

TOWN OF PARACHUTE, COLORADO
RESOLUTION NO. 2023-20

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PARACHUTE, COLORADO, APPROVING THE BID AWARD FOR RFP 23-007 AND CONTRACT FOR THE MEADOW DRIVE STREET PROJECT

WHEREAS, the Town of Parachute wishes to contract for construction services for the removal and repairs of various sections of street on Meadow Drive (the “Services”); and

WHEREAS, Frontier Paving Inc. wishes to provide such Services pursuant to the terms of the Agreement for Professional Construction Services enclosed as **Exhibit A**, and the Town wishes to approve such Agreement and for Frontier Paving Inc. (the “Contractor”) to provide the Services.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PARACHUTE, COLORADO THAT:

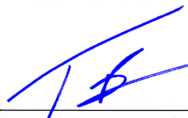
- Section 1. The foregoing recitals are incorporated herein as if set forth in full.
- Section 2. The Town Council hereby approves the Agreement for Professional Construction Services with the Contractor, enclosed as Exhibit A and incorporated herein, and authorizes the Town Manager to sign.
- Section 3. The Town Council hereby authorizes the Town Manager to make necessary additional minor modifications and negotiations that do not result in a significant increase in the contractual amount prior to executing the agreement.

INTRODUCED, PASSED, ADOPTED, AND APPROVED by a vote of 5 to 0 of the Town Council of the Town of Parachute, Colorado at a regular meeting held at Town Hall in the Town of Parachute, Colorado, on the 18th day of May, 2023 and approved by the Mayor on the 18th day of May, 2023.



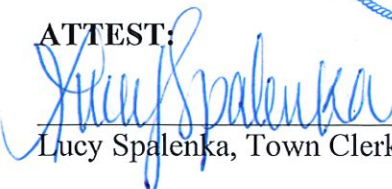
**TOWN COUNCIL OF THE
TOWN OF PARACHUTE, COLORADO**

By



Tom Rugaard, Mayor

ATTEST:



Lucy Spalenka, Town Clerk

**AGREEMENT BETWEEN THE TOWN OF PARACHUTE
AND FRONTIER PAVING INC.
TO PROVIDE PROFESSIONAL CONSTRUCTION SERVICES FOR STREET
REPAIRS AND PAVEMENT ON MEADOW DRIVE**

THIS AGREEMENT (“Agreement”) is made and entered into this 18th day of May 2023 by and between the **TOWN OF PARACHUTE, COLORADO**, a home rule municipality (the “Town”), and **FRONTIER PAVING INC.** (“Contractor”).

WHEREAS, the Town desires that Contractor perform, and the Contractor desires to complete, the following services set forth in this Agreement; and

WHEREAS, Contractor desires to perform such services 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, and Contractor agrees to provide the following: Sidewalk, curb, and gutter removal, asphalt cutting, sub grade preparation, replacement, and repairs throughout various locations in the Town of Parachute.

2. Contractor warrants and represents that it has the requisite authority, capacity, experience, and expertise to perform the Construction Services in compliance with the provisions of this Agreement and all applicable laws and agrees to perform the Construction Services on the terms and conditions set forth herein. The Town reserves the right to omit any of the Construction Services identified herein upon written notice to Contractor.

3. Compensation. The Town agrees to pay Contractor a sum not to exceed \$122,046.00, as adjusted to reflect the deletion by the Town of any of the Construction Services. The Contractor’s bid to complete the Construction Services is attached hereto as **Exhibit A**, and incorporated herein by this reference. The Town shall make payment within 30 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 Construction Services performed for which payment is requested. All amounts not paid when due shall bear interest at the rate of 1% per annum.

As applicable, the Town shall make payments to Contractor according to monthly invoices from Contractor, excepting therefrom 5% of invoiced amounts, which shall be retained by the Town as retainage to be released after final acceptance by the Town. Per C.R.S. § 24-91-103, the Contractor may elect to substitute securities in lieu of retainage. Securities must be in a

form acceptable to the Town.

4. Term; Time of the Essence. The Term of this Agreement shall be from the date first written above until completion of the Construction Services. Contractor agrees and acknowledges that time is of the essence, and shall essentially complete the Construction Services by October 31, 2023. The Construction Services shall be fully completed and ready for final payment no later than November 30, 2023.

~~5. Liquidated Damages. The Contractor acknowledges that the Town will suffer loss if the Construction Services are not completed within the timeline set forth in Section 3 of this Agreement. Accordingly, the Parties agree that the Contractor shall be liable to the Town for liquidated damages of \$1,000.00 for each day the Construction Services are not substantially complete following the substantial completion deadline until the Construction Services are completed. In no event shall aggregate liability of Contractor to pay liquidated damages exceed 50% of the contract price.~~

6. Outside Support Services and Sub-Contractor. Any sub-Contractors shall be pre-approved by the Town. A rate sheet for such sub-Contractors shall be provided to the Town.

7. Ownership of Instruments of Service. The Town acknowledges the Contractor's work product, including electronic files, as instruments of professional service. Nevertheless, the final work product prepared under this Agreement shall become the property of the Town upon completion of the services and payment in full of all monies due to the Contractor.

a. Contractor agrees to provide Town with final As Built drawings of the final installation and construction of the materials in an electronic format, as deemed acceptable by the Town. Contractor further agrees that payment may be withheld by the Town, and the project deemed incomplete, until such final as built files are delivered and received by the Town.

8. Monitoring and Evaluation. The Town reserves the right to monitor and evaluate the progress and performance of Contractor to ensure that the terms of this Agreement are being satisfactorily met in accordance with the Town's and other applicable monitoring and evaluating criteria and standards. Contractor shall cooperate with the Town relating to such monitoring and evaluation.

9. Independent Contractor. The parties agree that the Contractor shall be an independent contractor and shall not be an employee, agent, or servant of the Town. **Contractor is not entitled to workers' compensation benefits from the Town and is obligated to pay federal and state income tax on any money earned pursuant to this Agreement.**

10. Insurance Requirements. The following insurances policies shall be required in accordance with the discretion of the Town Manager in light of the services provided under this Agreement.

a. Comprehensive General Liability Insurance. Contractor shall procure and keep in force during the duration of this Agreement a policy of comprehensive general liability insurance insuring Contractor and naming the Town as an additional

insured against any liability for personal injury, bodily injury, or death arising out of the performance of the Construction Services with at least One Million Dollars (\$1,000,000) each occurrence. The limits of said insurance shall not, however, limit the liability of Contractor hereunder.

- b. Comprehensive Automobile Liability Insurance. Contractor shall procure and keep in force during the duration of this Agreement a policy of comprehensive automobile liability insurance insuring Contractor and naming the Town as an additional insured against any liability for personal injury, bodily injury, or death arising out of the use of motor vehicles and covering operations on or off the site of all motor vehicles controlled by Contractor which are used in connection with the Project, whether the motor vehicles are owned, non-owned, or hired, with a combined single limit of at least One Million Dollars (\$1,000,000). The limits of said insurance shall not, however, limit the liability of Contractor hereunder.

c. Terms of Insurance.

(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 Construction Services. No such policies shall be cancelable or subject to reduction in coverage limits or other modification except after 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-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 by reason 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 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.

11. 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, charges, obligations, expenses, attorney's fees, litigation, judgments, damages, claims, and demands of any kind whatsoever arising from or out of any negligent act or omission or other tortious conduct of Contractor, its officers, employees, or agents in the performance or nonperformance of its obligations under this Agreement.

12. Termination.

a. Generally.

- (i) The Town may terminate this Agreement without cause if it determines that such termination is in the Town's best interest. The Town shall affect such termination by giving written notice of termination to Contractor, specifying the effective date of termination, at least 30 calendar days prior to the effective date of termination. In the event of such termination by the Town, the Town shall be liable to pay Contractor for Construction Services performed as of the effective date of termination, but shall not be liable to Contractor for anticipated profits. Contractor shall not perform any additional Construction Services following receipt of the notice of termination unless otherwise instructed in writing by the Town.
 - (ii) Contractor may terminate this Agreement without cause if it determines that such termination is in Contractor's best interest. Contractor shall affect such termination by giving written notice of termination to the Town, specifying the effective date of termination, at least 60 calendar days prior to the effective date of termination.
- b. For Cause. If, through any cause, Contractor fails to fulfill its obligations under this Agreement in a timely and proper manner, violates any provision of this Agreement, or violates any applicable law, and does not commence correction of such nonperformance or violation within seven calendar days of receipt of written

notice and diligently complete the correction thereafter, the Town shall have the right to terminate this Agreement for cause immediately upon written notice of termination to Contractor. In the event of such termination by the Town, the Town shall be liable to pay Contractor for Construction Services performed as of the effective date of termination, but shall not be liable to Contractor for anticipated profits. Contractor shall not perform any additional Construction Services following receipt of the notice of termination. Notwithstanding the above, Contractor shall not be relieved of liability to the Town for any damages sustained by the Town by virtue of any breach of this Agreement, and the Town may withhold payment to Contractor for the purposes of setoff until such time as the exact amount of damages due to the Town from Contractor is determined.

13. Work by Illegal Aliens Prohibited. This paragraph shall apply to all Contractors whose performance of work under this Agreement does not involve the delivery of a specific end product other than reports that are merely incidental to the performance of said work, or information technology services or information technology products and services. Pursuant to Section 8-17.5-101, C.R.S., *et. seq.*, Contractor warrants, represents, acknowledges, and agrees that:

- a. Contractor does not knowingly employ or contract with an illegal alien.
- b. Contractor shall not knowingly employ or contract with an illegal alien to perform works or enter into a contract with a subcontractor that fails to verify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- c. Contractor has participated in or attempted to participate in the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the Department of Homeland Security (hereinafter, "E-Verify") in order to verify that Contractor does not employ illegal aliens. If Contractor is not accepted into E-Verify prior to entering into this Agreement, Contractor shall forthwith apply to participate in E-Verify and shall submit to the Town written verification of such application within five (5) days of the date of this Agreement. Contractor shall continue to apply to participate in E-Verify, and shall certify such application to the Town in writing, every three (3) months until Contractor is accepted or this Agreement is completed, whichever occurs first. This Paragraph 9 shall be null and void if E-Verify is discontinued.
- d. Contractor shall not use E-Verify procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
- e. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall be required to:
 - (i) notify the subcontractor and the Town within three days that Contractor has

actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

- (ii) terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; 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 an illegal alien.

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

g. If Contractor violates this Paragraph, the Town may terminate this Agreement for breach of contract. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the Town arising out of said violation.

14. Compliance with C.R.S. § 24-76.5-103.

a. If Contractor is a natural person (*i.e.*, not a corporation, partnership, or other legally-created entity) 18 years of age or older, he/she must do the following:

- (i) complete the affidavit attached to this Agreement as **Exhibit C**.
- (ii) attach a photocopy of the front and back of one of the valid forms of identification noted on **Exhibit C**.

b. If Contractor executes the affidavit stating that he/she is an alien lawfully present in the United States, the Town shall verify his/her lawful presence through the federal systematic alien verification or entitlement program, known as the “SAVE Program,” operated by the U.S. Department of Homeland Security or a successor program designated by said department. In the event the Town determines through such verification process that Contractor is not an alien lawfully present in the United States, the Town shall terminate this Agreement and shall have no further obligation to Contractor hereunder.

15. Agreement Subject to Appropriation. To the extent this Agreement constitutes a multiple fiscal year debt or financial obligation of the Town, it shall be subject to annual appropriation pursuant to the Town of Parachute 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.

16. Responsibilities. The Contractor shall be responsible for all damages to persons or property caused by the Contractor, its agents, employees or sub-Contractors, 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.

17. 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.

18. 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 Garfield, State of Colorado.

19. 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.*

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

21. 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.

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

23. 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.

24. 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.

25. 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 days after being sent by certified mail, return receipt requested:

If to the Town: Town Manager
Town of Parachute
222 Grand Valley Way
Parachute, CO 81635

If to Contractor: Charles Ellsworth
Frontier Paving Inc.
PO Box 1167
Silt, CO
970-625-2224

26. Authority. Each person signing this Agreement, **and any addendums or attachments hereto**, represents and warrants that said person is fully authorized to enter into and execute this Agreement and to bind the party it represents to the terms and conditions hereof.

27. Attorneys' Fees. Should this Agreement become the subject of litigation between the Town and Contractor, the prevailing party shall be entitled to recovery of all actual costs in connection therewith, including but not limited to attorneys' fees and expert witness fees. All rights concerning remedies and/or attorneys' fees shall survive any termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

TOWN OF PARACHUTE, COLORADO

By: _____

Title: _____

ATTEST:

Town Clerk

CONTRACTOR:

By: _____

Title: _____

**EXHIBIT A
CONTRACTOR'S BID & SCOPE OF WORK**

DRAFT

EXHIBIT B

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

(“Contractor”) certifies to the Town of Parachute (“Town”) that it is exempt from the provisions of the Colorado Workers’ Compensation Act.

If Contractor has any employees who will perform the Construction Services or subsequently employs any person to perform the Construction 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: _____

Title: _____

EXHIBIT C

AFFIDAVIT PURSUANT TO C.R.S. 24-76.5-103

I, _____, swear or affirm under penalty of perjury under the laws of the State of Colorado that (check one):

- ___ I am a United States citizen, or
- ___ I am a Permanent Resident of the United States, or
- ___ I am lawfully present in the United States pursuant to Federal law.

I understand that this sworn statement is required by law because I have applied for a public benefit. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statute 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

Signature

Date

INTERNAL USE ONLY

Valid forms of identification

- current Colorado driver's license, minor driver's license, probationary driver's license, commercial driver's license, restricted driver's license, instruction permit
- current Colorado identification card
- U.S. military card or dependent identification card
- U.S. coast guard merchant mariner card
- Native American tribal document

The following forms of identification may be accepted through February 28, 2007*

- original birth certificate from any state of the United States
- certificate verifying naturalized status by U.S. with photo and raised seal
- certificate verifying U.S. citizenship by U.S. government, e.g., U.S. passport
- order of adoption by a U.S. court with seal of certification
- valid driver's license from any state of the U.S. or the Dist. of Columbia excluding AK, HI, IL, MD, MI, NE, NM, NC, OR, TN, TX, UT, VT and WI
- valid immigration documents demonstrating lawful presence, e.g., current foreign passport with current I-551 stamp or visa, current foreign passport with I-94, I-94 with asylum status, unexpired Resident Alien card, Permanent Resident card or Employment Authorization card

*A waiver may be available where no identification exists or can be obtained due to a medical condition, homelessness, or insufficient documentation to receive a Colorado I.D. or driver's license. Contact your department director.

DRAFT

EXHIBIT D - COMPLETED W9 FORM

A completed W9 form must be completed and returned upon execution of this contract or prior thereto. A blank W9 can be found at [Form W-9 \(Rev. October 2018\) \(irs.gov\)](https://www.irs.gov/pub/irs-soi/1850101/w9.pdf)

DRAFT