

To: Mayor and Town Council
From: Michelle Metteer
Date: July 17, 2024
Agenda Item: Resolution 38 – Series 2024; A Resolution Approving a Contract with Ewing Construction for the Completion of the ECO Trail into the Town of Minturn



REQUEST:

Staff is recommending the Council approve Resolution 38 – Series 2024 A Resolution Approving a Contract with Ewing Construction for the Completion of the ECO Trail into the Town of Minturn as presented.

INTRODUCTION:

Recently, the ECO Trail was completed between the USFS bridge at the north end of town southward to just before the Minturn Town boundary. The ending location was due to not having the necessary easement approvals to cross Union Pacific property as those approvals were conditional upon the approval of the Minturn North project. With the Minturn North approvals, Union Pacific has provided the necessary easements for the ECOT Trail to cross their parcel of land and work can commence.

ANALYSIS:

Eagle County has offered to cover the costs associated with the completion of this section of the ECO Trail. This is a generous offer which Minturn has accepted. For this to occur, Minturn will need to secure the contract with Ewing Construction, who is already onsite and mobilized for the Minturn North project – saving time and money. This contract was obtained through a sole-source procurement given the unique specifics of the contract and the work already being done in the area by Ewing.

COMMUNITY INPUT: Extensive. Both the Imagine Minturn Community Plan and former Minturn Strategic Plans have identified this multi-modal connection as a critical improvement for connectivity to the greater Eagle County area.

BUDGET / STAFF IMPACT:

Although this project is through an agreement with the Town, Eagle County is funding the project cost. See associated letter of intent included with Resolution 38.

STRATEGIC PLAN ALIGNMENT:

In accordance with Strategy #4 the Town will advance decisions/projects/initiatives that expand future opportunity and viability for Minturn.

RECOMMENDED ACTION OR PROPOSED MOTION: Motion to approve Resolution 21 – Series 2023

Attachments:

- Resolution 38 – Series 2024, referenced agreement, and letter of intent

**TOWN OF MINTURN, COLORADO
RESOLUTION NO. 38 – SERIES 2024**

**A RESOLUTION TO APPROVE A PROFESSIONAL SERVICES
AGREEMENT BETWEEN EWING TRUCKING AND CONSTRUCTION
LLC AND THE TOWN OF MINTURN FOR CONSTRUCTION OF THE
ECO TRAIL CONNECTION AT MINTURN ROAD AND AUTHORIZING
THE MAYOR OF THE TOWN OF MINTURN TO SIGN THE
AGREEMENT**

WHEREAS, The Minturn Town Council has reviewed the Professional Services Agreement with Ewing Trucking and Construction LLC and deems it acceptable; and,

WHEREAS, The Town Council desires to engage Ewing Trucking and Construction LLC as presented in the attached agreement.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF
THE TOWN OF MINTURN, COLORADO:**

SECTION 1: The Minturn Town Council hereby approves the Professional Services Agreement between Ewing Trucking and Construction LLC and the Town of Minturn, Colorado and authorizes the Mayor or designee to execute said agreement.

SECTION 2: This resolution to be in full force and effect from and after its passage and approval.

**INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED this
17TH day of JULY, 2024.**

TOWN OF MINTURN

By: _____
Earle Bidez, Mayor

ATTEST:

Jay Brunvand, Town Clerk

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this _____, 202__ by and between the TOWN OF MINTURN, Colorado, a home rule municipality ("Minturn" or the "Town"), and _____ (the "Contractor").

WHEREAS, the Town desires that Contractor perform the services of _____ as an independent contractor, in accordance with the provisions of this Agreement, and more fully described in the job description attached as **Exhibit A**; and

WHEREAS, Contractor desires to perform such duties pursuant to the terms and conditions provided for in this Agreement; and

WHEREAS, the Parties hereto desire to set forth certain understandings regarding the services in writing.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. **Services.** The Town agrees to retain Contractor to provide the services set forth herein, and as further specified in **Exhibit A**, attached hereto and incorporated herein by reference ("Scope of Services"), and Contractor agrees to so serve. Contractor warrants and represents that it has the requisite authority, capacity, experience, and expertise to perform the Services in compliance with the provisions of this Agreement and all applicable laws and agrees to perform the Services on the terms and conditions set forth herein. The Town reserves the right to omit any of the Services identified in **Exhibit A** upon written notice to Contractor. In the event of any conflict between this Agreement and **Exhibit A**, the provisions of this Agreement shall prevail. All services shall be performed in conformance with the standard of care ordinarily exercised by members of Contractor's profession practicing at the same time in the State of Colorado.

2. **Compensation.** The Town agrees to pay Contractor a sum not to exceed _____ Dollars (\$ _____) as adjusted to reflect the deletion by the Town of any of the Services set forth in **Exhibit A**. The Town shall make payment within sixty (60) days of receipt and approval of invoices submitted by Contractor, which invoices shall be submitted to the Town not more frequently than monthly and which shall identify the specific Services performed for which payment is requested.

3. **Term.** The Term of this Agreement shall be from the date first written above until completion of the Services, unless extended by written agreement of the Parties.

4. **Outside Support Services and Subcontractor.** To the extent practicable, subcontractors whose principal place of business is Eagle County shall be used to perform the

Town of Minturn
Professional Services Agreement

i. Insurance required by this Agreement shall be with companies qualified to do business in the State of Colorado with a general policyholder's financial rating of not less than A+3A as set forth in the most current edition of "Best's Insurance Reports" and may provide for deductible amounts as Contractor deems reasonable for the Services. No such policies shall be cancelable or subject to reduction in coverage limits or other modification except after thirty (30) days prior written notice to the Town. Contractor shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal Contractor changes to "occurrence," Contractor shall carry a six (6)-month tail. Contractor shall not do or permit to be done anything that shall invalidate the policies.

ii. The policies described in subparagraphs a. and b. above shall be for the mutual and joint benefit and protection of Contractor and the Town. Such policies shall provide that the Town, although named as an additional insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its officers, employees, and agents because of negligence of Contractor, its officers, employees, agents, subcontractors, or business invitees. Such policies shall be written as primary policies not contributing to and not in excess of coverage the Town may carry.

d. Workers' Compensation and Other Insurance. During the term of this Agreement, Contractor shall procure and keep in force workers' compensation insurance and all other insurance required by any applicable law. If under Colorado law Contractor is not required to carry workers' compensation insurance, Contractor shall provide the Town an executed Certificate of Exemption from Statutory Workers' Compensation Law and Acknowledgment of Risk/Hold Harmless Agreement, which shall be attached hereto as **Exhibit B** and incorporated herein by this reference.

e. Evidence of Coverage. Before commencing work under this Agreement, Contractor shall furnish to the Town certificates of insurance policies evidencing insurance coverage required by this Agreement. Contractor understands and agrees that the Town shall not be obligated under this Agreement until Contractor furnishes such certificates of insurance.

f. Subcontracts. Contractor agrees to include the insurance requirements set forth in this Agreement in all subcontracts. The Town shall hold Contractor responsible in the event any subcontractor fails to have insurance meeting the requirements set forth in this Agreement. The Town reserves the right to approve variations in the insurance requirements applicable to subcontractors upon joint written request of subcontractor and Contractor if, in the Town's opinion, such variations do not substantially affect the Town's interests.

9. Indemnification. Contractor hereby covenants and agrees to indemnify, save, and hold harmless the Town, its officers, employees, and agents from any and all liability, loss, costs,

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appropriation pursuant to the Town of Minturn Municipal Code and Article X, Section 20 of the Colorado Constitution. The Town shall have no obligation to continue this Agreement in any fiscal year in which no such appropriation is made.

13. **Responsibilities.** The Contractor shall be responsible for all damages to persons or property caused by the Contractor, its agents, employees, or subcontractors, to the extent caused by its negligent acts, errors, and omissions hereunder, and shall indemnify and hold harmless the Town from any claims or actions brought against Contractor by reason thereof.

14. **Entire Agreement.** This Agreement, along with any addendums and attachments hereto, constitutes the entire agreement between the Parties. The provisions of this Agreement may be amended at any time by the mutual consent of both Parties. The Parties shall not be bound by any other agreements, either written or oral, except as set forth in this Agreement.

15. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Colorado, and venue shall be in the County of Eagle, State of Colorado.

16. **Governmental Immunity Act.** No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*

17. **Assignability.** Contractor shall not assign this Agreement without the Town's prior written consent.

18. **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective heirs, personal representatives, successors, and assigns.

19. **Survival Clause.** The "Indemnification" provision set forth in this Agreement shall survive the completion of the Services and the satisfaction, expiration, or termination of this Agreement.

20. **Severability.** In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

21. **Headings.** Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.

22. **Notices.** Written notices required under this Agreement and all other correspondence between the Parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

TOWN OF MINTURN, COLORADO

Michelle Metteer, Town Manager

ATTEST:

Town Clerk

CONTRACTOR

By: _____

Name: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2022 by _____.

Witness my hand and official seal.

My commission expires: _____.

{S E AL}

Notary Public



EXHIBIT A

Eagle Valley Trails - Dowd Junction To Minturn Segment-Extension Across UPRR Lot 2						
BID TAB - PHASE 2						
IME Project Number: 15-0096						
Date: February 22, 2024						
NO.	CDOT CODE REF.	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	SUBTOTAL
1	201-00001	CLEARING AND GRUBBING (INCLUDES HAUL-OFF)	0.4	ACRE	24000	\$ 9,600.00
2	202-00155	REMOVAL OF WALL (BOULDER) (AVG HT. 4.0'=320 S.F.F.), SALVAGE BOULDERS FOR ONSITE USE	80	LF	25	\$ 2,000.00
3	202-00220	REMOVAL OF ASPHALT MAT (3" DEPTH)	214	SY	19	\$ 4,066.00
4	202-00810	REMOVAL OF SIGN	3	EACH	300	\$ 900.00
5	202-05026	SAWING ASPHALT MATERIAL (3")	10	LF	6	\$ 60.00
6	203-00010	UNCLASSIFIED EXCAVATION (1:1 COMPLETE IN PLACE)	122	CY	60	\$ 7,320.00
7	203-00050	UNSUITABLE MATERIAL (HAUL-OFF) *ALLOWANCES* - ASSUMES 1 TRUCK /10 CY	60	CY	48	\$ 2,880.00
8	203-00210	BORROW (COMPLETE IN PLACE) - IMPORT CDOT CLASS 1 MATERIAL (2.5" MINUS) OR APPROVED EQUAL	380	CY	46	\$ 17,480.00
9	203-00060	EMBANKMENT MATERIAL (1:1 COMPLETE IN PLACE)	502	CY	24	\$ 12,048.00
10	203-00450	ROCK REMOVAL (HYDRAULIC HAMMERING)(ASSUME 2 HR /EACH)	7	EACH	975	\$ 6,825.00
11	207-00205	TOPSOIL-PLACEMENT ONSITE MATERIAL	173	CY	15	\$ 2,595.00
12	207-00210	STOCKPILE TOPSOIL (INCLUDES SCREENING)	173	CY	12	\$ 2,076.00
13	207-00704	SUBGRADE SOIL PREPARATION (SCARIFY 6"-8", MOISTURE CONDITION, & RECOMPACT)	778	SY	3	\$ 2,334.00
14	208-00012	EROSION LOG (TYPE 1) (9 INCH)	700	LF	7	\$ 4,900.00
15	208-00200	EROSION CONTROL MANAGEMENT (*ASSUMES 1 DAY/WK X 16 WK)	1	LS	4800	\$ 4,800.00
16	210-00810	RESET GROUND SIGN	0	EACH		\$ -
17	212-00708	SEEDING (NATIVE) BROADCAST	0.3	ACRE	3500	\$ 1,050.00
18	213-00012	SPRAY-ON MULCH BLANKET (TYPE 1)	0.3	ACRE	6600	\$ 1,980.00
19	216-00112	SOIL RETENTION BLANKETS (EXCELSIOR CLASS-2 100% BIODEGRABLE OR EQUAL)*ALLOWANCES*	100	SY	5	\$ 500.00
20	304-06000	AGGREGATE BASE COURSE (CLASS-6) (COMPLETE IN PLACE)	291	TON	60	\$ 17,460.00
21	304-06000	AGGREGATE BASE COURSE (CLASS-6) (*SALVAGED MATERIAL FROM PORTION OF TRAIL REMOVED)	27	TON	60	\$ 1,620.00
22	403-34721	HOT MIX ASPHALT (GRADING SX)(75)(PG 58-28)	122	TON	168	\$ 20,496.00
23	504-03411	RETAINING WALL (RE-BUILD ~10 L.F. OF WITH EXISTING BOULDERS-1.0-4.0' HT, COMPLETE IN PLACE)	20	SF	100	\$ 2,000.00
24	603-50008	8 INCH PLASTIC PIPE (SDR-35)(COMPLETE IN PLACE)	65	LF	55	\$ 3,575.00
25	614-00041	SIGN POST (SPECIAL)(8.0'-4"x4" TREATED CEDAR WITH 12"x24" CONCRETE FOOTING)	1	EACH	350	\$ 350.00
26	614-00037	SIGN PANEL (SPECIAL) R4-7aR KEEP RIGHT 24"x30"	1	EACH	225	\$ 225.00
27	614-00037	SIGN PANEL (SPECIAL) W7-5 HILL SIGN 9"x12"	1	EACH	200	\$ 200.00
28	614-00037	SIGN PANEL (SPECIAL) W7-5 HILL SYMBOL 18"x18"	1	EACH	215	\$ 215.00
29	625-00000	CONSTRUCTION SURVEYING	1	LS	2500	\$ 2,500.00
30	627-00012	PAVEMENT MARKING PAINT (LOW VOC SOLVENT BASED, 4" DOUBLE YELLOW, 550 L.F.)	4	GAL	500	\$ 2,000.00
31	629-01006	SURVEY MONUMENT (RESET TYPE 6) *ALLOWANCE*	1	EACH	1500	\$ 1,500.00
32	630-80335	BARRICADE (3-M-A) (TEMP) - 8'-14' LENGTH @ DETOUR & DEADEND LOCATIONS PER PLAN	2	EACH	200	\$ 400.00
33	950-00004	MOBILIZATION	1	LS	4800	\$ 4,800.00
34						
35						
OVERALL TOTAL						\$ 140,755.00

EXHIBIT B

**CERTIFICATE OF EXEMPTION FROM STATUTORY WORKERS'
COMPENSATION LAW AND ACKNOWLEDGEMENT OF RISK/HOLD HARMLESS
AGREEMENT.**

("Contractor") certifies to the Town of Minturn (the "Town") that it is exempt from the provisions of the Colorado Workers' Compensation Act.

If Contractor has any employees who will perform the Services or subsequently employs any person to perform the Services as set forth in this Agreement (other than subcontractors, who are not considered employees for the purposes of workers' compensation), it agrees to provide the Town with a Certificate of Insurance as required by the Agreement indicating proof of statutory workers' compensation coverage on such persons prior to their start of work for the Town.

Contractor acknowledges that it will be engaging in activities which exposes it to the risk of bodily injury, that it is physically capable of performing the activities, and that all necessary precautions to prevent injury to Contractor and others will be taken. Contractor shall not hold the Town liable for any injuries sustained, by it or others, which may arise out of or in the course of the work performed for or on behalf of the Town, and Contractor agrees to defend, indemnify, and hold harmless the Town from all such claims.

CONTRACTOR

By: _____

Name: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2022 by _____.

Witness my hand and official seal.
My commission expires: _____

{S E A L}

Notary Public