

Construction Agreement

THIS AGREEMENT is made and entered into this 10th day of July, 2018, by and between TOWN OF ERIE, COLORADO, whose address is 645 Holbrook Street, PO Box 750, Erie, Colorado 80516 (hereinafter called the "TOWN") and Preferred Garages, Inc. (hereinafter called "CONTRACTOR"), whose address is 5669 Vistancia Court, Parker, Colorado 80134.

The Town and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated, or which may be reasonably inferred as necessary to produce the results intended by the project description. The Work is generally described as follows:

Construction of a 32x32x16 one story building (approximately 1,024 SF) on a turned down concrete slab on grade. The building will house materials and supplies for maintenance and repair of Town facilities. The building will be located at the Leon A Wurl Service Center. The building will be wood framed with L. P. Smartsite and L. P. Siding.

PROJECT: L. A. W. Service Center Storage

PROJECT NUMBER: P18-513

ARTICLE 2. CONTRACT TIMES.

- 2.1 The Work shall be substantially completed within **60** Calendar Days after the date when ground is broken. The Work shall be completed and ready for final payment within **90** Calendar Days after the date when ground is broken. The Contract Times shall commence to run on the day ground is broken.

ARTICLE 3. CONTRACT PRICE.

- 3.1 The TOWN shall pay in current funds, and the CONTRACTOR agrees to accept in full payment for performance of the Work, subject to additions and deductions from extra and/or omitted work, the Contract Price of Forty Eight Thousand Nine Hundred Ninety Seven dollars (\$48,997).

ARTICLE 4. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment. Applications for Payment will be processed by the TOWN.

- 4.1 **Progress Payments.** The TOWN shall make progress payments on the basis of CONTRACTOR's Applications for Payment as recommended by the Project Manager, on or about every 30 days during construction as provided below. Payment will be made by the TOWN on the next billing cycle following approval for payment. All progress payments will be on the basis of the progress of the Work based on the percent complete.

- 4.1.1 Prior to Substantial Completion, progress payments will be made in the amount equal to 95 percent of the completed Work, and/or 95 percent of materials and equipment

not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to the TOWN), but in each case, less the aggregate of payments previously made and such less amounts as the Project Manager shall determine, or the TOWN may withhold.

- 4.2 **Final payment.** Upon final completion and acceptance of the Work, the TOWN shall pay the remainder of the Contract Price. Upon no receipt of claims toward the CONTRACTOR, per the Notice of Final Settlement advertisement, the TOWN shall pay the retainage withheld to the Contractor upon signature by the CONTRACTOR of a Claim Release for the TOWN.
- 4.3 **Payment of interest.** In the event that any payment of interest is to be made, interest shall be paid at the average rate earned by the TOWN on its invested funds during the quarterly fiscal period prior to the period during which the interest was accrued.

ARTICLE 5. CONTRACTOR'S REPRESENTATIONS.

In order to induce the TOWN to enter into this Agreement CONTRACTOR makes the following representations and commitments:

- 5.1 CONTRACTOR has examined and carefully studied the Project, and the other related data identified in the Bidding Documents including "technical".
- 5.2 CONTRACTOR has inspected the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.
- 5.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and furnishing of the Work.
- 5.4 CONTRACTOR has carefully studied all reports of exploration and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions relating to surface or subsurface structures (except Underground Facilities) at or contiguous to the site which have been identified. CONTRACTOR acknowledges that such reports and drawings are not CONTRACT DOCUMENTS and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that the TOWN and the Project Manager do not assume responsibility for the accuracy or completeness of information and data shown or indicated with respect to such reports, drawings or to Underground Facilities at or contiguous to the site. CONTRACTOR has conducted, obtained and carefully studied (or assumes responsibility for having done so) all necessary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of this agreement.
- 5.5 CONTRACTOR has reviewed and checked all information and data shown or indicated with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish

the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of this agreement.

- 5.6 CONTRACTOR is aware of the general nature of work to be performed by the TOWN and others at the site that relates to the Work as indicated in the project description.
- 5.7 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings and all additional examinations, investigations, explorations, tests studies and data.
- 5.8 CONTRACTOR has given the Project Manager written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered and the written resolution thereof by the Project Manager is acceptable to CONTRACTOR, and are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing the Work.
- 5.9 CONTRACTOR will use its best skill and workmanship to provide Work of the highest quality.

ARTICLE 6. RESERVED

ARTICLE 7. MISCELLANEOUS.

- 7.1 Reserved.
- 7.2 No assignment by a party hereto of any rights under or interests will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge that assignor from any duty or responsibility.
- 7.3 The TOWN and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in this agreement.
- 7.4 CONTRACTOR agrees to comply with all federal, state and city non-discrimination rules and regulations so long as CONTRACTOR is under contract with the TOWN.
- 7.5 By executing this agreement, CONTRACTOR warrants that:
 - 1. CONTRACTOR has not allowed any competing bidder or employee or agent thereof to see CONTRACTOR's bid or to know of its content.
 - 2. CONTRACTOR has not discussed the contents of its bid with any competing bidder, or any other person who a reasonably prudent person would believe would be likely to transmit information to a competing bidder.
- 7.6 **No Discrimination in Employment** In connection with the performance of work under this Agreement, CONTRACTOR agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified on the basis of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation,

marital status, or physical or mental disability and further agrees to insert the foregoing provision in all subcontracts hereunder

Failure to abide by the above provisions relating to collusion shall render the contractor liable to the TOWN for damages, including, without limitations, payment of the bid bond as liquidated damages. In addition, the TOWN may void any contract entered into with a bidder guilty of collusion.

ARTICLE 8. OTHER PROVISIONS.

- 8.1 **Third party beneficiaries.** The contract is not intended to create any right for the public or any member thereof, any subcontractor or supplier, or any other third party, or to authorize anyone not a party to the contract to maintain a suit to enforce its terms. The duties, obligations, and responsibilities of the parties to the contract, with respect to third parties, shall remain as imposed by law. This section shall not apply to any surety to the extent it is acting under any labor and materials bond or performance bond entered into by the CONTRACTOR.
- 8.2 **Integration.** This agreement represent the entire integrated agreement between the TOWN and the CONTRACTOR and supersede all prior negotiations, representations, or agreement, whether written or oral. No modification, amendment, waiver or novation shall be valid unless incorporated in a written amendment or change order properly executed by both parties.
- 8.3 **Severability.** To the extent that the performance of the parties' obligations may be accomplished within the intent of the contract, the terms of the contract are severable, and should any term or provision of the contract be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other contract term or provision.
- 8.4 **Waiver.** If the TOWN fails to enforce any term of the contract for any period, this shall not act as a waiver. No waiver of any breach of any term thereof shall be effective unless set forth in a writing signed by both the Project Manager and CONTRACTOR. The waiver of any breach of a term thereof shall not be construed as waiver of any other term.
- 8.5 **Compliance with laws.** At all times during the performance of the contract, CONTRACTOR shall strictly adhere to all applicable federal, state and Town laws that have been or may hereafter be established. This shall include, without limitation, the United States Department of Labor, Occupational Safety and Health Administration (OSHA) standards for excavating and trenching operations. As used in this section, and hereafter, the term "laws" shall include, without limitation, all federal, state and Town codes, charters, ordinances, laws, standards, rules and regulations.
- 8.6 **Choice of law.** In all litigation arising out of the contract, the statutory and common law of the State of Colorado shall be controlling, and venue shall be in the District Court of Weld County, Colorado.

ARTICLE 9. PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS.

- 9.1 By its signature on this Agreement, CONTRACTOR certifies that, as of the time of its signature, it does not knowingly employ or contract with an illegal alien and that, in order to verify that it does not employ any illegal aliens, the CONTRACTOR will participate in the E-Verify Program created in Public Law 104-208, as amended, and expanded in Public Law 108-156, as amended, administered by the United States Department of Homeland Security and the Social Security Administration.

- 9.2 CONTRACTOR agrees that it shall not knowingly employ or contract with an illegal alien to perform work under this Agreement; and that it shall not enter into a contract with a subcontractor that fails to certify to the CONTRACTOR that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.
- 9.3 CONTRACTOR has verified or attempted to verify through participation in the Basic Pilot Program that the CONTRACTOR does not employ any illegal aliens. If CONTRACTOR has not been accepted into the Basic Pilot Program prior to entering into this Agreement, CONTRACTOR shall apply to participate in the Basic Pilot Program every three months until the CONTRACTOR is accepted or work under this Agreement has been completed, whichever is earlier. This requirement shall not apply if the Basic Pilot Program is discontinued.
- 9.4 CONTRACTOR shall not use Basic Pilot Program procedures to undertake preemployment screening of job applicants while work under this Agreement is being performed.
- 9.5 If CONTRACTOR obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the CONTRACTOR shall: (1) notify the subcontractor and the TOWN within three days that the CONTRACTOR has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (2) terminate the subcontract with the subcontractor if, within three days of receiving the notice required herein, the subcontractor does not stop employing or contracting with the illegal alien; except that the 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.
- 9.6 The CONTRACTOR shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. section 8-17.5-101(5).
- 9.7 If CONTRACTOR violates a provision of this Illegal Alien Addendum, the TOWN may terminate this Agreement for breach of contract. If the Agreement is so terminated, the CONTRACTOR shall be liable for actual and consequential damages to the TOWN. CONTRACTOR understands that, in the event of such a termination, TOWN is required to notify the office of the Colorado Secretary of State.

IN WITNESS WHEREOF, the TOWN and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to the TOWN and CONTRACTOR.

This Agreement is effective as of 7-5-18, 2018.

TOWN:

CONTRACTOR:

TOWN OF ERIE

Preferred Garages, Inc.

Greg Moss - owner

By: _____

By: *[Signature]*

(CORPORATE SEAL)

(CORPORATE SEAL)

Attest: _____

Attest: _____

Address for giving notices:

