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CONSTRUCTION CONTRACT
101 NORTH MAIN STREET – ALLEYWAY REHABILITATION PROJECT

This Construction Contract is made this ____ day of _____, 2016 between The City of Fountain, a Colorado municipal corporation and home rule city (hereinafter “City”), and _____(hereafter “Contractor”). City and Contractor, for the consideration hereinafter referenced, agree as follows:

ARTICLE I
THE CONTRACT DOCUMENTS

1. The Contract consists of this Contract, plus any documents listed below or attached hereto as Exhibits, including but not limited to: Proposals, Drawings, Specifications, addenda issued prior to execution of this Agreement, Performance, Labor, Material Payment and Maintenance Bonds and other documents referenced in this Contract plus Modifications or written Change Orders issued after execution of this Contract. All of the above-referenced documents which are attached hereto are a part of the Construction Contract, and are incorporated by this reference into this Contract.
2. The Contract represents the entire and integrated agreement between the parties, and supersedes prior negotiations, representations, or agreements, whether oral or written.
3. The Construction Contract is to be executed in duplicate by City and Contractor. Contractor, by executing the Construction Contract represents that it has inspected and is familiar with the Property and the local conditions under which the work is to be performed.

ARTICLE II
CONTRACT WORK

Contractor and its Subcontractors shall fully perform all Work described in the Contract, except to the extent specified in the Contract to be the responsibility of others, or as stated herein. For purposes of this contract, a Subcontractor is defined as a person or entity, including their employees and agents, with whom Contractor has a contract for any portion of the Work or materials to be provided for the Work. Except where expressly provided otherwise in the Contract, all references to Subcontractors shall apply to Sub-Subcontractors and their agents and employees. All contracts between Contractor and Subcontractors shall conform to this Contract.

ARTICLE III
CONTRACT TIME

1. After execution of this Contract, City shall deliver to Contractor a written Notice to Proceed, and upon receipt of such Notice, Contractor shall promptly apply for and obtain all appropriate permits. Completion of the Project shall occur within 150 calendar days after receipt by Contractor of the Notice to Proceed.
2. Construction under this Contract shall begin on the date agreed upon between the City and the Contractor on the Notice to Proceed issued by the City.
3. Substantial Completion of the Work shall be determined at a later date. “Completion of the Project” means completion of the improvements in accordance with the plans and specifications and shall mean that the Project is ready for occupancy/use by City.
4. The times stated in the Contract may be extended by a written Change Order for such reasonable time that Contractor has been justifiably delayed in the Work by any reason beyond Contractor’s control, such as labor disputes, fire, prolonged transportation delays, injuries, or any delays caused by City, provided such delays are not a result of Contractor’s negligence or the negligence of any Subcontractor, material, man or employee of the Contractor or under Contractor’s supervision.

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5. All times stated in this Contract are of the essence.

**ARTICLE IV
CONTRACT PRICE**

City shall pay Contractor for Contractor's performance of the Contract the contract Price, which shall not exceed \$_____. City shall make payments in the form of monthly progress payments plus a Final Payment as set forth in Article V.

**ARTICLE V
PAYMENTS**

1. City shall make progress payments based upon the percentage of Work completed, as set forth in monthly Applications for Payment submitted by Contractor to City as the Work progresses. Contractor shall submit such Applications for Payment by the 25th day of the month. City shall pay undisputed amounts in the application to Contractor no later than the 5th day of the following month. No payments shall be made that are not in compliance with the requirements of Article 91 of Title 24 Colorado Revised Statutes.
2. Final Payment shall be made within 30 days following completion of the Project and City's acceptance of the Work, except as otherwise provided in this Agreement. No final payment shall be made until compliance with the requirements of section 38-26-107 Colorado Revised Statutes including advertising of notice of final settlement in a newspaper of general circulation and including withholding of any funds required to be withheld for payment of claims under this statute.

**ARTICLE VI
TERMINATION OR SUSPENSION BY CONTRACTOR**

1. The Contract may be terminated or the Work may be suspended by Contractor if the Work is stopped for a period of 30 days through no fault of Contractor, a Subcontractor, or any other persons under their direction, for any of the following reasons:
 - A. Order of any court or public authority having jurisdiction;
 - B. National emergency or act of government;
 - C. City has not made payment within 10 days of the date such payment is due;
 - D. City has caused unreasonable and repeated suspensions, delays or interruptions;
 - E. City has failed to furnish to Contractor upon request anything City is required to furnish under the Contract;
 - F. Work has been stopped for a period of 60 consecutive days through no fault of Contractor, a Subcontractor, or any person working under their direction, and because City has consistently failed to perform its obligations under this Contract pertaining to matters important to progress of the Work.
 - G. Contractor reasonably determines that unsafe conditions exist, in which case Contractor may suspend the Work until such conditions are remedied. Such suspension shall not be considered a breach of this contract by Contractor, and Contractor will be entitled to an equitable adjustment to the Contract Price and Contract Time.
2. Contractor shall give City seven (7) days written notice of any of the above reasons, and thereafter may terminate the contract and recover from City payment for Work satisfactorily completed.

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ARTICLE VII
TERMINATION OR SUSPENSION BY CITY

1. City may, upon seven (7) days written notice to Contractor, terminate or suspend the Contact without prejudice to any other remedy City may have, for the following reasons:
 - A. Contractor substantially fails to comply with laws, ordinances, rules, regulations or orders of public authorities having jurisdiction;
 - B. Contractor breaches any provision of the contract;
2. Upon request by City, Contractor shall provide a detailed accounting of costs required to finish the Work.

ARTICLE VIII
CITY'S RIGHTS AND RESPONSIBILITIES

1. City shall pay all development fees due to any city, county or state entity relating to the Project.
2. Should Contractor fail to clean up the site as required in this Agreement or General Conditions, City may obtain clean up services elsewhere and offset or charge the cost against Contractor.
3. City and its representatives will be given reasonable access to the Work site to monitor the progress and manner of construction.
4. Before Contractor shall be entitled to Final Payment: (i) City may inspect the Project, make a punch list of deficiencies, and all punch list items shall be completed; and (ii) the Work site shall be in broom clean condition, free of trash or debris, boxes, wrappings and equipment.

ARTICLE IX
CONTRACTOR'S RIGHTS AND RESPONSIBILITIES

1. Contractor shall be responsible for all Work under this contract, including the techniques, sequences, procedures, and means, and for coordination of all Work. Contractor shall supervise and direct the Work to the best of its ability, and give it all attention necessary for such proper supervision and direction. Contractor shall insure that sufficient numbers of properly skilled and licensed, if required by any local, city, county or state law, rule or ordinance, workers are performing the Work.
2. Contractor shall maintain at all times strict discipline among its employees, and Contractor agrees not to employ for the Work any person unfit or without sufficient skill to perform the job for which he or she was employed in the sole discretion of the Contractor.
3. Contractor shall provide and pay for all labor, materials, and equipment, including tools, construction equipment, and machinery, as necessary for the proper completion of the Work according to the Contract.
4. Contractor shall pay all taxes required by law in connection with the Work, including sales tax, use tax, and similar taxes. Note; Contractor can use the City's tax-exempt status when this status applies. Contractor shall secure and pay fees for all licenses and permits necessary for proper completion of the Work.
5. Contractor shall comply with all laws, ordinances, rules, regulations and orders of all public authorities with jurisdiction, which relate to the Work.
6. Contractor shall provide for and oversee all safety orders, precautions, laws, regulations, ordinances, and programs necessary for the reasonable safety of the performance of the Work. Contractor shall take

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reasonable precautions for the safety of all employees and other persons whom the Work might affect, all labor and material incorporated in the Work, and all property and improvements on or adjacent to the Work site.

7. Contractor shall keep the work premises and adjoining ways free of waste material and rubbish caused by the performance of the Work. Contractor shall remove all waste material and rubbish upon termination of the Work, together with all its tools, equipment, machinery, and surplus materials. Contractor shall conduct general clean up of operations, including surfaces, paved streets, walks, steps, and interior floors, upon completion or termination of the Work.
8. Contractor shall make arrangements for all required tests, inspections, or approvals to be conducted in a timely manner to avoid delay of the Work. Testing company shall be approved by the City.
9. Contractor shall provide all documents, reports and other information requested by the City, and shall cooperate with City to the fullest extent possible.
10. Contractor is not an architect, engineer, or designer and is not hired to perform any of these services. Suggestions made by contractor related to these services are merely options to be considered by City after consultation with the appropriate professional, and are not to be relied upon by City.
11. Any remaining inventory or material is the property of the Contractor.
12. Contractor shall furnish necessary surveys for the work, including placement of stakes at property lines if required, and shall secure and pay for construction easements as necessary for completion of the Work.
13. Contractor shall comply with all applicable provisions of the Construction Code, Chapter 12.04 of the Fountain Municipal Code, and any other applicable City requirements.

ARTICLE X CORRECTION OF WORK

1. Contractor shall promptly correct any Work which is not in compliance with applicable codes and regulations whether observed before or after substantial Completion of the Work, at any stage of progress. Contractor shall bear costs of such correction, including any additional testing, inspections, and other necessary expenses. Contractor shall remove from the Work site any portions which are not in compliance. Should Contractor fail to promptly correct any portion of the Work or perform any other obligation under applicable codes and regulations, City may cause such corrections or obligations to be performed by a third party at Contractor's expense.
2. Contractor's obligation to correct work expires one year after last completion of the work, unless the noncompliance was latent and not discovered under reasonable diligence within the one-year period, in which case Contractor's obligation to correct expires one year from discovery of the noncompliance.
3. If City prefers to accept Work which is not in compliance with the Contract, City may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate. Such adjustment shall be made whether or not Final Payment has been made. Contractor shall pay funds due under such adjustment within ten days after such adjustment.

ARTICLE XI CHANGES IN THE WORK

1. The City may order changes in the Work, such as additions, deletions, or modifications, without invalidating the Contract, provided that appropriate adjustments are made in the Contract Price and time for

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completion. Changes shall be made by written Change Order. Change Orders shall be signed by both City and the Contractor stating A) a description of the change in the Work; B) the amount of the adjustment in Contract Price; and C) the extension of time necessary for the change. Contractor will determine the cost of additions required by Change Orders, and will add 15% of such amounts to the Contract Price for profit and overhead. In contrast, a 15% deduction for profit and overhead will not be made for deletions. Contractor shall not begin making any changes until it receives a written Change Order from City with provisions agreeable to both Contractor and City.

2. The terms of this Construction Contract, including Contract Price, are based on observations Contractor was able to make under conditions existing at the time of Contractor's bid. If concealed conditions are discovered as the Work progress which will affect the Contract Price or Contract Time or otherwise interfere with the performance of the Work, Contractor will stop the Work, notify City, and both parties will execute an appropriate Change Order.

ARTICLE XII INDEMNITY

1. Contractor agrees that Contractor shall indemnify, defend, and hold harmless City, its officers, employees, and agents, from and against any and all loss, damage, injuries, claims, costs, including attorney's fees, cause or causes of action, or any liability whatsoever resulting from, or arising out of, or in connection with the Contractor's obligations or actions under this contract, or from any act or obligation of any Subcontractor, laborer, materialman or agent of the Contractor.
2. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable for or by the Contractor or any Subcontractor, manufacturer or supplies under Worker's Compensation Act, disability benefits acts or other employee benefit acts.

ARTICLE XIII INSURANCE

1. **INSURANCE INSTRUCTIONS.** Contractor shall not commence work under this contract until all insurance required under this section has been obtained and such insurance has been approved by the City, nor shall the Contractor allow any sub-contractor to commence work on a subcontract until all similar insurance required of this Subcontractor has been so obtained. The City shall be included as an additional insured on all insurance coverages.
2. **WORKER'S STATUTORY COMPENSATION INSURANCE AND EMPLOYER LIABILITY INSURANCE.** The Contractor shall take out and maintain during the life of this contract the applicable statutory Worker's Compensation Insurance with an insurance company authorized to write such insurance and in the applicable state covering all employees, and in the case of any work sublet, the Contractor shall require the Subcontractor similarly to provide statutory Worker's Compensation Insurance for the latter's employees. The Contractor shall take out and maintain during the life of this contract, Employer's Liability Insurance with a limit of \$100,000 with an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract and the Contractor shall require such Subcontractor similarly to maintain Employer's Liability Insurance on its employees.
3. **COMMERCIAL LIABILITY INSURANCE.** The Contractor shall maintain during the life of this contract such Public Liability Insurance as shall protect against claims for damages resulting from (1) bodily injury, including wrongful death, and property damage, which may arise from operations under this contract whether such operations be by self or by any Subcontractor or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided by such Public Liability Insurance shall be as follows:

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- A. Bodily Injury and Property Damage Limits are \$500,000 per occurrence Combined Single Limit
 - B. The Public Liability Insurance required by the preceding subparagraph shall include the following extensions of coverage:
 - C. Coverage shall be provided under a Commercial General Liability form of policy or similar thereto.
 - D. X.C.U. Coverage - If the contract requires any work procedures involving blasting, excavating, tunneling, or other underground work, the liability coverage shall include Standard Blasting or Explosion Coverage, Standard Collapse Coverage and Standard Underground Coverage, commonly referred to as X.C.U. property damage liability coverage with limits of \$1,000,000 each occurrence.
 - E. The property damage coverage shall include a Broad form Property Damage Endorsement.
 - F. Contractual Liability coverage shall be included.
 - G. Protective Liability coverage shall be included to protect the Contractor against claims arising out of operations performed by Subcontractor.
 - H. Products Liability and/or Completed Operations coverage shall be included.
 - I. Completed Operations coverage shall be provided for two years following substantial completion of the work.
4. **AUTOMOBILE LIABILITY INSURANCE.** The Contractor shall take out and maintain during the life of the contract such comprehensive Automobile Liability Insurance as shall protect against claims for damages resulting from (1) bodily injury, including wrongful death, and (2) property damage, which may arise from the operations of any owned, hired, or non-owned automobiles used by or for work in any capacity in connection with the carrying out of this contract. The minimum acceptable limits of liability to be provided by such comprehensive Automobile Liability Insurance shall be as follows:
- A. Bodily Injury and Property Damage Limits are \$500,000 per occurrence Combined Single Limit
5. **CITY'S PROTECTIVE LIABILITY.** This insurance shall be in the name of the City and maintained in force for the duration of the contract by the Contractor. The policy shall provide a liability limit of not less than \$1,000,000 and shall protect against any and all claims, and liabilities for injury to or death of persons, or damage to property caused in whole or in part by, or alleged to have been caused in whole or in part by, the negligent acts or omissions of Contractor, Contractors agents, employees, or Subcontractor, in connection with or resulting from the operations performed under the terms of the agreement.
6. **EXCESS LIABILITY POLICY.** This insurance shall protect the Contractor against all claims in excess of the limits provided under the Commercial Automobile Liability and the Commercial General Liability. The liability limits of the Excess Liability Policy shall not be less than \$1,000,000.
7. **PROOF OF CARRIAGE OF INSURANCE.** The Contractor shall furnish the City satisfactory proof of carriage of the insurance required. All certificates of insurance shall state that 30 days written notice will be given to the City before the policy is canceled or changed. The Contractor and all Subcontractors shall include the City and the City's officers, agents and employees as "additional insured parties" on each policy for each project, except for Worker's Compensation Coverage. Each certificate of insurance shall state the type of coverage certified and shall be identified as one of the following:

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Insurance Coverage Limits

- A. Worker’s Compensation Statutory
- B. Employer’s Liability \$100,000 each person
- C. Commercial General Liability
 - Bodily Injury \$500,000 each occurrence
 - Property Damage \$500,000 each occurrence
- D. Commercial Automobile Liability
 - Bodily Injury \$500,000 each occurrence
 - Property Damage \$500,000 each occurrence
- E. Excess Liability Policy \$1,000,000
Required X
- F. City’s Protective Liability Insurance \$1,000,000

Two copies of each certificate shall be sent to the CITY.

**ARTICLE XIV
DISPUTE RESOLUTION**

- 1. Negotiation. In the event of any dispute, claim, questions or disagreement arising out of or in relation to this Contract or any part of the Contract, or the breach thereof (the “dispute”) the parties hereto shall use their best efforts to settle such dispute. To this effect they shall consult and negotiate with each other in good faith, and recognizing their mutual interest, attempt to reach a just agreement which is satisfactory to both parties.
- 2. Mediation. If the dispute cannot be settled through negotiation within thirty (30) days, the parties agree to try in good faith to settle the dispute by mediation administered under the auspices of a recognized, established mediation service within the state of Colorado. If the parties are unable to settle the dispute through mediation within ninety (90) days, or if the parties fail to enter into mediation within ten (10) days after the expiration of the negotiation period, then the parties may initiate litigation relating to any dispute. In the event of litigation, venue shall be in the District Court of El Paso County, Colorado, or if subject to jurisdiction of the United States District, in the United States District Court for the District of Colorado.
- 3. Except as expressly provided for in the Contract, the parties waive all claims for consequential damages.

**ARTICLE XV
MISCELLANEOUS PROVISIONS**

- 1. Where this Agreement references a provision of the General Conditions or another Contract document, the reference incorporates all amendments or supplements.
- 2. Notices concerning the Contract shall be in writing and be deemed sufficiently given when personally

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delivered or sent by certified or registered mail if sent to the respective addresses of each party as set forth above.

3. Any modification of the Contract, including Change Orders, and any additional obligation assumed by either party in connection with this Contract shall be binding only if evidenced in writing signed by each party or an authorized representative thereof.
4. The rights of each party pursuant to this Contract are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express written consent of the other party. This contract is binding upon the successors and assigns to the parties.
5. Titles to the Articles in this Agreement are solely for convenience and shall not be used to explain, modify, simplify, or aid in the interpretation of this Agreement.
6. All duties, obligations, rights, and remedies provided for under the Contract are in addition to and shall not limit any duties, obligations, rights and remedies otherwise provided for by law.
7. No act or failure to act shall constitute a waiver of any right or duty, or constitute an approval or acquiescence, unless expressly provided for in writing.
8. The invalidity of any part or provision of the Contract shall not impair or affect in any manner the validity, enforceability or effect of the remaining parts and provisions of the Contract.
9. No applicable statute of limitations shall be deemed to have commenced with respect to any portion of the Work which is not in accordance with the requirements of the Contract, which would not be visible or apparent upon conducting a reasonable investigation, and which is not discovered by City until after the date which would be the date of commencement of the statute of limitations. The applicable statute of limitations instead shall be deemed to have commenced on the date of such discovery by City.
10. Nothing in this Contract shall be deemed to waive or otherwise limit any and all defenses available to the City pursuant to the Colorado Governmental Immunity Act or as otherwise provided by law.
11. The laws, rules and regulations of the State of Colorado, and City of Fountain shall be applicable in the enforcement, interpretation and execution of this Easement.
12. This Contract may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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This Construction Contract is entered as of the first date written above and is executed in triplicate.

City of Fountain _____

By: _____

Printed Name and Title: _____

The above person's signature verifies his/her authority to execute this Contract on behalf of City.

Contractor:

By: _____

Printed Name and title: _____

The above person's signature verifies her/her authority to execute this Construction Contract on behalf of the Contractor.