

**TOWN OF JOHNSTOWN, COLORADO
AGREEMENT FOR CONSTRUCTION CONTRACT**

[NAME OF PROJECT]

THIS AGREEMENT FOR CONSTRUCTION CONTRACT ("Agreement") is made by and between the Town of Johnstown, Colorado, a home-rule municipal corporation of the State of Colorado ("Town"), whose address is 450 S. Parish Avenue, Johnstown, CO 80534, and Colorado Paving Inc, ("Contractor") of the State of Colorado, whose address is 15210 Edna Drive, Brighton Colorado, 80603. The Town and the Contractor may be collectively referred to as "parties."

In consideration of these mutual covenants and conditions, the Town and Contractor agree as follows:

SCOPE OF WORK. The Contractor shall commence and complete the construction of the Charlotte Street Improvements ("Project") and, in furtherance thereof, execute the entire Work described in the Contract.

CONTRACT DOCUMENTS. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, written or oral representations and agreements. The Contract incorporates the following Contract Documents. In resolving inconsistencies among two or more of the Contract Documents, precedence shall be given in the same order as enumerated.

LIST OF CONTRACT DOCUMENTS.

The Contract Documents, except for modifications in writing issued after execution of this Agreement, are:

1. Change Orders;
2. Agreement for Construction Contract;
3. The following Addenda, if any:
Number 1: Date: 7/20/2022 Bid Questions and Answers
Number 2 : N/A
Number 3: Date: 7/26/2022 Final Bid Tab
4. Special Conditions;
5. Town of Johnstown Construction Contract General Conditions;
6. Technical Specifications;
7. The following Drawings:
Title: Charlotte Street improvements – Town of Johnstown Date:6/29/2022
8. Notice to Proceed;
9. Notice of Award;
10. Advertisement to Bid;
11. Bid Bond;
12. Bid Proposal;
13. Information and Instructions to Bidders; Project Manual - Charlotte Street Project
14. Performance Bond and Payment Bond; and
15. Insurance Certificates.

CONTRACT PRICE. The Town shall pay the Contractor on a per unit price basis for the total quantity of Work performed and the completion of the Project according to the Contract, subject to Change Orders approved and executed in writing by the Town. The Town will pay the Contractor, in accordance with the unit prices of the Bid Schedule, a total amount not to exceed \$4,546,707.21 ("Contract Price"), subject to full and satisfactory performance of the terms and conditions of the Contract. The Town has appropriated sufficient funds for the Work.

COMPLETION OF WORK. The Contractor shall begin the Work covered by the Contract Date within 15 calendar days and shall substantially complete work within 320 calendar days from and including the date of Notice to Proceed, as modified, if at all, by an executed Change Order extending the Contract Time (the "Substantial Completion Date").

INCENTIVE PAYMENT. In addition to the Contract Price, and notwithstanding the Substantial

Completion Date set forth above, if the Contractor achieves substantial completion of the Project and the Town issues the Notice of Substantial Completion on or before June 1, 2023, the Town agrees to pay the Contractor an incentive bonus in the amount of Fifty Thousand Dollars (\$50,000). Such amount shall not be prorated and is only payable if the foregoing conditions are satisfied.

LIQUIDATED DAMAGES.

The parties recognize that time is of the essence of the Contract and that the Town will suffer financial loss if the Contractor fails to substantially complete the Work by the Substantial Completion Date. The parties also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the Town if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Town and Contractor agree that, as liquidated damages for the delay, but not as a penalty, Contractor shall pay the Town the sum of five hundred Dollars (\$500.00) for each day that expires after the Substantial Completion Date.

SERVICE OF NOTICES. Notices to shall be hand delivered, sent by electronic mail on the condition that the recipient acknowledges receipt thereof or sent by registered or certified mail, postage prepaid, to the following address:

To the Town:

TOWN OF JOHNSTOWN
Attn: Town Manager
450 S. Parish Ave
Johnstown, CO 80534
Email: mlecerf@johnstownco.gov

To the Contractor:

PROJECT MANAGER. The Town hereby designates the following person as the Project Manager for the Project:

Name: Mark Stanley
450 South Parish Avenue
Johnstown, CO 80534
Phone: 970-481-9252
Email: mstanley@johnstownco.gov

CONTRACTOR'S REPRESENTATIVE. The Contractor hereby designates the following person as the Contractor's Representative for the Project:

Name: Jesus Sanchez
Address: 1521 Edna Drive
Brighton Colorado, 80603
Phone: 720-556-3123
Email: jsanchez@copaving.com

INSURANCE PROVISIONS. The Contractor shall not commence any work until the Contractor obtains, at the Contractor's own expense, all required insurance as specified in the General Conditions. Such insurance must have the approval of the Town of Johnstown as to limits, form and amount, and must include the Town as an additionally insured party.

RESPONSIBILITY FOR DAMAGE CLAIMS. The Contractor shall indemnify, save harmless, and defend the Town, its officers, employees and agents, from and in all suits, actions or claims of any character brought because of: any injuries or damage received or sustained by any person, persons or property because of operations for the Town under the Contract; the Contractor's failure to comply with the provisions of the

Contract; the Contractor's neglect of materials while constructing the Work; any act or omission, neglect or misconduct of the Contractor; any claims or amounts recovered from any infringements of patent, trademark, or copyright, unless the design, device, materials or process involved are specifically required by Contract; any claims or amount arising or recovered under the "Workers' Compensation Act," by reason of the Contractor's failure to comply with the act; pollution or environmental liability; and/or any failure of the Contractor to comply with any other law, ordinance, order or decree. The Town may retain so much of the money due the Contractor under the Contract, as the Town considers necessary for such purpose. If no money is due, the Contractor's Surety may be held until such suits, actions, claims for injuries or damages have been settled. At the Town's discretion, money due the Contractor may not be withheld when the Contractor produces satisfactory evidence that the Contractor and the Town are adequately protected by public liability and property damage insurance.

The Contractor also agrees to pay the Town all expenses incurred to enforce this "Responsibility for Damage Claim" provision, including but not limited to attorney's fees. The Contractor further agrees to pay for the Town's cost of defense if the Contractor's insurer fails to provide or pay for the defense of the Town, its officers, employees and agents, as additional insureds.

Nothing in the **INSURANCE PROVISIONS of the General Conditions** shall limit the Contractor's responsibility for payment of claims, liabilities, damages, fines, penalties, and costs, including but not limited to attorney's fees, resulting from its performance or nonperformance under the Contract.

STATUS OF CONTRACTOR. The Contractor shall perform all the Work under the Contract as an independent contractor and not as an agent or employee of the Town. No employee or official of the Town will supervise the Contractor nor will the Contractor exercise supervision over any employee or official of the Town. The Contractor shall not represent that it is an employee or agent of the Town in any capacity. **The Contractor and its employees are not entitled to Unemployment Insurance benefits from the Town. Contractor is obligated to pay federal and state income tax on moneys paid pursuant to the Contract.** This is not an exclusive contract.

THIRD PARTY BENEFICIARIES. None of the terms or conditions in the Contract shall give or allow any claim, benefit, or right of action by any third person not a party to the Contract. Any person except the Town or the Contractor receiving services or benefits under the Contract shall be only an incidental beneficiary.

INTEGRATION. The Contract is an integration of the entire understanding of the parties with respect to the matters set forth in it.

DEFINITIONS AND CAPITALIZED TERMS. The Definitions in the General Conditions apply to the entire Contract unless modified within a Contract Document. Unless otherwise defined, the capitalized terms used herein shall have the meaning set forth in the General Conditions.

[Remainder of page intentionally left blank.]

