AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Contractor Agreement; Jim Thomas Construction; Bla

Action Requested: County Manager Signature

Parties to the Agreement: Jim Thomas Construction

Term Begins: 9/1/15 **Term Ends:** 12/31/2015 **Grant Contract #:**

Summary:

The gutters on the eaves of the tile roof at the Blackstock building are failing and causing water leaks into the building, walls have noticeable water damage. Gutters need re-worked and lining replaced

Fiscal Impact: $7,000 from Facilities budget

Submitted by: John Cattles **Submitter's Email Address:** jcattles@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
Repair and Maintenance dollars available in 2015 adopted budget.

Reviewed by: Discharge Date: 8/26/2015

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 8/20/15

Reveiwed by: Discharge Date: 8/26/2015 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: Discharge Date: 8/26/2015

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted:

Agenda Date: 9/1/2015

Revised April 2015

CONTRACTOR AGREEMENT

This Contractor Agreement ("Agreement") made effective the ___ day of _____, 2015, is by and between the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 East Virginia, Gunnison, CO 81230 ("Gunnison County") and Jim Thomas Construction, whose address is P.O. Box 933, Crested Butte, CO 81224 ("Contractor").

RECITALS

Contractor provides services to Blackstock building, located at 221 N. Wisconsin St., Gunnison, CO (hereinafter "Services"). Gunnison County desires to engage Contractor to provide Services according to this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the Recitals and the mutual covenants and obligations hereinafter set forth, the parties agree as follows:

1. SCOPE OF SERVICES.

   Contractor shall furnish all materials, labor, supervision, supplies and equipment to commence, diligently pursue, and complete the services as more specifically set forth on Exhibit A, attached hereto and incorporated herein by this reference. All Services shall be performed in a timely manner and in accordance with generally accepted standards for Contractor's profession and all applicable federal, state and local laws and regulations affecting the Services or the subject matter thereof. Contractor acknowledges that this is a non-exclusive Agreement, and Gunnison County may contract with additional or other providers able to furnish the same or similar services as it deems appropriate to do so.

2. TERM.

   The term of this Agreement shall commence on the date first set forth above and shall terminate when the scope of services is complete, but not later than December 31, 2015, unless sooner terminated or replaced as provided herein.

3. STRATEGIC RESULT.

   Execution of this Agreement will assist the County Facilities and Grounds Department with its Maintenance Management System strategy to provide preventative maintenance services at County facilities, as outlined in the Gunnison County Strategic Plan.

4. COMPENSATION, BONUS AND EXPENSES.

(a) In exchange for Contractors performance of the Services, during the Term, Gunnison County shall pay Contractor fees as more specifically set forth in Exhibit A.

(b) The Compensation shall compensate Contractor for all charges, expenses, overhead, payroll costs, employee benefits, insurance subsistence, and profits, except as specifically set forth herein.

(c) This Agreement is subject to Gunnison County making an annual budget appropriation in an amount sufficient to fund this Agreement. If Gunnison County fails or refuses to make such an appropriation, Gunnison County reserves the right to terminate this Agreement without penalty to Contractor pursuant to paragraph 13 of this Agreement.

5. INSURANCE.

Contractor agrees that at all times during the Term of this Agreement that Contractor shall carry and maintain, in full force and effect and at its sole cost and expense, the following insurance policies. Within thirty (30) days of the execution of this Agreement, Contractor will provide insurance certificates to Gunnison County, listing Gunnison County as an additional insured, for the coverage's required herein which shall state that such policies shall not be materially changed or cancelled without thirty (30) days prior notice to Gunnison County.

(a) Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Contractor during the term of this Agreement.

(b) Comprehensive General Liability Insurance or the equivalent for any injury to one person in any single occurrence, Three Hundred Fifty Thousand and No/100 U.S. Dollars ($350,000.00); and For an injury to two or more persons in any single occurrence, the sum of Nine Hundred Ninety Thousand and No/100 U.S. Dollars ($990,000.00).

(c) Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than $350,000 for any injury to one person in any single occurrence and in an amount no less than $990,000 for any injury to two or more persons in any single occurrence.

6. INDEPENDENT CONTRACTOR.

In carrying out its obligations and activities under this Agreement, Contractor is

acting as an independent contractor and not as an agent, partner, joint venture or employee of Gunnison County. Contractor does not have any authority to bind Gunnison County in any manner whatsoever.

Contractor acknowledges and agrees that Contractor is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County. Further, Contractor is obligated to pay federal and state income tax on any moneys paid it related to the services.

7. INDEMNIFICATION.

Contractor agrees to indemnify, defend and hold harmless Gunnison County, its Commissioners, agents and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including death, of any person or damage to property of any kind caused by the misconduct or negligent acts, errors or omissions of Contractor or its employees, subcontractors or agents in connection with this Agreement.

This provision shall survive any termination or expiration of this Agreement with respect to any liability, injury or damage occurring prior to such termination.

8. DISCRIMINATION.

The Contractor agrees not to discriminate against any person or class of persons by reason of age, race, color, sex, creed, religion, disability, national origin, sexual orientation or political affiliation in providing any services or in the use of any facilities provided for the public in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. Contractor shall further comply with the letter and spirit of the Colorado Anti-Discrimination Act of 1957, as amended, and any other laws and regulations respecting discrimination in unfair employment practices. Additionally, Contractor shall comply with such enforcement procedures as any governmental authority might demand that Gunnison County take for the purpose of complying with any such laws and regulations.

9. IMMIGRATION COMPLIANCE CERTIFICATION.

(a) Contractor certifies that Contractor does not and will not knowingly contract with or employ illegal aliens to work under this Agreement.

(b) Contractor certifies that Contractor has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to

work under this Agreement.

(c) Contractor certifies that it has attempted to verify the eligibility of its employees and subcontractors to work through the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security.

(d) Contractor agrees to comply with all reasonable requests made in the course of an investigation under C.R.S. 8-17.5-102 by the Colorado Department of Labor and Employment.

(e) Contractor agrees to comply with the provisions of C.R.S. 8-17.5-101 et seq.

10. ADA COMPLIANCE.

The Contractor assures Gunnison County that at all times during the performance of this Agreement no qualified individual with a disability shall, by reason of such disability, be exclude from participation in, or denied benefits of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor upon which assurance Gunnison County relies.

11. MISCELLANEOUS.

(a) SEVERABILITY. If any clause or provision of this Agreement shall be held to be invalid in whole or in part, then the remaining clauses and provisions, or portions thereof, shall nevertheless be and remain in full force and effect.

(b) AMENDMENT. No amendment, alteration, modification of or addition to this Agreement shall be valid or binding unless expressed in writing and signed by the parties to be bound thereby.

(c) NO WAIVER OF GOVERNMENTAL IMMUNITY. Nothing in this Agreement is, or shall be construed to be, a waiver, in whole or part, by Gunnison County of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

12. DELEGATION AND ASSIGNMENT.

This is a personal services contract with Contractor and, therefore, Contractor shall not delegate or assign its duties under this Agreement without the prior written consent of Gunnison County which consent Gunnison County may

withhold in its discretion. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall be binding on the successors and assigns of either party.

13. TERMINATION.

Either party shall have the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other. Upon termination, Contractor shall be entitled to compensation for Services performed prior to the date of termination, per the compensation terms outlined in Exhibit A.

14. NOTICES.

Any notice, demand or communication which either party may desire or be required to give to the other party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally or sent by certified first class US mail, postage prepaid, addressed as follows:

Gunnison County: County Manager
Gunnison County
200 E. Virginia
Gunnison, Colorado 81230
Phone: 970-641-0248

With a copy to: Board of County Commissioners
of the County of Gunnison, Colorado
200 E. Virginia
Gunnison, Colorado 81230

Contractor: Jim Thomas Construction
P.O. Box 933
Crested Butte, CO 81224

Either party has the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

15. GOVERNING LAW.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Exclusive jurisdiction and venue for any legal proceedings related to this Agreement shall be in the state District Court governing Gunnison, Colorado.

16. ATTORNEYS FEES.

If any party hereto shall bring any suit or action against another for relief, declaratory or otherwise, arising out of this Agreement, the prevailing party shall have and recover against the other party, in addition to all court costs and disbursements, such sum as the court may adjudge to be reasonable attorneys fees and expert witness fees.

17. COUNTERPARTS: FACSIMILE TRANSMISSION.

This Agreement may be executed by facsimile and/or in any number of counterparts, any or all of which my contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though originally executed on one originally executed document. All facsimile counterparts shall be promptly followed with delivery of original executed counterparts.

18. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, proposals, negotiations and representations pertaining to the obligations to be performed hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Matthew Birnie, County Manager

ATTEST:

_____
Deputy Clerk

CONTRACTOR

By: _____

Exhibit A

Jim Thomas Construction, Inc.

Quality Roofing
P.O. Box 933
Crested Butte, CO 81224
970.349.5271

AGREEMENT FOR SERVICES

Date: 08/07/2015
Project Address: Blackstocks County Building
Owner/Contractor Name: 200 East Virginia
Owner/Contractor Address: John Cattles
Owner/Contractor Phone: 970-275-0768

I/WE, the Owner(s) of the premises described above, authorize Jim Thomas Construction, Inc., a Colorado corporation, ("JTC") to furnish all materials and labor necessary to roof and/or improve these premises in a good, workmanlike and substantial manner according to the following terms, specifications, and provisions:

A. Description of the work and materials to be used:

Removal and disposal of existing gutter.
Repair all damaged framing.
Install Ice and Water Shield over existing or new substrate.
Installation of manufactured, 24 gauge new gutter metal in 10' sections.

Note: due to the possibility of unknown damages the county will be notified if more work is needed prior to implementation.

(This list of specifications may be continued on subsequent pages which are attached.)

B. Description of any areas that will NOT be worked on:

C. Cost. JTC proposes to perform the above work, subject to any additions and/or deductions pursuant to authorized and executed change orders, for the

Contract Price of : $6,200.00 not to exceed $7,000.00

D. Payment is to be made as follows:

1. Schedule. 50% down payment; 25% Draw upon written notice to Owner; and 25% upon completion.
2. Consequence of Delinquency. If the 50% down payment is not received within 30 days of the date of this Agreement, this Agreement will automatically terminate. The 25% Draw must be paid within 10 days of the invoice date. If such payment is not received by JTC, JTC will stop work. After 5 additional days, if payment is still not received, JTC will file a mechanics' lien against Owner's property.
3. Release of Lien and Continuance of Work. If payment on the 25% Draw is not received within 15 days of the invoice date, the remaining 25% payment must be placed into an escrow account for JTC in order for JTC to release the mechanics lien and complete the work. If payment Schedule is not met, any warranties provided in this Agreement will be void. (***See Additional Provisions, Paragraphs 10 and 11).***

E. Commencement and Completion of Work.

Approximate Start Date: _____
Approximate Completion Date: _____

F. Acceptance, Amendment: This Agreement is approved and accepted. I/WE understand there are no oral agreements between the parties of this Agreement. The written terms, provisions, plans, and/or specifications in this Agreement constitute the entire and only Agreement between the parties. Changes to this Agreement shall be allowed only by written and signed Change Orders. Change Order(s) may result in additional charges to the Owner and an extended Completion Date.

***Additional Provisions* of this Agreement are continued on subsequent pages. Read *Additional Provisions* before signing.**

_____ _____
Approved and accepted (Owner/Contractor) Date

_____ _____
Approved (JTC) Date

Note: This Agreement may be withdrawn after 30 days from the date first above written if not approved and signed by both parties.

ADDITIONAL PROVISIONS. The following additional provisions are expressly incorporated into this Agreement:

1. Agreement, Plans, Specifications, Permits and Fees. The work described in this Agreement shall be done according to the plans and the plan specifications (if any) except in the case of conflict, in which case the provisions of this Agreement shall control all required building permits will be paid for by Owner and obtained by JTC. All other charges, taxes, assessments, fees, etc. of any kind whatsoever, required by any government body, telephone or utility company or the like, shall be paid for by the Owner.

2. Installation. JTC has the right to subcontract any part of, of all of, the work performed hereunder.

3. Change Orders. Should Owner, construction lender, or any government body or inspector require any modification to the work covered under this Agreement, any cost incurred by JTC shall be added to the cost of the work and Owner agrees to pay JTC, at the time of payment of the next invoice, any agreed upon additional compensation for such extra work. All extra work and any other modifications to the original Agreement shall be specified and approved by both parties in a written and signed Change Order. All Change Orders shall become a part of this Agreement and shall be incorporated herein.

4. Owner's Responsibility: Insurance, etc. Owner is responsible for the following: (1) to see that all utilities necessary to perform the work, and access to the premises, are provided on the premises; (2) to provide a storage area on the premises for JTC's equipment and materials. ~~(3) to relocate and protect any item that prevents JTC from having free access to the work areas such as, but not limited to, TV or radio antennas, vehicles, tools or garden equipment. In the event that Owner fails to provide JTC free access to the work areas, JTC may relocate necessary items, but JTC is in no way responsible for damage to these items; (4) to obtain permission from the owner(s) of any adjacent property(ies) that JTC must use to gain access to the work areas. Owner agrees to be responsible and to hold JTC harmless and accept any risk resulting from the use of adjacent property(ies) by JTC;~~ (5) to correct any existing defects which are recognized during the course of the work which are necessary for JTC's performance of the work; and (6) to maintain liability and hazard insurance with Fire, Course of Construction, all Physical Loss with Vandalism and Malicious Mischief clauses attached, in an amount at least equal to the Agreement price, prior to and during performance of this Agreement. If the project is destroyed or damaged by an accident, disaster or calamity, or by theft or vandalism, any work or materials supplied by JTC in re-roofing or restoring the project shall be timely paid for by Owner pursuant to a Change Order.

5. Delay. JTC shall not be held responsible for any damage or losses occasioned by delays resulting from: work done by Owner's subcontractors, extra work, acts of Owners or Owner's agent including failure of Owner to make timely progress payments or payments for extra work, shortages of material and/or labor, bad weather, fire, strike, war, governmental regulations, or any other contingencies unforeseen by JTC or beyond JTC's reasonable control.

6. Surplus Materials and Salvage. Any surplus materials left over after the work has been completed are the property of JTC and will be removed by it. No credit is due Owner on returns for any surplus materials because this Agreement is based upon a complete job. All salvage resulting from the work under this Agreement is the property of JTC.

7. Cleanup and Advertising. Upon completion, and after removing all debris and surplus materials, wherever possible, JTC will leave the premises in a neat, broom clean condition. JTC shall not be responsible for any debris consisting of dust, dirt, asphalt, or small bits of materials that settle. JTC recommends that Owner lay out drop cloths to protect work, surrounding areas, and other areas where Owner discovers settling debris infiltration. ~~Owner grants JTC the right to display signs and advertise at the premises for the period of time commencing with the date of signing this Agreement and continuing uninterrupted until fourteen (14) days past the date the job is completed and payment in full has been received by JTC~~. Owner grants JTC the right to publish the project street address on a

"references" list which may be given to prospective customers.

8. Concealed damage and dry rot. JTC will inform Owner of any dry rot or other sub-roof or other deterioration or building or other code violations, which are concealed and are discovered during the course of the work. JTC is not obligated to or liable for, the repair of any such discovered deterioration unless a change order is executed.

9. Termites, Pests and Hazardous Substances. Owner understands that JTC is not qualified or licensed as an inspector or abatement contractor for Hazardous Materials (as defined by federal, state or local government), or for pests. Should any such Hazardous Materials or pest(s) be suspected to be present on the premises, it is the Owner's responsibility to arrange and pay for inspection and abatement. JTC does not certify or warrant that the premise is free of Hazardous Materials or pests.

10. Right to Stop Work and to Withhold Payment on Labor and Material, Payment of Same. If any payment is not timely made to JTC pursuant to the terms of this Agreement, JTC shall have the right to stop work and keep the job idle until all past due payments are received. JTC is further excused by Owner from paying any material, equipment and/or labor suppliers or any subcontractors (hereinafter collectively called "suppliers"), during the period that Owner is in arrears in making payments to JTC for bills received during that same period. If suppliers make demand for payment, Owner shall make such payment and JTC shall reimburse Owner for any amount so paid at such time that Owner becomes current with JTC for all past due payments. Owner is responsible for verifying the correct amounts owed to these suppliers prior to making payment. Owner shall not be entitled, under any circumstances, to collect as reimbursement from JTC any amount greater than the amount actually owed by JTC to the suppliers for work done or materials supplied on the project.

~~***11. Collection and Attorney Fees.*** Owner agrees to pay all collection fees and charges, including but not limited to, reasonable attorneys' and expert witness fees and costs that result should Owner default in timely payment of this Agreement. Overdue accounts are subject to interest charged at the rate of 18% per annum.~~

12. Notice of Defect. The Owner shall provide prompt written notice to JTC if the Owner becomes aware of any fault or defect in the work performed under this Agreement.

13. Claims for Consequential Damages. JTC and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement, including its termination.

14. Colorado Law and Venue. This Agreement shall be construed in accordance with, and its performance shall be governed by, the laws of the State of Colorado. If a dispute requiring a legal proceeding for resolution arises between Owner and JTC, the parties hereby consent to the jurisdiction of the Gunnison County Court or Gunnison County District Court.

15. Waiver of Rights. To the extent damages are covered by insurance during or after construction, JTC and the Owner waive all rights against each other for such damages.

~~***16. Entire Agreement; Amendments***. This instrument contains all of the agreements, understandings, representations, conditions, and covenants made between the parties, and supersedes all prior agreements between the parties. All modifications and amendments to this Agreement must be in writing and signed by the parties.~~

17. Warranty. There is no warranty expressed or implied by this Agreement. JTC represents that services provided under this Agreement shall be performed with professional standards of workmanship applicable to the State of Colorado.

18. Notices. All notices shall be in writing and sent by postage prepaid certified mail, return receipt requested, facsimile, or electronic mail to the following addresses:

Owner:
_____
_____
_____
Fax:_____
Email: _____

JTC
P.O. Box 933
Crested Butte, CO 81224
Phone: (970) 349-5271
Email: jimthomasconstruction@gmail.com

Notice shall be deemed to have been delivered when mailed, faxed or emailed. Either party may change its address by notice to the other as set forth above.

19. Assignment. This Agreement may be assigned by JTC upon prior written notice to Owner.

20. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, representatives, successors and assigns.