

## CONTRACTOR'S AGREEMENT

FOR: **500 EAST WATER LINE REPLACEMENT PROJECT**

THIS, made and entered into this \_\_\_\_\_, by and between RIVER HEIGHTS CITY, hereinafter referred to as "OWNER" and \_\_\_\_\_ AAA Excavation Inc. in, and authorized to do business in the State of Utah, hereinafter referred to as "Contractor", whose address is: \_\_\_\_\_ 1650 N 170 W, Willard, UT 84340.

WITNESSETH: WHEREAS, Owner intends to have Work performed to improve and upgrade its culinary water system in accordance with the **500 EAST WATER LINE REPLACEMENT PROJECT** construction documents.

WHEREAS, Contractor agrees to perform the Work for the sum stated herein.

**The project generally includes the installation and construction of new 8" C900 PVC water line in 500 East between River Heights Blvd and 400 S. with connection to the existing 8" water lines and construction of valves, bends, services, and restoring disturbed surfaces including roadways, sidewalks, and landscaping.**

NOW, THEREFORE, Owner and Contractor for the consideration provided in this Contractor's Agreement, agree as follows:

**ARTICLE 1. SCOPE OF WORK.** The Work to be performed shall be in accordance with the Contract Documents prepared by Forsgren Associates, Inc. for the said project.

All terms used in this Contractor's Agreement shall be as defined in the Contract Documents, and in particular, the General Conditions.

The Contractor Agrees to furnish labor, materials, and equipment to complete the Work as required in the Contract Documents which are hereby incorporated by reference. It is understood and agreed by the parties hereto that all Work shall be performed as required in the Contract Documents and shall be subject to inspection and approval of Owner or its authorized representative. The relationship of the Contractor to the Owner hereunder is that of an independent Contractor.

**ARTICLE 2. CONTRACT SUM.** The Owner agrees to pay and the Contractor agrees to accept in full performance of this Contractor's Agreement, the sum of Eighty-eight thousand one hundred and 96/100 Dollars (\$88,100.96), which is the base bid and which sum also includes the cost of a 100 % Performance Bond and a 100 % Payment Bond as well as all insurance requirements of the Contractor. **Said bonds have already been posted by the Contractor pursuant to State law.** The required proof of insurance certificates have been delivered to Owner in accordance with the General Conditions **before** the execution of this Contractor's Agreement.

**ARTICLE 3. TIME OF COMPLETION AND DELAY REMEDY.** The Work shall be **Substantially Complete within sixty (60) calendar days** after the date of the Notice to Proceed. Contractor agrees to pay liquidated damages in the amount of **\$ 150.00 per day** for each day after expiration of the Contract Time until the Contractor achieves Substantial Completion in accordance with the Contract Documents, if Contractor's delay makes the damages applicable. The provision for liquidated damages is: (a) to compensate the Owner for delay only; (b) is provided for herein because actual damages cannot be readily ascertained at the time of execution of this Contractor's Agreement; (c) is not a penalty; and (d) shall not prevent the Owner from maintaining Claims for other non-delay damages, such as costs to complete or remedy defective Work.

No action shall be maintained by the Contractor or Subcontractor at any tier, against the Owner for damages or other claims due to losses attributable to hindrances or delays from any cause whatsoever, including acts and omissions of the Owner or its officers, employees or agents, except as provided in

Article 8 of the General Conditions. The Contractor may receive an extension of time in which to complete the Work under this Contractor's Agreement, as provided in Article 8 of the General Conditions.

**ARTICLE 4. CONTRACT DOCUMENTS.** The Contract Documents consist of this Contractor's Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, Specifications, and Addenda and Modifications. The Contract Documents shall also include the Bid Schedule submitted by the Contractor, to the extent not in conflict therewith.

All such documents are hereby incorporated by reference herein. Any reference in this Contractor's Agreement to certain provisions of the Contract Documents shall in no way be construed as to lessen the importance or applicability of any other provisions of the Contract Documents.

**ARTICLE 5. PAYMENT.** The Owner agrees to pay the Contractor from time to time as the Work progresses, but not more than once each month after the date of Notice to Proceed, and only upon Certificate of the Engineer, for Work performed during the preceding calendar month, ninety-five percent (95%) of the value of the labor performed and ninety-five percent (95%) of the value of materials furnished in place or on the site. The Contractor agrees to furnish to the Owner invoices for materials purchased and on the site but not installed, for which the Contractor requests payment and agrees to safeguard and protect such equipment or materials and is responsible for the safekeeping thereof and if such be stolen, lost or destroyed, to replace same.

Such evidence of labor performed and materials furnished as the Owner may reasonably require shall be supplied by the Contractor at the time of request for Certificate of Payment on account. Materials for which payment has been made cannot be removed from the job site without Owner's written approval. Five percent (5%) of the earned amount shall be retained from each monthly payment.

**ARTICLE 6. INDEBTEDNESS.** Before final payment is made, the Contractor must submit evidence satisfactory to the Owner that all payrolls, materials bills, subcontracts at any tier and outstanding indebtedness in connection with the Work have been paid or that arrangements have been made for such payment. Final Payment will be made without unnecessary delay after receipt of said evidence and final acceptance of the Work by the Owner.

Contractor shall respond immediately to any inquiry in writing by the Owner as to any concern of financial responsibility and Owner reserves the right to request any waivers or releases from Contractor in regard to any rights of Subcontractors at any tier or any third parties prior to any payment by Owner to Contractor.

**ARTICLE 7. ADDITIONAL WORK.** It is understood and agreed by the parties hereto that no money will be paid to the Contractor for additional labor or materials furnished unless a new contract in writing or a Modification hereof for such additional labor or materials has been executed. The Owner specifically reserves the right to modify or amend this Contractor's Agreement and the total sum due hereunder either by enlarging or restricting the scope of the Work.

**ARTICLE 8. INSPECTIONS.** The Work shall be inspected for acceptance in accordance with Article 9 of the General Conditions.

**ARTICLE 9. DISPUTES.** If disputes arise regarding the value of any Work performed, or any Work omitted, or of any extra Work which the Contractor may be required to perform, or respecting any other elements involved in this Contractor's Agreement, said dispute shall be resolved in accordance with Article 4 of the General Conditions.

**ARTICLE 10. TERMINATION.** This Contractor's Agreement may be terminated in accordance with Article 14 of the General Conditions.

**ARTICLE 11. OWNER'S RIGHT TO WITHHOLD CERTAIN AMOUNT AND MAKE USE THEREOF.** The Owner may withhold from payment to the Contractor such amount as, in Owner's judgment, may be necessary to pay just claims against the Contractor or Subcontractor at any tier for labor and services rendered and materials furnished in and about the Work. The Owner may apply such withheld amounts for the payment of such claims in Owner's discretion. In so doing, the Owner shall be deemed the

agent of Contractor and payment so made by the Owner shall be considered as payment made under this Contractor's Agreement by the Owner to the Contractor. Owner shall not be liable to the Contractor for any such payment made in good faith. Such payments may be made without prior determination of the claim or claims.

**ARTICLE 12. INDEMNIFICATION.** The Contractor shall comply with Subparagraph 3.14, "Indemnification", of the General Conditions.

**ARTICLE 13. ASSIGNMENT OF CONTRACT.** The Contractor shall not assign the Contract without the prior written consent of the Owner, nor shall the Contractor assign any moneys due or to become due as well as any rights under the Contract, without prior written consent of the Owner.

The Contractor and Owner for themselves, their heirs, successors, executors, and administrators, whichever may be applicable, hereby agree to the full performance of the Contract Documents.

**ARTICLE 14. RELATIONSHIP OF THE PARTIES.** The contractor accepts the relationship of trust and confidence established by this Contractor's Agreement and covenants with the Owner to cooperate with the Engineer and utilize the Contractor's best skill, efforts and judgment in furthering the interest of the Owner; to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best and most expeditious and economic manner consistent with the interests of the Owner.

The Owner agrees to exercise best efforts to enable the Contractor to perform the Work in the best and most expeditious manner by furnishing and approving in a timely way, information required by the Contractor in accordance with the requirements of the Contract Documents.

**ARTICLE 15. AUTHORITY TO EXECUTE AND PERFORM AGREEMENT.** Contractor and Owner each represent that the execution of this Contractor's Agreement and the performance thereunder is within their respective duly authorized powers.

**ARTICLE 16. ATTORNEY FEES AND COSTS.** The prevailing party shall be entitled to reasonable attorney fees and costs incurred in any action in the District Court and/or appellate body to enforce this Contractor's Agreement or recover damages or any other action as a result of a breach thereof.

**IN WITNESS WHEREOF,** the parties hereto have executed this Contractor's Agreement on the day and year stated herein above.

ATTEST: (SEAL)

**CONTRACTOR:**

\_\_\_\_\_  
Secretary of Corporation

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Please type/write name clearly

Title: \_\_\_\_\_

\_\_\_\_\_  
Please type/write name clearly

**RIVER HEIGHTS CITY**

\_\_\_\_\_  
Jason Thompson, Mayor