

AGREEMENT BETWEEN WEBER COUNTY AND ASPHALT CONSTRUCTION & EXCAVATING FOR PATIO SPRINGS DRIVE ASPHALT REPAIR

This project will repair damage to Patio Springs Drive as a result of their trenching through the asphalt. The decision was ultimately reached to do a cost share on this contract with Wolf Creek Water and Sewer as a 50/50 cost share since the road was damaged by them, but not originally built to County specifications.

This agreement is entered into between WEBER COUNTY ("County"), a political subdivision of the State of Utah, located at 2380 Washington Blvd., Ogden, Utah, 84401, and Asphalt Construction & Excavating ("Contractor"), a Utah S Corp, located at 1256 North 1725 West, Farr West, UT 84404. The agreement shall take effect as soon as both parties have signed it.

RECITALS

The County desires to obtain services for the following project:

Patio Springs Drive Asphalt Repair

The Contractor has submitted a proposal to provide the desired services to the County and has been chosen to provide the services.

NOW THEREFORE, the Contractor and the County agree as follows:

AGREEMENT

1. SERVICES OF THE CONTRACTOR

- a. The Contractor will perform the following services (the "Work"):
 - i. This project will repair damage to Patio Springs Drive as a result of their trenching through the asphalt. The decision was ultimately reached to do a cost share on this contract with Wolf Creek Water and Sewer as a 50/50 cost share since the road was damaged by them, but not originally built to County specifications.
- b. In performing the required Work, the Contractor shall follow practices consistent with acceptable professional and technical standards for work of this nature.
- c. Except as allowed by the County's Representative in writing, none of the Work specified by this agreement shall be subcontracted.
- d. The Contractor warrants that the Work will be free from material defects for a period of 1 year after the Work has been completed, as determined by the County.
- e. The Contractor shall, promptly and without additional compensation, correct deficiencies in the Work, as determined by the County based on the terms of this

agreement, unless such deficiencies are directly caused by the County, in which case the County shall pay for the corrective work. This paragraph applies during the performance of the Work and during the warranty period described in this agreement.

- f. If the Contractor performs corrective work during a warranty period, then a new warranty period of the same duration will begin after the corrective work is completed, and the Contractor will be under the same obligations as during the previous warranty period.
- g. All materials prepared or acquired by the Contractor during the performance of the Work specified by this agreement shall become the property of the County and shall be delivered to the County during or at the end of the agreement term. Such materials shall not be released by the Contractor to others at any time without the prior written approval of the County's Representative, unless required by law. It is understood and agreed that such materials are prepared exclusively for work required under this agreement, and that their use on other projects may not be appropriate. Therefore, the County agrees that its use of such materials on other projects shall be at its own risk, unless the Contractor has given its written approval for such use.

2. MANAGEMENT AND COORDINATION

- a. The Contractor shall designate a Project Manager for purposes of this agreement. The Project Manager shall be the Contractor's primary contact for all communications related to this agreement, unless someone else is designated as the primary contact for specific matters.
- b. The County Engineer, or his or her designee, shall serve as the County's Representative for this agreement. The County's Representative shall be the County's primary contact for all communications related to this agreement, unless someone else is designated as the primary contact for specific matters.
- c. The parties agree that for purposes of this agreement, the Contractor and its officers, agents, and employees are not to be regarded as the County's employees, and that the Contractor is an independent contractor in all respects.

3. TERM OF AGREEMENT

- a. Unless terminated earlier as provided herein, this agreement shall remain in effect until:
 - i. All Work has been performed and accepted as satisfactory by the County, all payments have been made, and the warranty period described above (if applicable) has expired.
- b. All provisions of this agreement that by their nature would continue after the termination or expiration of the agreement, including indemnification provisions

and other provisions related to the liability of the parties, shall continue in force until all applicable statutes of limitations have run and until all legal proceedings arising out of this agreement have reached final resolution.

4. TIME SCHEDULE

- a. The Contractor shall commence the Work upon receipt from the County of written notice to proceed.
- b. The Contractor shall comply with the following schedule and deadlines, except where written notification of variance is received from the County's Representative:
 - i. Work to take place is intended to be completed in the year 2024 in accordance with APWA specifications in regards to material placement.
- c. The time schedule is an essential condition of this agreement. If the Contractor fails to comply with the time schedule set forth in this section, or any extension of time granted by the County, then the Contractor shall be in default, unless the failure is beyond the control and without the fault and negligence of the Contractor. If the Contractor defaults, then the County shall be entitled to the recovery of direct damages, if any, resulting from the default, in addition to any other remedies granted by this agreement.
- d. The Contractor will not be liable for damages due to delay or failure to perform any obligation under this agreement if such delay or failure results directly or indirectly from circumstances beyond the control of the Contractor. Such circumstances shall include strikes, disturbances, riots, fire, water damage, flood, severe weather, governmental action, pandemic, acts of war, acts of terrorism, acts of God, or any other cause similar to the foregoing which are beyond the reasonable control of the Contractor.

5. COMPENSATION

- a. The County shall pay the Contractor the following amount for the performance of the Work:

\$82,580.00

 - i. Payment will be a lump sum payment upon completion of the project.
- b. Unless otherwise specified above, at the end of each 30-day period during the Contractor's performance hereunder, the Contractor may request a progress payment based upon Work performed within that 30-day period. Such requests must be in writing, in a form acceptable to the County, with sufficient detail to justify the request. The County shall pay to the Contractor the requested payment, if approved, or the undisputed portion thereof within 30 days after the progress payment request.

- c. Final payment, less the 5% retainage described in the following paragraph (if applicable), shall be made when the Contractor has completed all Work in a manner consistent with this agreement.
- d. If a warranty period applies, the County shall withhold, as retainage, 5% of the overall payment due under this agreement.
 - i. If, at the end of the warranty period, the Work remains in satisfactory condition, the County's Representative shall issue to the County, with a copy to the Contractor, a final acceptance notice, and the County shall release the retainage to the Contractor.
 - ii. If, during the warranty period, the County determines that the Work has material defects, then the Contractor shall be in breach of this agreement, and the County shall provide notice as described in the Default and Remedies section of this agreement. If the Contractor does not correct the defects as outlined in that section, then the Contractor shall be in default, and the County may use the retainage, in its sole discretion, to correct the defects in the Work. The County may also pursue any other remedy available to it under the law.

6. INSURANCE AND INDEMNIFICATION

- a. The Contractor shall procure and maintain the insurance policies required in this article from an insurance company authorized to write casualty insurance in the State of Utah, to protect itself and the County from all claims including, but not limited to, bodily injury, death, or property damage which may arise from performance under this agreement. The County may reject or terminate this agreement if, at the County's sole discretion, the insurance policies are not satisfactory.
- b. The Contractor shall not commence performance under this agreement until it has obtained all insurance required by this article and filed a certificate of insurance or certified copy of insurance policy with the County. The amount of such insurance coverage will not be less than the following:
 - i. Workers' compensation statutory limits as required by the Workers' Compensation Act of the State of Utah and Employers Liability limits \$1,000,000 per occurrence.
 - ii. Commercial General Liability insurance in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 aggregate.
 - iii. Professional Liability insurance in an amount of not less than \$1,000,000.
 - iv. Automobile Liability insurance in the minimum amount of \$1,000,000 per occurrence with no deductible. "Any Auto" coverage is required.

- c. Before using any subcontractor, the Contractor shall require the subcontractor to provide proof of coverage showing workers' compensation coverage for its employees or, if applicable, a valid waiver of workers' compensation for an independent contractor without employees. The Contractor shall provide a copy of the required documentation to the County.
- d. Excluding workers' compensation and professional liability coverages, the Contractor's insurance coverage shall be a primary insurance. The County's self-insurance or insurance shall be in excess of the Contractor's insurance and shall not contribute with it.
- e. Notwithstanding any other provision of this agreement, the Contractor agrees to indemnify and hold harmless the County from and against any and all liability, claims, expenses, and costs arising from workers' compensation claims made by the Contractor, its employees, its subcontractors, its subcontractors' employees, and any additional subcontractors or employees engaged in the performance of this agreement.
- f. The Contractor agrees to indemnify and hold harmless the County, its officers, employees, and agents from and against any and all liability, claims, expenses, and costs arising out of or related to this agreement, to the extent that such liability, claims, expenses, and costs are caused by or result from the negligent or intentional acts, errors, or omissions of the Contractor, its agents, employees, and subcontractors. This indemnification requirement shall apply to the full extent allowed by law, regardless of whether or not the Contractor has complied with the insurance requirements of this agreement.

7. CHANGES

- a. The County may, at any time, make changes to the Work required under this agreement, as long as the changes remain within its general scope. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the agreement, an equitable adjustment in price or time will be made and the agreement modified accordingly.
- b. All changes shall be set forth in writing, signed by all parties.

8. DEFAULT AND REMEDIES

- a. Any material breach of this agreement shall constitute a default if the breach cannot be substantially cured within a reasonable time, or if the breaching party does not do the following:
 - i. Substantially cure the breach within ten days after receipt of written notice from the non-breaching party; or
 - ii. If a substantial cure within ten days is not possible, begin good faith efforts to cure the breach within ten days after receipt of written notice

from the non-breaching party, and diligently pursue the good faith efforts until the breach is substantially cured.

- b. If either party defaults on its obligations under this agreement as described in this section, the non-defaulting party may terminate the agreement for cause, by delivering to the other party a notice of termination explaining the reason for the termination and its effective date.
- c. This agreement does not limit, in any way, a party's remedies that are available to it under applicable laws.
- d. In the event of disputes that cannot be resolved informally, the parties may agree on any desired dispute resolution procedure. If they are unable to agree on an alternative dispute resolution procedure, either party may initiate litigation. In any litigation or other dispute resolution proceeding, each party shall be responsible for its own attorneys' fees, expert witness fees, and other expenses incurred in such litigation or proceeding.
- e. This agreement shall be governed by the laws of the state of Utah. Venue for any legal action shall be in the state or federal courts covering Weber County, Utah.

9. TERMINATION

- a. In addition to each party's right to terminate the agreement for cause, the County shall have the right to terminate this agreement at any time, for any reason or no reason, by giving 30 days' written notice of termination.
- b. In the event the agreement is properly terminated prior to full performance by the Contractor, the Contractor shall be paid for Work rendered to the date of termination, based upon a percentage of completion of the full performance of this agreement.
- c. After delivery of a written notice of termination, the Contractor shall:
 - i. Stop work under this agreement on or before the date specified in the notice of termination; and
 - ii. Deliver to the County all work in process, completed work, completed or partially completed plans, drawings, information, and other property (including all electronic files and support files) which would be required to be furnished to the County if the agreement had been completed.

10. MISCELLANEOUS

- a. The Contractor shall not assign any interest in this agreement without the prior written consent of the County.

- b. The invalidity of any term of this agreement shall not be deemed to affect the validity of any other term, and the remainder of the agreement will remain in full force and effect, unless the invalidation of the term materially alters the agreement. If the invalidation of the term materially alters the agreement, then the parties shall negotiate in good faith to modify the agreement to match, as closely as possible, the original intent of the parties.
- c. This agreement supersedes all previous agreements, both oral and written, between the County and the Contractor relating to the subject matter hereof.
- d. Failure or delay by either party to enforce any term of this agreement will not be deemed a waiver of future enforcement of that or any other term.
- e. Notice
 - i. Any notice required or desired to be given pursuant to this agreement shall be in writing and shall be either (1) delivered personally to the party's representative (i.e., the Contractor's Project Manager or the County's Representative); (2) delivered electronically, with confirmed receipt, to the party's representative; or (3) mailed to the party's representative. The following contact information shall be used, unless a party notifies the other party of a change in representative or contact information:
 - 1. Clayton Monahan, Asphalt Construction & Excavating, 1256 North 1725 West, Farr West UT 84404
 - 2. Clayton Monahan, Asphalt Construction & Excavating, 1256 North 1725 West, Farr West UT 84404
 - ii. Notice shall be effective upon delivery, if receipt is confirmed. If notice is properly mailed and receipt is not confirmed, notice shall be effective three business days after the date of mailing.

IN WITNESS WHEREOF, the parties have caused this agreement to be signed by their duly authorized representatives:

[Clayton Monahan]

Signature

Date

10-30-24

Printed Name

Clayton Monahan

Title

Owner

STATE OF Utah

)ss.

COUNTY OF Weber

On this 30th day of October, in the year 2024, before me,

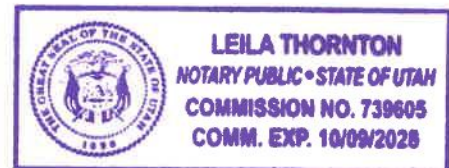
(notary name) Leila Thornton, a notary public, personally appeared

(signer name) Clayton Monahan, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed the same.

Leila Thornton

Notary Public

Notary seal:



WEBER COUNTY

Chair, Board of County Commissioners

Date: _____

ATTEST:

Weber County Clerk/Auditor

Date: _____

Exhibit 1
Bid Tab of Work

MINUTES

WOLF CREEK WATER AND SEWER IMPROVEMENT DISTRICT

October 10, 2024

In accordance with the requirements of Utah Code Annotated Section 52-4-7(1)(d), the District records in the minutes the names of all citizens who appear and speak at an open Board of Trustees Meeting and the substance "in brief" of their comments. Such statements may include opinions or purported facts. The District does not verify the accuracy or truth of any statement but includes it as part of the record pursuant to State Law.

This meeting is recorded. The recording of this meeting can be found on the Public Notice Website at utah.gov/pmn. Within three working days after the meeting date.

A regular meeting of the Board of Trustees of Wolf Creek Water and Sewer Improvement District (WCWSID) was held **Thursday, October 10, 2024**, at 8:00 a.m. in the business office located at 2580 N. Highway 162, Suite A.

Board Members Present: Miranda Menzies, Don Stefanik, Jon Bingham, Pam Young, Henry Huchel

Board Members Absent:

Others Present: Rob Thomas, General Manager, Annette Ames, Controller/Recorder, ShyAnna Chambers, Office Assistant, Aaron Spurlock & Garrett Rook – Insight IT, John Lewis - Lewis Homes 3718 N Wolf Creek Dr. Eden, Jon Shutz – Mabey Wright & James.

The regular meeting was called to order at 8:01 a.m. by Miranda Menzies

1. Aaron Spurlock & Garrett Rook presented the actions taken regarding the email breach, cleanup, and recommendations for security upgrades to the board members.
Recommendations: User cyber security training, secure password management, ransomware readiness assessment, SCADA system evaluation for safety now & in ~~the~~ the future. IT management: office 365 environment, computer system properly updated, security training. Miranda Menzies made the motion to move ahead and plan to authorize when the district gets the formal proposal to secure the district's computer environment. Henry Huchel duly seconded the motion; the roll call vote was as follows:

Miranda Menzies Aye
Jon Bingham Aye
Don Stefanik Aye
Henry Huchel Aye
Pam Young Aye

2. Rob Thomas gave a project update for all ongoing projects:
 - Snowflake – mostly complete just a little cleanup & power meters have been removed for the two lift stations, which means Rocky Mountain Power needs to remove the ~~kill~~ power, this should be the last thing to be done.
 - East Well – moving along, got permit for building
 - Reuse Pump station – progress is moving forward

- Phase 1 of Pipeline – completed to Willow Brook Lane, final stretch to the plant. Received a reduced bid from 3XL for phase 2 ~~to~~ which will be reviewed.
 - Village Sewer Reroute – having a few problems that are being worked through and continuing to move along.
 - Paving Patio Springs Dr. – Split cost with county 50/50. Jon Bingham made a motion to pave Patio Springs Drive through county contract and split the cost with Weber County. Pam Young duly seconded the motion, and the roll call vote was as follows:
 - Miranda Menzies Aye
 - Jon Bingham Aye
 - Don Stefanik Aye
 - Henry Huchel Aye
 - Pam Young Aye
 - Reuse pond – DWQ need an environmental assessment done because of the federal money being used for the reuse pond loan. AECOM is waiting for responses from US Fish and Wildlife about the Biological assessment on the Ute ~~lady-Ladies~~ trusses Tresses flowers, which were not found.
3. Miranda Menzies accepted a motion to enter into a Closed Session. Don Stefanik made the motion to go into a Closed Session to discuss the purchase or Ownership of Water Rights, Land or Other Real Property, Personnel Matters, Imminent Legal Action, or Loan Applications at 9:58 a.m. Jon Bingham duly seconded the motion, and it was unanimously approved. Jon Bingham made a motion to reopen the regular meeting and Don Stefanik duly seconded the motion, and it was unanimously approved. The regular meeting reconvened at 11:38 a.m. Henry Huchel made a motion to accept the items discussed in the Closed Session. Pam Young duly seconded the motion, the roll call vote was as follows:
- | | |
|-----------------|-----|
| Miranda Menzies | Aye |
| Jon Bingham | Aye |
| Don Stefanik | Aye |
| Henry Huchel | Aye |
| Pam Young | Aye |
4. Miranda Menzies updated the board on the Highlands Reservoir relining and considering ~~patches~~ patching project. Jon Bingham commented that it is not feasible to do the relining at this time considering the financials.
5. ShyAnna Chambers gave an update on the Lead & Copper process. Set up a waterlink account waiting for approval to submit Initial lead & copper inventory. We have 30 days from October 16, 2024, to reach out to the 34 ~~unknown~~ customers with unknown service lines. The field investigation is on hold, while we are waiting for the new regulations.
6. Miranda Menzies went through the issues at WorldMark and the struggles the districts staff are having when needing to access the water system at this location. Rob Thomas explained the situation with the springs at WorldMark since the ~~warm springs~~ Warm springs well is partially shut in now.
7. The September 2024 Financial Report, A/P & A/R, and aging had been sent to the Board previously for review and presented for approval. Pam Young made the motion to approve and

accept the September 2024 Financial Report, A/P & A/R, and aging. Henry Huchel duly seconded the motion; the roll call vote was as follows:

Miranda Menzies Aye
Jon Bingham Aye
Don Stefanik Aye
Henry Huchel Aye
Pam Young Aye

8. The minutes from the September 12, 2024- Regular Meeting. Jon Bingham made a motion to approve the September 12, 2024- Regular Meeting Minutes, Pam Young duly seconded the motion, and the roll call vote was as follows:

Miranda Menzies Aye
Jon Bingham Aye
Don Stefanik Aye
Henry Huchel Aye
Pam Young Aye

9. Miranda Menzies presented a letter the district received from the Ogden Valley Land Trust, about the land between Trappers Ridge and Elkhorn asking the district to agree that the land should be put into the Ogden Valley Land Trust. The district has no part in this since the district does not own this land, other than the lot for the East Well. No action will be taken by the board.

There being no further business Pam Young made a motion to adjourn, Jon Bingham duly seconded the motion, and it was unanimously approved. The meeting was adjourned at 12:21 p.m.

The next meeting will be a regular meeting and is scheduled for Thursday, November 14, 2024, at 8:00 a.m. in person at the business office located at 2580 N. Highway 162, Suite A, Eden, Utah.

Annette Ames
Secretary of the Meeting