

**AN AGREEMENT BY AND BETWEEN THE CITY OF STEAMBOAT SPRINGS, A MUNICIPAL CORPORATION, AND _____ FOR _____
IN STEAMBOAT SPRINGS, COLORADO.**

SECTION I - PARTIES

THIS AGREEMENT, made this ____ day of _____, 2009 by and between the City of Steamboat Springs, hereinafter called "City" and _____, doing business as (a corporation) hereinafter called "Contractor".

SECTION 2 - RECITALS AND PURPOSE

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

2.1 The Contractor will commence and complete the _____ hereinafter called "Project".

2.2 The Contractor represents that it has the special expertise and background necessary to complete the project for the amount of Contractor's Proposal and within the time period specified.

SECTION 3 - SCOPE OF SERVICES

The Contractor agrees to complete the Project in accordance with all the Contract Documents referenced in Section 5 below.

3.1 The Contractor will furnish all of the material, supplies, tools, equipment, labor and other necessary for the construction and completion of the Project described herein.

3.2 The Contractor will commence the work required by the Contract Documents upon the direction of _____ for the City of Steamboat Springs.

SECTION 4- COMPENSATION

4.1 The Contractor agrees to perform all of the work to complete the Project described in the Contract Documents and comply with the terms therein for the sum of _____.

4.2 The amount appropriated for the Contract is _____. The issuance of any change order or other form of order or any directive by the City requiring additional compensable work to be performed, which work caused the aggregate amount payable under the contract to exceed the amount appropriated is hereby prohibited, unless the Contractor is given written assurance by the City that lawful appropriations to cover the costs of additional work have been made or such appropriations have in fact been made, unless such work is covered under a remedy-granting provision herein.

4.3 Payments: City shall authorize partial payments of the amounts due hereunder at the end of each calendar month, or as soon thereafter as practicable, to the Contractor, if the Contractor is satisfactorily performing the contract. At least ninety percent of the calculated value of any work completed shall be paid until fifty percent of the work required by the contract

has been performed. Thereafter, City shall pay any of the remaining installments without retaining additional funds if, in the opinion of the City, satisfactory progress is being made to the work. The withheld percentage of the contract price of any such work shall be retained until the contract is completed satisfactorily and finally accepted by the City. If the City finds that satisfactory progress is being made in all phases of the contract, it may, upon written request by the Contractor, authorize final payment from the withheld percentage to the Contractor or subcontractors who have completed their work in a manner finally acceptable to the public entity. Before such payment is made, the public entity shall determine that satisfactory and substantial reasons exist for the payment and shall require written approval from any surety furnishing bonds for the contract work. Retainage will not be deducted on any prepayment request for the building required by the manufacturer prior to delivery.

SECTION 5 - CONTRACT DOCUMENTS

The term "Contract Documents" means and includes the following:

- A. Advertisement for Bid or Invitation for Bidders
- B. Information for Bidders
- C. Bid
- D. Bid Bond
- E. Agreement
- F. General Conditions
- G. Supplemental General Conditions
- H. Payment Bond
- I. Performance Bond
- J. Notice of Award
- K. Notice to Proceed
- L. Change Order
- M. Drawings prepared or issued by _____, numbered _____ through _____, and issued _____.
- N. Specifications prepared or issued by _____ and issued _____.
- O. Addenda:
 - No. _____, dated _____, _____
 - No. _____, dated _____, _____

SECTION 6 - TIME FOR COMPLETION AND LIQUIDATED DAMAGES

The date of beginning and the time for completion of the project are essential conditions of the Contract Documents and the work embraced shall be commenced _____, or as directed by the City and the date for substantial completion is _____.

6.1 The Contractor will proceed with the work at such rate of progress to insure full completion within the contract time. It is expressly understood and agreed, by and between the Contractor and the City, that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.

6.2 If the Contractor shall fail to complete the work within the contract time, or extension of time granted by the owner, then the Contractor will pay to the owner the amount for liquidated damages in the amount of _____ for each calendar day that the contractor shall be in default after the date stipulated in the Contract Documents.

6.3 The Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to the following, and the Contractor has promptly given written notice of such delay to the owner or architect.

6.3.1 To any preference, priority or allocation order duly issued by the City.

6.3.2 To unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the City, acts of another Contractor in the performance of the contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and the abnormal and unforeseeable weather, and

6.3.3 To any delays of subcontractors occasioned by any of the causes specified in paragraphs 6.3.1 and 6.3.2 of the section.

SECTION 7 - NON-APPROPRIATION

Each party hereto agrees that the revenues and expenditures hereunder shall constitute current expenditures and revenues payable and receivable in the fiscal years for which funds are appropriated for the payment thereof. The obligations of the City under this agreement shall be from year to year only and shall not constitute a multiple-fiscal year direct or indirect debt or other financial obligation or any obligation payable in any fiscal year beyond the fiscal year for which funds are appropriated for the payment thereof or payable from any funds other than funds appropriated for the payment of current expenditures. No provision of this agreement shall be construed to pledge credit or to create a lien on any class or source of the City's monies.

SECTION 8 - INSURANCE

8.1 The Contractor shall procure and maintain, and shall cause each subcontractor of the Contractor to procure and maintain, the minimum insurance coverages listed below. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured by the Contractor to maintain such continuous coverage.

8.1.1 Worker's Compensation insurance as required by the Labor Code of the State of Colorado and Employers Liability Insurance. Evidence of qualified self-insured status may be substituted.

8.1.2 General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and ONE MILLION DOLLARS (\$1,000,000.00) aggregated. The policy shall include the City of Steamboat Springs, its officers and its employees, as additional insured, with primary coverage as respects the City of Steamboat Springs, its officers and its employees, and shall contain a Severability of interests position.

8.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00) per person in any one occurrence and SIX HUNDRED THOUSAND DOLLARS (\$600,000.00) for two or more persons in any one occurrence, and auto property damage insurance of at least FIFTY THOUSAND DOLLARS (\$50,000.00) per occurrence, with respect to each of the Contractor's owned, hired or non-owned vehicles assigned to used in performance of the services. The policy shall include the City of Steamboat Springs, its officers and its employees, as additional insured, with primary coverage as respects the City of Steamboat Springs, its officers and its employees, and shall contain a SEVERABILITY of interests provision. If the Contractor has no owned automobiles, the requirements of this paragraph shall be met by each employee of the Contractor providing services to the City under this contract.

8.1.4 The Contractor shall secure, if applicable, "All Risk" type Builder's Risk Insurance for work to be performed. Unless specifically authorized by the City, the amount of such insurance shall not be less than the Contract Amount totaled in the Bid. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind collapse, riot, aircraft, and smoke during the Contract Time, and until the work is accepted by the City. The policy shall name as the insured the Contractor, the Engineer, and the City.

8.2 A certificate of insurance shall be completed by the Contractor's insurance agent(s) as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City's Internal Services Director prior to commencement of any services under the contract.

8.3 The parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, 24-10-101 et seq., 10 C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

SECTION 9 - INDEMNIFICATION

The Contractor agrees to indemnify and hold harmless the City, and its officers and its employees, from and against all liability, claims, demands, and expenses, including court costs and attorney fees, on account of any injury, loss, or damage, which arise out of or are in any manner connected with the work to be performed under this contract, if such injury, loss, or damage is caused by, or is claimed to be caused by, the act, omission, or other fault of the Contractor or any officer or employee of the Contractor. The obligations of this Section 9 shall not extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City.

SECTION 10 - QUALITY OF WORK

Contractor's professional services shall be in accordance with the prevailing standard of practice normally exercised in the performance of construction services of a similar nature.

SECTION 11 - INDEPENDENT CONTRACTOR

Contractor and any persons employed by Contractor for the performance of work hereunder shall be independent contractors and not agents of the City. Any provision in this Agreement

that may appear to give the City the right to direct Contractor as to details of doing work or to exercise a measure of control over the work mean that Contractor shall follow the direction of the City as to end results of the work only. **As an independent contract, Contractor is not entitled to worker's compensation benefits except as may be provided by the independent contractor nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the independent contractor or some other entity. The Contractor is obligated to pay all federal and state income tax on any monies earned or paid to this contract.**

SECTION 12 - ASSIGNMENT

Contractor shall not assign or delegate this Agreement or any portion thereof, or any monies due to or become due hereunder without the City's prior written consent.

SECTION 13 - DEFAULT

Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event that either part shall fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

SECTION 14 - INTEGRATION AND AMENDMENT

This Agreement represents the entire Agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

SECTION 15 - CONSTRUCTION OF CONTRACT DOCUMENTS

In the event there is a conflict between a provision of this Agreement and a provision of any of the Contract documents, the provisions of this Agreement shall prevail.

SECTION 16 - EQUAL OPPORTUNITY EMPLOYER

16.1 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 agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by agency of the Federal government, setting forth the provisions of the Equal Opportunity Laws.

16.2 Contractor shall be in compliance with the applicable provisions of the Americans with Disabilities Act of 1990 as enacted and from time to time amended any other applicable federal, state, or local laws and regulations. A signed, written certificate stating compliance with the American with Disabilities Act may be requested at any time during the life of this Agreement or any renewal thereof.

SECTION 17 - COMPLIANCE WITH LAWS

Contractor shall be solely responsible for compliance with all applicable federal, state, and local laws, including the ordinances, resolutions, rules, and regulations of the City; for payment of all applicable taxes; and obtaining and keeping in force all applicable permits and approvals.

SECTION 18 - SEVERABILITY

Any provision of this Contract which is determined to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof, and remaining provisions shall remain in full force and effect.

SECTION 19 - UNLAWFUL EMPLOYEES, CONTRACTORS AND SUBCONTRACTORS

Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor shall not knowingly contract with a subcontractor that (a) knowingly employs or contracts with an illegal alien to perform work under this Contract or (b) fails to certify to the Contractor that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Contract. [CRS 8-17.5-102(2)(a)(I) & (II).]

SECTION 20 - VERIFICATION REGARDING ILLEGAL ALIENS

Contractor has verified or attempted to verify through participation in the basic pilot program of the state of Colorado that Contractor does not employ any illegal aliens or Contractor verifies that Contractor has not been accepted into the basic pilot program prior to entering into this Contract. Contractor further verifies that if Contractor has not been accepted in to the basic pilot program of the state of Colorado, Contractor will apply to participate in the basic pilot program of the state of Colorado every three months until Contractor is accepted or this Contract is completed, whichever is earlier. [CRS 8-17.5-102(2)(b)(I).]

SECTION 21 - LIMITATION REGARDING BASIC PILOT PROGRAM

Contractor shall not use basic pilot program procedures to undertake pre-employment screening of job applicants while performing this Contract. CRS 8-17.5-102(2)(b)(II). See attached certification sheet.

SECTION 22 - DUTY TO TERMINATE A SUBCONTRACT; EXCEPTIONS

If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall, unless the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien:

- (a) notify the subcontractor and the City 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 notice that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien, the subcontractor does not stop employing or contracting with the illegal alien. CRS 8-17.5-102(2)(b)(III)(A) & (B).]

SECTION 23 - DUTY TO COMPLY WITH STATE INVESTIGATION

Contractor shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of an investigation pursuant to C.R.S. 8-17.5-102 (5). CRS 8-17.5-102(2)(b)(IV).]

SECTION 24 - DAMAGES FOR BREACH OF CONTRACT

In addition to any other legal or equitable remedy the City may be entitled to for a breach of this Contract, if the City terminates this Contract, in whole or in part, due to Contractor's breach of any paragraph numbered twenty-one (21) through twenty-five (25) inclusive, Contractor shall be liable for actual and consequential damages to the City.

SECTION 25 – LAWFULLY PRESENT IN THE UNITED STATES

All Contractors eighteen years of age or older shall provide proof that they are lawfully present in the United States prior to receipt of certain public benefits. [CRS 24-76.5-101] Contractor shall sign the attached affidavit affirming lawful presence in the United States and shall provide proof in the one of the forms indicated on the attached affidavit. [CRS 24-76.5-103]

For an individual who has executed an affidavit stating that he or she is an alien lawfully present in the United States, verification of lawful presence for federal public benefits or state or local public benefits shall be made through the federal systematic alien verification of entitlement program, referred to in this section as the "SAVE program", operated by the United States department of homeland security or a successor program designated by the United States department of homeland security. Until such verification of lawful presence is made, the affidavit may be presumed to be proof of lawful presence for purposes of this section. [CRS 24-76.5-103 (7)]

Dated this _____ day of _____, 2009.

CITY OF STEAMBOAT SPRINGS,
A Municipal Corporation

Jon Roberts
City Manager

ATTEST:

Julie Franklin
Interim City Clerk

CONTRACTOR

Name
Title

ATTEST:

Name
Title

STATE OF COLORADO)
)ss.
COUNTY OF ROUTT)

The foregoing instrument was subscribed to and acknowledged before me by Jon Roberts, City Manager, and attested to by Julie Franklin, City Clerk, for the City of Steamboat Springs, Colorado, on the _____ day of _____, 2009.

WITNESS my hand and official seal.

Notary Public

My commission expires:

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was subscribed to and acknowledged before me by _____ and attested to by _____
on the _____ day of _____, 2009.

WITNESS my hand and official seal.

Notary Public

My commission expires: