

## AGREEMENT

This Agreement is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the Widefield Water and Sanitation District, a quasi-municipal corporation and political subdivision of the State of Colorado (“State”) located in the County of El Paso, Colorado (“District”), and \_\_\_\_\_, a Colorado \_\_\_\_\_, with a mailing address of \_\_\_\_\_, \_\_\_\_\_ (“Contractor” and together with District, the “Parties” or either of the Parties, a “Party”).

In consideration of the mutual covenants, agreements, conditions and undertakings hereinafter set forth, District and Contractor agree as follows:

**Section 1. Scope of Work.** Contractor shall perform all work in accordance with the Contract Documents as identified in Section 18 for services to include installation of new water meters within the District’s service area, including furnishing all construction plans and methods, construction management, labor, equipment and materials (generally referred to as the “Project”) with the exception of the water meters to be installed which have been purchased directly by the District, and shall complete the Project, including any additional work authorized pursuant to Section 17, in accordance with the terms of this Agreement and the Contract Documents.

**Section 2. Contract Price.** District shall pay Contractor for the performance of work and completion of the Project the total price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the “Contract Price”), subject to certain adjustments as herein provided, in accordance with the proposal submitted by Contractor. The Contract Price may be adjusted (i) for changes in the Contract Documents or for extensions of time to complete performance, if approved by District and Contractor as specified in Section 17; (ii) for any additional work authorized pursuant to Section 17. All unit quantities requiring an adjustment of the Contract Price shall be verified by Project Manager (as defined in Section 16).

**Section 3. Progress Payments.** District will make progress payments monthly on account of the Contract Price in accordance with partial payment applications prepared by Contractor for work performed during the last monthly period and approved by Project Manager and District. Progress payments shall not constitute final acceptance of the work. District may withhold progress payments if: (i) Contractor’s performance is inadequate or defective and not remedied in accordance with Project Manager’s directions; (ii) Contractor does not make prompt and proper disbursements to subcontractors on receipt of progress payments from District; (iii) Contractor does not promptly pay for materials, labor or equipment furnished on the Project; (iv) claims or liens are filed on the Project; or (v) in Project Manager’s opinion, Contractor’s performance is not progressing satisfactorily or completion of the Project is jeopardized or delayed.

**Section 4. Retainage.** An amount equal to five percent (5%) of each progress payment made on the Contract Price shall be retained by District. District shall pay the remaining amount of each progress payment to Contractor without retaining additional funds if, in the opinion of Project Manager and District, satisfactory progress is being made on the Project. Such retainage of the Contract Price shall be held by District until the Project is completed and finally accepted by District in accordance with the provisions hereof. District shall pay the full amount of such retainage to Contractor within sixty (60) days of final completion and acceptance, except to the extent of any claims filed pursuant to Section 38-26-107, C.R.S. Any release of retainage to Contractor or a subcontractor prior to final payment shall, in addition to any other requirements of the Contract Documents, require written approval from the surety furnishing bonds pursuant to Section 13.

**Section 5. Final Payment.**

**a.** Upon completion of the Project and Contractor's submittal of notice thereof to Project Manager and District, Project Manager shall inspect the Project and reject any portion of performance not in conformity with the Contract Documents. Defective materials, equipment or work shall be remedied immediately by Contractor before final payment. District shall make final payment to Contractor within thirty (30) days after (i) final acceptance of performance by District as specified in Section 6 and (ii) receipt of Project Manager's confirmation to District that the Project has been completed satisfactorily. Final payment shall not, however, be due until Contractor has delivered to District a complete release of all claims or liens against the Project and has produced satisfactory receipts, waivers or lien releases indicating final and total payment to all subcontractors and persons who have furnished materials, labor and equipment on which a lien or claim might potentially be filed in form acceptable to District. District shall, no later than ten (10) days before final payment is made, publish a notice of final payment at least twice in a legal newspaper of general circulation in any county where the work was contracted for or performed pursuant to Section 38-26-107, C.R.S.

**b.** By making final payment, District waives all claims against Contractor, except those expressly declared to Contractor in writing or those arising out of: (i) defective performance appearing after final acceptance; (ii) performance in patent noncompliance with Contract Documents, unless expressly waived by District; (iii) outstanding claims of any nature, including but not limited to claims for property damage or personal injury arising during the construction period or liens or claims against the Project; or (iv) Contractor's failure to execute any warranty, guarantee or bond or to provide insurance or other indemnification required by the Contract Documents. By accepting final payment, Contractor waives all claims against District, except those expressly declared to District in writing received by District prior to final payment.

## **Section 6. Final Acceptance.**

**a.** Final acceptance of the Project shall follow inspection and approval of Contractor's performance by Project Manager, along with inspection by appropriate manufacturers' representatives and governmental officials pursuant to local, State and federal requirements as necessary. District shall have the right to determine the acceptability of Contractor's performance and conformance with the Contract Documents, which determination shall be conclusive and binding upon Contractor. Final acceptance by District is subject to the provisions of Section 5 and in no manner affects or releases any warranty or guarantee with Contractor or manufacturers or suppliers of Project equipment or materials.

**b.** When presented for final acceptance, the Project shall be delivered to District in complete compliance with the Contract Documents free from any lien, claim or encumbrance, whether in existence or subsequently established by law, statute, ordinance or otherwise. Notwithstanding the foregoing, nothing in the Contract Documents shall give Contractor or any subcontractor, laborer, supplier, manufacturer or other person or entity, either expressly or by implication, any right to assert a lien, claim or encumbrance against the Project.

## **Section 7. Commencement and Completion of Performance;**

**a.** Contractor shall commence performance by June 1, 2024 or other date as indicated in the Notice to Proceed, if applicable, and shall diligently prosecute all work through completion. Unless an extension of time is granted by District as hereinafter set forth, Contractor shall substantially complete the Project by November 30, 2024. For purposes of this Agreement, (i) "Substantial Completion" shall be the time at which the Project (or a specified part thereof) has progressed to the point where, in the opinion of Project Manager, the Project (or a specified part thereof) is sufficiently complete in accordance with the Contract Documents, so that the Project (or a specified part thereof) can be utilized by District for the purposes for which it is intended; and (ii) "Final Completion" shall be the time at which District accepts the Project upon confirmation from Project Manager and Contractor that the Project is totally complete in accordance with Contract Documents.

**Section 8. Default.** District may give written notice of grounds for default to Contractor at any time if: (i) Contractor fails to perform in an adequate or specified manner or proceeds in willful violation of the Contract Documents or terms of this Agreement, as determined by Project Manager or District; (ii) Project Manager advises District that performance of work on the Project is being delayed unnecessarily or that Contractor is executing its responsibilities in bad faith or contrary to the intent of this Agreement; (iii) performance is not fully completed within the period of time specified for completion under Section 7; (iv) work to be performed by Contractor is assigned without District's consent; (v) Contractor is insolvent or files for bankruptcy;

(vi) Contractor makes a general assignment of assets for the benefit of creditors; (vii) a receiver is appointed for Contractor; or (viii) other serious and reasonable cause exists which jeopardizes completion of the Project. If Contractor does not remedy or otherwise correct the grounds for default within such period of time as specified by District, District may terminate this Agreement and direct Contractor to discontinue any further work on the Project, and Contractor shall immediately stop all work on the Project and forfeit all rights under this Agreement. District, in its discretion, may complete the Project, or may request the surety of Contractor to complete the Project, or may contract with others to complete the Project at the expense of Contractor and its surety. Any increase in costs over the Contract Price and any special damages incurred by District as a consequence of such default, including reasonable attorneys' fees, shall be paid and satisfied in full by Contractor and its surety.

**Section 9. Termination.** At any time, District may, without cause and without prejudice to any other right or remedy hereunder, elect to terminate this Agreement. In such event, District shall give written notice of Project termination to Contractor at least five (5) days in advance of the Project termination date. Such notice may include specific instructions as to work to be completed and other winding-up matters. In the absence of any contrary instructions, Contractor shall place no further orders or subcontracts, shall terminate all orders and subcontracts to the extent they relate to terminated work, and shall stop work on the date and in accordance with directions specified in the notice. Contractor shall cooperate with District to transfer all of Contractor's rights and interests in any orders, subcontracts or work as directed by District. District shall pay Contractor for the performance of all work through the Project termination date and for such additional amounts as, in the opinion of Project Manager, are reasonable to compensate Contractor for the termination of this Agreement. Final payment to Contractor shall be made in accordance with Section 5.

**Section 10. Taxes, Licenses, Permits and Regulations.** In all operations connected with the Project, Contractor shall pay all fees, charges and taxes imposed by law, except for sales and use taxes from which District or the Project are exempt, and shall obtain all licenses and permits necessary for completion of the Project, including payment of all fees, unless otherwise specified by the Contract Documents or Project Manager. Contractor shall comply with all laws, ordinances, codes, rules and regulations of all governmental authorities, whether local, State or federal, relating to the performance of work on the Project and particularly for compliance with those laws concerning the environment, stormwater management permits, workmen's compensation, safety and health, labor, immigration and equal employment opportunity. District shall, upon request, furnish Contractor with a copy of its certificate of sales and use tax exemption. District shall not reimburse Contractor for any sales or use taxes paid to the State or any county or municipality from which District or the Project are exempt.

**Section 11. Indemnification.** Subject to Sections 13-21-111.5(6) and 13-50.5-102, C.R.S., to the extent applicable, Contractor shall indemnify, defend and hold the Owner, and its officers, directors, employees, agents, architects and attorneys, harmless from and against all costs, claims, damages, judgments, losses and expenses of every nature, including reasonable attorneys' fees, arising at any time from any act or omission of the Contractor, its employees, subcontractors and their employees, and all other persons directly or indirectly involved in or performing work for the Contractor (other than the Owner and any other third party while under the control or supervision of the Owner) on the Project. The obligations of the indemnifications extended by Contractor hereunder shall survive termination or expiration of the Contract. Contractor's indemnification, defense, and insurance obligations shall be to the fullest extent permitted by law. Contractor shall not be liable for any claim, loss, damage, injury, or liability arising out of the negligence of Owner, its directors, employees, agents, and consultants, and nothing in the Contract Documents shall be construed as requiring Contractor to defend in litigation, indemnify, or insure Owner against liability for damage arising out of the death or bodily injury to persons or damage to property caused by the negligence or fault of Owner or any third party under the control or supervision of Owner.

**Section 12. Insurance.** During the term of this Agreement, Contractor shall: (i) maintain all insurance required by the State Workmen's Compensation Act or any other employee benefit law; (ii) provide broad form general liability and property damage insurance in the minimum amount of \$1,000,000 for bodily injury, death or damage to property of any person, and \$2,000,000 for bodily injury, death or damage to property of more than one person, or such other greater amounts as may be specified in the Contract Documents for injuries, death or damages which may arise out of or result from Contractor's acts or omissions in performing the Project work, designating District and Project Manager as "additional insureds" thereunder; and (iii) unless otherwise waived by District in writing, furnish builders risk insurance for protection against damage, explosion, fire, vandalism, theft and other dangers ordinarily included under such coverage, including loss of use resulting therefrom, to the full insurable value of all property, structures, equipment and material of District within Contractor's control, designating District as "loss payee" thereunder. Contractor shall file certificates of insurance coverage satisfactory to District prior to commencement of performance. Such certificates shall provide that coverages afforded thereunder shall not be cancelled until at least thirty (30) days' prior written notice has been given to District.

**Section 13. Performance and Payment Bond.** Prior to commencement of performance, Contractor shall provide to District a general performance and payment bond executed by Contractor and an acceptable corporate surety, or collateral approved by District, in the minimum amount of one-half of the Contract Price, including provisions for any adjustment of the Contract Price in accordance with the terms of this Agreement. Such bond shall expressly guarantee: (i) faithful performance of this Agreement and completion of the Project in complete compliance with the Contract

Documents; and (iii) payment to all persons performing labor and furnishing materials, supplies, tools and equipment in connection with the Project. Contractor shall obtain such bond on District's behalf separate and apart from any similar bond or surety entered into independently between District and any manufacturer or supplier. Notwithstanding anything contained within the bonds to the contrary, such bonds are required, in part, by and shall comply with the minimum requirements of Section 38-26-106, C.R.S.

**Section 14. Warranties and Guarantees.** Contractor hereby represents, warrants and guarantees to District all workmanship, equipment and materials on or made a part of the Project and its structures for a period of two years following Final Completion of the Project. Such warranty and guarantee shall be construed to include, but is not limited to, representations that all workmanship, equipment and materials are of good quality, free from any defects or irregularities, and in strict conformity with the Contract Documents. If any defect in workmanship, equipment or materials arises, Contractor shall remedy or otherwise correct such defect without cost to District within such reasonable period of time as specified by District in writing. If Contractor fails to repair such defect within such period of time as is specified by District, District may repair such defect or contract for such repairs at the expense of Contractor and its surety. The performance bond specified in Section 13 shall remain in full force and effect during the period of this warranty and guarantee, including any period necessary to remedy or otherwise correct any defects. Contractor shall provide such warranty and guarantee on District's behalf separate and apart from other warranties, guarantees and surety agreements entered into independently between District and any manufacturer or supplier.

**Section 15. Subcontractors, Suppliers and Others.** Contractor shall, prior to commencement of performance, submit a list of all major subcontractors, suppliers, and other individuals or entities to be engaged to work on the Project for District's reasonable acceptance (either in writing or by failing to make written objection thereto within ten (10) days after such submission). Contractor shall not substitute any subcontractor, supplier, or other individual or entity previously accepted by District without District's prior written consent, which shall not be unreasonably withheld. District's acceptance of any such subcontractor, supplier, or other individual or entity so identified may be withheld or revoked on the basis of reasonable objection after due investigation. In such event, Contractor shall submit an acceptable replacement for the rejected subcontractor, supplier, or other individual or entity, and the Contract Price may be adjusted by any reasonable difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by District of any such subcontractor, supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of District or Project Manager to reject defective work. All contracts between Contractor and subcontractors shall conform explicitly to all applicable provisions of this Agreement and the Contract Documents. Contractor shall be responsible and held liable for any bonding, insurance, warranties, indemnities,

progress payments and completion of performance of or to such subcontractors, suppliers, or other individuals or entities. Upon receipt of progress and final payments from District, Contractor shall disburse the same immediately to subcontractors, suppliers, and other individuals and entities without any requirement of District to supervise the same. No contractual relationship shall exist between District and any subcontractor, supplier, or other individual or entity because of the subcontracting of any part of the Project work.

**Section 16. Project Manager.** Official authority for the administration of all performance under this Agreement is hereby delegated to District's engineer and is referred to herein as the "Project Manager," unless otherwise provided in the Contract Documents. Throughout the construction period, Project Manager, or such other duly authorized representative of District, may inspect the Project and shall consult with Contractor in regard to any inquiries, directions or interpretations of the Contract Documents.

**Section 17. Appropriations; Change Orders.** This Agreement is subject to Section 24-91-103.6, C.R.S., and in accordance therewith:

- a. District represents that it has appropriated money equal to or in excess of the Contract Price for the work.
- b. District shall not issue any Change Order or other directive (other than a clarification) requiring additional compensable work to be performed that will cause the aggregate amount payable under this Agreement to exceed the amount appropriated for the original Contract Price and any subsequent appropriations, unless:
  1. Contractor is given written assurance by District that lawful appropriations to cover the costs of the additional work have been made and are available prior to performance of the additional work; or
  2. Such additional work is covered by the following remedy-granting provision: Contractor may request, in writing, a letter from District explaining the expected sources of funding for the additional work. In the event District does not provide such written assurance reasonably satisfactory to Contractor within five (5) days of Contractor's request, Contractor may stop work until such time as District provides satisfactory assurances. Contractor's acceptance of a Change Order in accordance with any assurances provided under this paragraph shall not limit or restrict Contractor from making a claim under the Contract Documents for an adjustment in the Contract Price or the Performance Deadlines or otherwise for expenses or damages directly attributable to Contractor's stoppage of the work as permitted hereunder.
- c. For any Change Order or other directive (other than a clarification) that requires additional compensable work to be performed, District shall reimburse

Contractor for Contractor's costs on the periodic basis set forth in the Contract Documents for all additional directed work performed until the Change Order is finalized. In no instance shall the periodic reimbursement be required before Contractor has submitted an estimate of cost to District for the additional compensable work to be performed.

**Section 18. Contract Documents.** The Contract Documents comprise the entire agreement and contract between District and Contractor and consist of (i) this Agreement and any exhibit or addendum hereto; (ii) any documents furnished to Contractor by or at the request of District in connection with the Project, including but not limited to the request for proposals, Contractor's proposal or quote, performance and payment bonds, notice of award, notice to proceed, specifications, and any addendum to such documents; and (iii) any modifications, change orders or other such revisions approved by the Parties in writing or duly authorized after the execution of this Agreement.

**Section 19. Report of Differing Conditions.** If Contractor believes that any technical data on which Contractor is entitled to rely is inaccurate, or any physical condition differs materially from that indicated, reflected or referred to in the Contract Documents, Contractor shall promptly, after becoming aware of such condition and before performing any further work in connection with the Project, notify Project Manager and District in writing about such inadequacy or difference.

**Section 20. Amendment.** This Agreement may be amended, from time to time, by agreement between the Parties. No amendment, modification or alteration of this Agreement shall be binding upon the Parties unless the same is in writing and approved by the duly authorized representatives of each Party. No document executed subsequent to this Agreement shall be interpreted to amend, modify or alter the terms of this Agreement, unless express reference to amending the terms of this Agreement is made in such document.

**Section 21. Severability.** If any term, section or other provision of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, section or other provision shall not affect any of the remaining provisions of this Agreement.

**Section 22. Waiver.** No waiver by either Party of any right, term or condition of this Agreement shall be deemed or construed as a waiver of any other right, term or condition, nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

**Section 23. Remedies.** None of the remedies provided to either Party under this Agreement shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which such Party may then be entitled. Every obligation assumed by, or imposed upon, either Party shall be enforceable by any appropriate action, petition or



proceeding at law or in equity, including specific performance. This Agreement shall be construed in accordance with the laws of the State of Colorado and particularly those relating to governmental contracts.

**Section 24. Counterparts; Electronic Signatures; Electronic Records.** This Agreement may be executed in two counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument. The Parties consent to the use of electronic signatures and agree that the transaction may be conducted electronically pursuant to the Uniform Electronic Transactions Act, § 24-71.3-101, et seq., C.R.S. The Agreement and any other documents requiring a signature may be signed electronically by either Party. The Parties agree not to deny the legal effect or enforceability of the Agreement, solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Contract in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature on the grounds that it is an electronic record or an electronic signature or that it is not in its original form or is not an original.

**Section 25. Entirety.** This Agreement and all other Contract Documents constitute the entire agreement between the Parties concerning the subject matter herein, and all prior negotiations, representations, contracts, understandings or agreements pertaining to such matters are merged into and superseded by this Agreement and the other Contract Documents.

**Section 26. Conflicting Provisions; Grant Requirements Control; Interpretation.** In the event any provision of this Agreement conflicts with any provision of any other Contract Document, then the provisions of this Agreement shall govern and control such conflicting provisions. If the Project is financed in whole or in part by a federal or State grant, any provision of the Contract Documents that is in conflict with the terms of such grant shall be inapplicable. Subject to the foregoing provisions of this Section, to the extent the Parties need guidance on a matter that is not addressed by the Contract Documents, such matter shall be governed by the pertinent provisions, if any, contained in the General Conditions.

**Section 27. Assignment.** Contractor shall not, at any time, assign any interest in this Agreement to any person or entity without the prior written consent of District. The terms of this Agreement shall inure to and be binding upon any successors and assigns of the Parties.

**Section 28. Time.** Unless otherwise expressly provided, any reference herein to days shall mean calendar days. All times stated in this Agreement are of the essence.

**Section 29. Notice.** Any notice required hereunder shall be in writing delivered to the applicable Party at the address set forth at the beginning of this Agreement or as changed pursuant to the provisions of this Section.

**Section 30. Section Headings.** The section headings in this Agreement and any other Contract Documents are inserted for convenience and are not intended to indicate completely or accurately the contents of the sections which they introduce, and shall have no bearing on the construction of the sections which they introduce.

**Section 31. No Third Party Beneficiaries.** The Parties to this Agreement do not intend to extend any benefits to any person not a Party to this Agreement. No person or entity, other than the Parties to this Agreement, shall have any rights, legal or equitable, to enforce or rely on any provision of this Agreement.

**Section 32. Duly Authorized Signatories.** By execution of this Agreement, the undersigned each individually represent that he or she is duly authorized to execute and deliver this Agreement and that the subject Party shall be bound by the signatory's execution of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

WIDEFIELD WATER AND SANITATION  
DISTRICT

By: \_\_\_\_\_  
Lucas Hale, District Manager

CONTRACTOR

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_