressly contingent upon the approval of the City of all of the terms set forth herein. In the event this Construction Contract is not approved and fully executed by the City, neither Party shall be bound to the terms of this Construction Contract.

The person or persons signing and executing this Construction Contract on behalf of each Party, do hereby warrant and guarantee that he/she or they have been fully authorized to execute this Construction Contract and to validly and legally bind such Party to all the terms, performances and provisions herein set forth.

Governmental Immunity. The City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended ("CGIA"), or otherwise available to the City and its officers or employees.

INSURANCE CERTIFICATES REQUIRED BY THE GENERAL CONDITIONS OF THIS CONTRACT SHALL BE SENT TO THE PUBLIC WORKS DEPARTMENT, CITY OF CASTLE PINES, ATTENTION: DOLE GREBENIK, P.E., PROJECT MANAGER.

IN WITNESS WHEREOF, the parties hereto have executed this Construction Contract in triplicate. Two counterparts have been delivered to the City and one counterpart has been delivered to the Contractor. All portions of the Contract Documents have been signed or identified by the City and the Contractor.

**CITY OF CASTLE PINES, COLORADO**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM (excluding exhibits)

\_\_\_\_\_  
Tobi Duffey, MMC, City Clerk

\_\_\_\_\_  
Linda Michow, City Attorney

**CONTRACTOR: LA WESTERN CONSTRUCTION  
MANAGEMENT, INC., D/B/A/ NICHOLAS  
CONSTRUCTION, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_

)

) ss.

COUNTY OF \_\_\_\_\_)

The foregoing Construction Contract was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of LA Western  
Construction Management, Inc., a Colorado corporation d/b/a Nicholas Construction, Inc..

Witness my hand and official seal.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public