

TOWN OF JOHNSTOWN CONSTRUCTION AGREEMENT

This Construction Agreement (“Agreement”) is made and entered this 20th day of June, 2022, by and between the Town of Johnstown, Colorado, a Colorado home-rule municipal corporation (the “Town”), and Connell Resources Inc., a Colorado corporation (“Contractor”) (collectively, the “Parties”).

RECITALS

WHEREAS, the Town seeks to mill and overlay Parish Ave between Charlotte Street and Weld County Road 46 ½.; and

WHEREAS, the Contractor has the requisite skills and experience to perform the work; and

WHEREAS, the Town desires to engage the services of Contractor to perform the work and Contractor desires to perform the work described herein for the Town; and

WHEREAS, to effectuate the foregoing, the Parties desire to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, incorporating the foregoing Recitals herein, which are hereby acknowledged as being true and correct, and in consideration of the mutual promises, agreements, undertakings and covenants, as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby mutually agree as follows:

1. Scope of Work and Standard of Performance.
 - A. Contractor agrees to perform the work set forth on the proposal dated June 13, 2022, which is attached hereto and incorporated herein by reference as Exhibit A Connell Quotation dated June 13, 2022 and per Exhibit B – Phasing Plan (“Work”). The scope of the Work shall not be changed absent written agreement of the Parties. Contractor shall furnish all labor, services, materials, tools, and equipment for the construction and completion of the Work. To the extent of a conflict between the terms of this Agreement and of Exhibit A, this Agreement shall control.
 - B. Contractor shall undertake the Work in a thorough and workmanlike manner in every respect and in compliance with all applicable building codes and requirements to which the Work is subject. Contractor shall conform to the standards of quality normally observed by a person practicing in such Contractor’s profession. Contractor shall at all times comply with applicable workplace and occupational safety requirements under state and federal law.
 - C. Contractor has familiarized itself with the nature and the extent of the Work, the physical characteristics of the Property and the 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.

2. Progress and Completion of Work.

- A. Contractor shall commence the Work as soon as practicable after a pre-construction meeting. The Work shall be substantially completed, as determined by the Town, in its discretion, no later than September 1, 2022, subject to agreed extensions of time as authorized by the Town in writing, and shall be finally complete no later than October 1, 2022.
- B. Timely completion of the Work is essential. Time is of the essence in all respects regarding the undertakings of Contractor under this Agreement. Therefore, Contractor shall carry out the Work with all due diligence.
- C. Among other factors that the Town may consider, the Work shall be considered finally complete when all work has been finished, the Town has performed an inspection and accepted the work in writing, and all claims for payment of labor, materials, or services of any kind used in connection with the Work thereof have been paid or settled by Contractor or its surety.
- D. Until final acceptance of the Work by the Town in writing, Contractor shall have the charge and care thereof, and shall take every necessary precaution against injury or damage to any part thereof. Contractor, at its own expense, shall rebuild, repair, restore, and correct all injuries or damages to any portion of the Work occasioned by any causes before its completion and acceptance. In case of suspension of work from any cause whatsoever, Contractor shall be responsible for all building materials and shall properly store same, if necessary. Contractor shall correct or replace, at its own expense and as required by Town, any building material or portions thereof which may be destroyed, lost, damaged, or in any way made useless for the purpose and use intended by this Agreement. Contractor shall be relieved of the responsibilities provided in this section upon final acceptance of the work by Town, except no such relief shall apply to damages or injuries caused by or related to actions of Contractor or its subcontractors.
- E. Upon the Town's written acceptance of the Work, Contractor shall be released from further obligation except as set forth in the surety bond, the guarantee set forth in Section 7 or as otherwise provided in this Agreement.

3. Payment to Contractor.

- A. Contractor agrees to accept an amount not to exceed _____ as full payment for the Work. No funds payable under this Agreement shall become due and payable until the Contractor provides the Town with satisfactory assurances that Contractor has fully settled or paid for all materials and equipment used in or upon the Work and labor done in connection therewith.
- B. The Town has appropriated the money necessary to fund the Project. No change order or other form of directive shall be issued by the Town requiring additional

compensable work to be performed, which causes the aggregate amount payable under the Agreement to exceed the amount appropriated for the original contract amount, unless the Town provides written assurance to the Contractor that lawful appropriations have been made to cover the cost of the additional work or unless such work is covered under the remedy-granting provisions of the Agreement.

- C. On a monthly basis, Contractor shall submit to the Town for review and approval an application for payment fully completed and signed by Contractor describing the work completed through the last payment and accompanied by such supporting documentation as may be requested by the Town. Materials on hand but not complete in place may be included for payment. The Town shall, within thirty (30) days of receipt of Contractor's completed application for payment, pay an amount equal to ninety-five percent (95%) of the requested payment, with the remaining five percent (5%) held as retainage.
- D. Except as otherwise provided herein, upon final completion of the Work, the Town shall, within thirty (30) days, pay to Contractor the retainage accumulated hereunder in addition to any other sums properly due Contractor upon final completion.
- E. Neither the payment of any progress payment nor the payment of any retained percentage shall relieve the Contractor of any obligations to correct any defective work or material.
- F. Contractor shall provide Town with written evidence that all persons who have done work or furnished material under this Agreement and are entitled to liens therefor under any laws of the State of Colorado have been fully paid or are not entitled to such liens. Final payment shall not be made to Contractor until the Town is reasonably satisfied that all claims or liens have been satisfied by Contractor.
- G. Notwithstanding any other provision of this Agreement, the Town may withhold funds if required to do so pursuant to the Colorado Public Works Act, §§38-26-101, *et seq.*, C.R.S., as amended.

4. Ownership of Plans, Specifications, and Documents.

All of the plans (if any) and the contract documents are and shall remain the property of the Town.

5. Insurance and Bonds.

- A. Contractor shall not commence work under this Agreement until it has presented Certificates of Insurance as required below, confirming it has obtained all insurance and bonds required by this Section 5. Contractor shall not allow any subcontractor to commence work on this project until all similar insurance required of the subcontractor has been obtained and approved. For the duration of this Agreement, the Contractor must maintain the insurance coverage required in this Section. Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the contract documents by reason of its failure to procure or maintain insurance, or by

reason of its failure to procure or maintain insurance in sufficient amounts, durations, or type.

- B. Contractor shall procure and maintain, and shall cause each subcontractor of the Contractor to procure and maintain (or shall insure the activity of Contractor's subcontractors in Contractor's own policy with respect to), the minimum insurance coverages set forth below:
- (1) Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - each employee.
 - (2) Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.
 - (3) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each accident with respect to each of Contractor's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.
- C. The policies required above, except for the Workers' Compensation insurance and Employers' Liability insurance, shall be endorsed to include the Town as an additional insured. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by Contractor. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under each of the policies required above.
- D. Certificates of Insurance shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. Each certificate shall identify this project and shall provide that the coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. The Town

reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

- E. Failure on the part of the Contractor to procure or maintain policies as provided herein shall constitute a material breach of contract upon which the Town may immediately terminate the Agreement, or, at its discretion, may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Contractor to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Contractor from the Owner.
- F. Contractor shall furnish a performance bond and payment bond in an amount at least equal to the contract price, as security for the faithful performance and payment of all Contractor's obligations under the Agreement, including but not limited to the guarantee period provided in Section 7 below. All bonds shall be in the forms approved by the Town. These bonds shall remain in effect at least until two years after the date of final payment. All bonds shall be executed by such sureties as (i) are licensed to conduct business in the State of Colorado and (ii) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570, amended, by the Audit Staff, Bureau of Account, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act. If the surety on any bond furnished by the Contractor is declared bankrupt or becomes insolvent, or its right to do business in Colorado is terminated, or it ceases to meet the requirements of clauses (i) and (ii) of this section, Contractor shall, within five (5) days thereafter, substitute another bond and surety, both of which shall be acceptable to the Town.
- G. The Parties hereto understand and agree that the Town is relying on, and does 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, § 24-10-101 *et seq.*, C.R.S., as amended, or otherwise available to the Town, its officers, or its employees.

6. Indemnification.

To the fullest extent permitted by law, Contractor agrees to indemnify and hold harmless the Town, and its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the Work, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the Contractor or any subcontractor of the Contractor, or any officer, employee, or agent of the Contractor or any subcontractor, or any other person for whom Contractor is responsible. The Contractor shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands, and bear all other costs and expenses related thereto, including court costs and attorneys' fees. The Contractor's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the negligent act, omission, or other fault of the Town.

7. Contractor's Guarantee of Work.

Contractor shall guarantee all work under this Agreement as being free of defects for a period of two (2) years from the date of final acceptance by the Town. If any unsatisfactory condition or damage develops within the time of Contractor's guarantee period due to defective or inferior materials or workmanship, or due to the failure to construct the Work in accordance with the Agreement, then the Contractor shall, upon notice by Town, immediately place such guaranteed work in a condition satisfactory to Town. The Town shall have all available remedies to enforce such guarantee. However, Town shall not have any work performed independently to fulfill contractor's guarantee and require Contractor to pay Town such sums as were expended by the Town for such work, unless the Town has first given notice to the Contractor of the deficiency and given the Contractor a reasonable opportunity to cure the same.

8. Independent Contractor.

Contractor and any persons employed by Contractor for the performance of work hereunder shall be independent contractors and not employees or agents of the Town. Nothing herein shall be construed as establishing a quality standard for any individual, or as establishing any right on the part of the Town to oversee the actual work of the Contractor or to instruct any individual as to how the work will be performed. 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. 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 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. Costs and Attorneys' Fees.

In the event of litigation enforcing or interpreting the terms of the within Agreement, and only in the event the Town is the prevailing party, the Town shall be entitled an award of reasonable attorney fees and all costs of suit, including expert witness fees, court reporter fees and similar litigation expenses.

10. No Assignment.

This Agreement shall not be assigned by the Contractor without the prior written approval of the Town. Contractor shall have the right to employ such assistance as may be required for the performance of the Work, including the use of subcontractors, which employment shall not be deemed an assignment of the Contractor's rights and duties hereunder.

11. Governing Law and Venue.

The interpretation and enforcement of this Agreement shall be in accordance with Colorado law. The Parties agree to the jurisdiction and venue of the courts of Weld County, Colorado, in connection with any dispute arising out of or in any matter connected with this Agreement.

12. Dispute Resolution.

In the event of any dispute arising under this Agreement, the Parties shall submit the matter to mediation prior to commencing legal action. The cost of the mediation shall be split equally.

13. Notice.

Any notice required to be provided under this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered or sent by a nationally recognized overnight delivery service, by certified mail or by e-mail (on condition of confirmation of receipt), as appropriate, to: (i) if to Contractor, the last-known physical address or email address of Contractor or (ii) if to the Town, to, Matt LeCerf, Town Manager, 450 S. Parish Avenue, Johnstown, CO 80534, mlecerf@townofjohnstown.com.

14. Acceptance of Work.

No act of the Town, or of any representative thereof, either in superintending or directing the Work, or any extension of time for the completion of the Work, shall be regarded as an acceptance of such Work or any part thereof, or of materials used therein, either wholly or in part. Acceptance shall be evidenced only by the final certificate of Town. Before any final certificate shall be issued, Contractor shall execute an affidavit on the certificate that it accepts the same in full payment and settlement of all claims on account of work done and materials furnished under this Agreement, and that all claims for materials provided or labor performed have been paid or set aside in full.

15. Waiver.

No waiver of any breach of this Agreement by Town or anyone acting on behalf of Town shall be held as a waiver of any other subsequent breach thereof. Any remedies provided herein shall be cumulative.

16. No Presumption.

The Parties acknowledge that each has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

17. Severability.

If any portion of this Agreement shall be or becomes illegal, invalid or unenforceable in whole or in part for any reason, such provision shall be ineffective only to the extent of such illegality, invalidity or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement. If any court of competent jurisdiction should deem any covenant herein to be invalid, illegal or unenforceable because its scope is considered excessive, such covenant shall be modified so that the scope of the covenant is reduced only to the minimum extent necessary to render the modified covenant valid, legal and enforceable.

18. Amendment.

This Agreement may not be amended or modified except by a subsequent written instrument signed by both Parties.

19. 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 Town, its governing body, staff, consultants, officials, attorneys, representatives, agents, or employees.

20. Required Colorado Immigration Certification.

Pursuant to § 8-17.5-101, C.R.S., *et. seq.*, Contractor by its signature hereto certifies and represents that at this time:

(i) Contractor does not knowingly employ or contract with a worker without authorization who will perform work under this Contract; and

(ii) Contractor will participate in the E-VERIFY program authorized under 8 U.S.C., Section 1324(a), jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program (hereinafter, "E-VERIFY Program"), or the Colorado Department of Labor and Employment program established under § 8-17.5-102 (5) (c), C.R.S., in order to confirm the employment eligibility of all employees who are newly-hired for employment within the United States.

Unless the E-VERIFY Program has been discontinued as of the date of this certification, Contractor has confirmed the employment eligibility of all employees who are newly hired for employment in the United States through participation in the E-VERIFY program.

Contractor is prohibited from using the E-VERIFY Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.

If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with a worker without authorization, Contractor shall:

(i) Notify such subcontractor and the Town within three days that Contractor has actual knowledge that the subcontractor is employing or contracting with a worker without authorization; and

- (ii) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the worker without authorization; except that 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 a worker without authorization.

Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in subsection 8-17.5-102 (5), C.R.S.

If Contractor violates any provision of this Contract pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the Town may terminate this Contract. If this Contract is so terminated, Contractor shall be liable for actual and consequential damages to the Town arising out of Contractor's violation of Subsection 8-17.5-102, C.R.S.

21. Colorado Labor Clause.

Contractor agrees, pursuant to Title 8, Article 17, C.R.S., as amended, that Contractor shall employ Colorado labor (as defined below in this paragraph) to perform the Work to the extent of not less than eighty percent of each type or class of labor in the several classifications of skilled and common labor employed under this Agreement. "Colorado labor" as used in this Agreement means any person who is a resident of the state of Colorado, at the time of employment, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification.

22. Equal Opportunity Employer.

Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. 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. 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.

23. Headings.

The headings used herein are for convenience purposes only and shall not limit the meaning of the language contained herein.

The Parties hereto acknowledge that the services to be rendered by the Contractor under this Agreement and the rights and privileges granted to the Town under the Agreement are of a special, unique, unusual and extraordinary character which gives them a peculiar value, the loss of which

may not be reasonably or adequately compensated by damages in any action at law, and the breach by the Contractor of any of the provisions of this Agreement may cause the Town irreparable injury and damage. The Contractor agrees that the Town, in addition to other relief at law, shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement by the Contractor.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Diana Seele, Town Clerk

By: _____
Gary Lebsack, Mayor

Connell Resources, Inc.

By: _____
Name: John M Warren
Title: President

STATE OF COLORADO)
) ss
COUNTY OF LARIMER)

SUBSCRIBED AND SWORN to before me this 20 day of June, 2022 , by
John M Warren as the President of Connell Resources, Inc.

WITNESS my hand and official seal.

My commission expires: 02-21-2026

JENNIFER LINDBLAD
Notary Public
State of Colorado
Notary ID # 20144008302
My Commission Expires 02-21-2026

Jennifer Lindblad
Notary Public

EXHIBIT A
SCOPE OF THE WORK