

RESOLUTION 26R24

**A RESOLUTION APPROVING THE SETTLEMENT AGREEMENT UPON
TERMINATION BETWEEN THE TOWN AND TRIPLE M CONSTRUCTION,
LLC REGARDING THE TRADE CONTRACTOR AGREEMENT FOR THE
MAIN STREET STREETScape PROJECT**

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE
TOWN OF ELIZABETH, COLORADO AS FOLLOWS:

Section 1. The Settlement Agreement upon Termination between the Town of
Elizabeth and Triple M Construction, LLC, attached hereto as **Exhibit A**, is hereby approved, and
the Mayor is authorized to execute the same on behalf of the Town.

PASSED, APPROVED, and ADOPTED this ____ day of _____, 2026, by the
Board of Trustees of the Town of Elizabeth, Colorado, on first and final reading, by a vote of
_____ for and _____ against.

Angela Ternus, Mayor

ATTEST

Michelle M. Oeser, Town Clerk

Settlement Agreement Upon Termination

This Settlement Agreement upon Termination (the “Settlement Agreement”) is made and entered into this 25th day of August 2026, by and between Triple M Construction, LLC (“Trade Contractor”) and the Town of Elizabeth (the “Town”). The Trade Contractor and Town may be referred to together as the “Parties, or individually as a “Party.”

WHEREAS, the Trade Contractor and the Town entered into that Trade Contractor Agreement dated August 13, 2024 (the “Agreement”), in which Trade Contractor agreed to construct the Main Street Streetscape Project (the “Project”), which Agreement has been amended in a manner that has led to a dispute regarding the approved not to exceed contract amount, and the approved scope of work;

WHEREAS, such dispute involves final payment under the Agreement, including, but not limited to, the disposition of various change orders, delay damages alleged by Trade Contractor, concerns by the Town regarding defective and/or incomplete work, the imposition of liquidated damages by the Town, and the Parties disagreement as to who is responsible for certain claimed additional costs, the completion of work, and project delays associated with the Project; and

WHEREAS, the Parties desire to terminate the Agreement and treat the Agreement as terminated for convenience under the terms and conditions set forth below in order to finally resolve all claims related to the Agreement through the date of this Settlement Agreement.

NOW THEREFORE, in exchange for the recitals set forth above and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Termination for Convenience. The Town and Trade Contractor hereby agree that the Agreement is hereby terminated for convenience within the meaning of the Agreement, but subject to the following conditions.
 - A. Amount in Controversy. The Parties agree that Trade Contractor shall be paid the original contract amount of \$2,915,834.00 incident to such termination for convenience. Thus, upon final settlement as described in subsection 1.B below, the Town shall pay the amount of \$1,483,345.13 (the “Final Settlement Amount”) to Trade Contractor as final payment under the Agreement.
 - B. Final Settlement. The Town has advertised for final settlement to occur on September 8, 2026 as required by C.R.S. § 38-26-107 to assure that no person or entity that has supplied or furnished labor, materials, or other supplies used or consumed by Trade Contractor or any subcontractor have been paid, and no amounts other than those due and owing to Trade Contractor remain to be paid. Upon the Town receiving no such claims as of the date of final settlement, the Town shall pay and release the amount of \$1,483,345.13 as final payment under the Agreement, and in settlement of the disputed claims hereunder. If any such claims are made, the Town shall withhold such amounts pursuant to and as required by C.R.S. § 38-26-107.

- C. Warranties and Performance Guarantees. In consideration for the Trade Contractor agreeing to accept the Final Settlement Amount as final payment hereunder, the Town hereby waives and releases Trade Contractor from any warranty items, punch list items, or other disputed items under the Agreement that are known as of the date of this Settlement Agreement as provided in more detail in Section 1, subsection E. hereunder. Provided however, nothing in this Settlement Agreement shall be deemed a waiver of the right of the Town to make a claim against Trade Contractor for any faulty or defective work that is unknown or has not been discovered as of the date of this Settlement Agreement, and the Parties specifically reserve their respective rights as they may have regarding claims or defenses to such unknown or undiscovered claims, if any. Upon payment of the Final Settlement Amount hereunder, the Town shall release any Performance, Labor and Material Payment Bonds provide to the Town pursuant to the Agreement
- D. Cooperation. The Parties agree that a significant component of the dispute being resolved hereunder was a result of potential design deficiencies. Trade Contractor agrees to cooperate with the Town in the event the Town seeks to make a claim against the design consultant retained by the Town that created the design documents for the Project.
- E. Mutual Release of Claims. In consideration of the promises set forth in this Settlement Agreement, the Parties for themselves and their heirs, representatives, attorneys, executors, administrators, successors, and assigns hereby release, acquit, remise, and discharge each other and all persons acting under, by, through or in concert with any of them, from any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liabilities, suits, debts, demands, and benefits (including attorneys' fees and costs), of whatever character, in law or in equity, known as of the date of this Settlement Agreement. This release of claims does not include claims for breach of this Settlement Agreement, or any claim against Trade Contractor for any faulty or defective work that is unknown or has not been discovered as of the date of this Settlement Agreement.
2. Severability. If any provision of this Settlement Agreement is declared by any court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this Agreement, which shall be fully severable, and given full force and effect.
3. Waiver. No waiver by either Party of any breach by the other or any provision hereof shall be deemed to be a waiver of any later or other breach thereof or as a waiver of any other provision of this Agreement. This Agreement and its terms may not be waived, changed, discharged or terminated orally or by any course of dealing between the Parties, but only by an instrument in writing signed by the Party against whom any waiver, change, discharge or termination is sought.
4. Entire Agreement. This Agreement and the Street Project Agreement constitute the entire agreement between the Parties. No promises or oral or written statements have been made to either Party other than those in this Agreement and the Street Project Agreement.

5. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

6. Counterparts. This Agreement may be executed in counterparts, all of which shall have full force and effect.

IN WITNESS WHEREOF, the Parties hereunto to the terms of this Settlement Agreement on the date set forth above.

TOWN OF ELIZABETH,

By _____
Angela Ternus, Mayor

ATTEST:

Michelle M. Oeser, Town Clerk

TRADE CONTRACTOR
TRIPLE M CONSTRUCTION, LLC:

By _____
Its:

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
20__, by _____, as _____ of _____.

My commission expires: _____.

(SEAL)

Notary Public