

AGREEMENT

This agreement is dated as of the _____ day of _____, 2012 by and between:

the Town of Minturn, Colorado (hereinafter called Owner) and

_____ (hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

Contractor shall complete all work as specified or indicated in the Contract Documents. The work is generally described as follows: Removal and replacement of asphalt pavement and concrete curb, gutter, and sidewalk.

ARTICLE 2. OWNERS REPRESENTATIVE

The project is under the authority of the Town of Minturn, the Town Manager of which, or his designee, shall be Owner's liason with Contractor with respect to the performance of the Work.

ARTICLE 3. CONTRACT TIME

3.1 The work will be substantially completed within 40 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 50 calendar days after the date when the Contract Time commences to run.

3.2 **Liquidated Damages:** Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the work is not substantially complete on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner five hundred dollars (\$500.00) for each calendar day that expires after the time specified in paragraph 3.1 for substantial completion until the work is substantially complete.

3.3 After Substantial Completion if Contractor shall neglect, refuse or fail to complete the remaining work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner five hundred dollars (\$500.00) for each calendar day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

ARTICLE 4. CONTRACT PRICE

4.1 Owner shall pay Contractor for performance of the work in accordance with the Contract Documents in current funds as follows:

_____ (\$_____).

ARTICLE 5. PAYMENT PROCEDURES

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

5.1 **Progress Payments.** Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, on or about the 10th day of each month following the month that the Engineer received and processed the application during construction as provided below. All progress payments will be on the basis of the progress of the work measured by the schedule of values established in paragraph 2.07 of the General Conditions (and in the case of Unit Price work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

5.1.1 Prior to Substantial Completion progress payments will be in the amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall determine, or Owner may withhold, in accordance with paragraph 14.02 of the General Conditions.

Ninety percent (90%) of work completed. If work has been 50% completed as determined by Engineer, and if the character and progress of the work have been satisfactory to Owner and Engineer, Owner on recommendation of Engineer, may determine that as long as the character and progress of the work remain satisfactory to them, there will be no additional retainage on account of work completed in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the work completed.

Ninety percent (90%) of materials and equipment not incorporated in the work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in paragraph 14.02 of the General Conditions).

5.1.2 Upon Substantial Completion in an amount sufficient to increase total payments to Contractor to ninety percent (90%) of the Contract Price, less such amounts as Engineer shall determine or Owner may withhold in accordance with paragraph 14.02 of the General Conditions.

5.2 **Final Payment.** Upon final completion and acceptance of the work in accordance with paragraph 14.07 of the General Conditions and advance publication of notice of final payment, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph 14.07.

ARTICLE 6. INTEREST

All moneys not paid when due hereunder as provided in Article 14 of the General Conditions shall bear interest at a rate not exceeding 5.0 percent per annum.

ARTICLE 7. CONTRACTOR'S REPRESENTATIONS

In order to induce Owner to enter into this Agreement Contractor makes the following representations:

7.1 Contractor has familiarized himself with the nature and extent of the Contract Documents, work, site, locality, and with all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the work.

- 7.2 Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies (in addition to or to supplement those referred to in paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.02 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.
- 7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by Contractor in order to perform and furnish the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.04 of the General Conditions.
- 7.4 Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- 7.5 Contractor has given Engineer written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.

ARTICLE 8. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between Owner and Contractor concerning the work consist of the following:

- 8.1 This Agreement (pages 1 to 6, inclusive).
- 8.2 Performance and Labor and Material Payment Bond.
- 8.3 Notice of Award.
- 8.4 General Conditions (pages 1 to 62, inclusive).
- 8.5 Supplementary Conditions (pages 1 to 9, inclusive).
- 8.6 Drawings (if any).
- 8.7 Contractor's Bid (pages 1 to 11, inclusive).
- 8.8 The following which may be delivered or issued after the Effective the date of the Agreement and are attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

ARTICLE 9. MISCELLANEOUS

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests 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 that assignor from any duty or responsibility under the Contract Documents.
- 9.3 Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 **Costs and Attorneys' Fees.** In addition to the indemnification provisions of this Agreement and the contract documents, and provided that the City/Town is not in material default of this Agreement or the direct cause of litigation, the Contractor shall be responsible for and pay the City/Town for all of the costs, expert, and attorneys' fees related to litigation or other forms of dispute resolution arising out of any matter related to this Agreement, the contract documents, or the work.
- 9.5 **Equal Opportunity Employer.**
1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.
 2. The Contractor shall be in compliance with the appropriate provisions of the American with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal regulation. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of any purchase order or contract and with any new purchase order or contract issued by the City/Town.
- 9.6 **Independent Contractor.**
1. Contractor and any persons employed by Contractor for the performance of work hereunder shall be independent contractors and not employees or agents of the City/Town. Nothing herein shall be construed as establishing a quality standard for any individual, or as establishing any

right on the part of the City/Town to oversee the actual work of the Contractor or to instruct any individual as to how the work will be performed.

2. Contractor shall have the right to employ such assistance as may be required for the performance of work under this Agreement. Said Contractor shall be responsible for the compensation, insurance, and all clerical detail pertaining to such assistants, and shall be solely responsible for providing any training, tools, benefits, materials, and equipment.
3. THE PARTIES HERETO UNDERSTAND THAT THE CONTRACTOR AND THE CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS ARE NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS UNDER ANY WORKERS' COMPENSATION INSURANCE POLICY OF THE CITY/TOWN, AND THAT CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX AND OTHER APPLICABLE TAXES AND OTHER AMOUNTS DUE ON ANY MONEYS PURSUANT TO THIS AGREEMENT.

9.7 No Personal Liability. In carrying out any of the provisions of this Agreement or in exercising any power or authority thereby, there shall be no personal liability of the City/Town, its governing body, staff, consultants, officials, attorneys, representatives, agents, or employees.

ARTICLE 10. PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS

1. The Contractor shall not:
 - (A) Knowingly employ or contract with an illegal alien who will perform work under the public contract for services; or
 - (B) Enter into a contract with a Subcontractor that fails to certify to the Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien who is newly hired to perform work under the public contract for services.
2. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the employment verification program established pursuant to C.R.S. 8-17.5-102(5) ("the Department Program") or the electronic employment verification program created in Public Law 104-208, as amended, and expanded in Public Law 108-156, as amended and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program ("the E-verify Program")
3. The Contractor shall use either the E-verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.
4. The Contractor shall, within twenty days after hiring an employee who is newly hired for employment to perform work under the public contract, affirm that the contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. 1324a, and not altered or falsified the identification documents for such employees. The contractor shall provide a written, notarized copy of the affirmation to the Owner.
5. If the Contractor obtains actual knowledge that a Subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall:

(A) Notify the Subcontractor and the Owner within three days that the Contractor has actual knowledge that the Subcontractor is employing or contracting with an illegal alien; and

(B) Terminate the subcontract with the Subcontractor if within three days of receiving the notice required pursuant to paragraph 4(A) the Subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the Subcontractor if during such three days the Subcontractor provides information to establish that the Subcontractor has not knowingly employed or contracted with an illegal alien.

6. The Contract 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 C.R.S. 8-17.5-102(5)(a).
7. If a Contractor violates a provision of the public contract for services required pursuant to paragraphs 1-5, the Owner may terminate the contract for breach of the contract. If the contract is so terminated, the Contractor shall be liable for actual and consequential damages to the Owner.

ARTICLE 11. OTHER PROVISIONS

In witness whereof, the parties hereto have signed this Agreement in triplicate. One counter part each has been delivered to Owner, Contractor and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or by Engineer on their behalf.

This Agreement will be effective on _____, 2012.

Owner: Town of Minturn

Contractor: _____

By: _____

By: _____

(CORPORATE SEAL)

(CORPORATE SEAL)

Attest: _____

Attest: _____

Address for giving notices
Jim White, Town Manager
P.O. Box 309
Minturn, CO 81645

Address for giving notices

License No. _____