AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Slurry Seal Bid Award; Multi Agency 2018 Slurry Se

Action Requested: County Manager Signature

Parties to the Agreement: Inter Mountain Slurry and Gunnison County

Term Begins: **Term Ends:** 7/31/2018 **Grant Contract #:**

Summary:

This is the joint bid for slurry seal between the City, the County and Mt. Crested Butte.

Fiscal Impact: $53,760.00

Submitted by: Marlene D. Crosby **Submitter's Email Address:** mcrosby@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, the 2018 adopted budget has appropriations to cover this cost. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 5/9/2018

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

Comments:
The bid documents in and of themselves are legally sufficient. However, as noted by the submitter, issues remain regarding the sufficiency of the proposed contract. CAO does not recomment approval of the contract at this time and until such issues are addressed. MRH

(PS Please excuse the typos in the A/C Comments below -- the software is not permitting me to make approprirate changes).

Reveiwed by: GUNCOUNTY1\mhoyt Discharge Date: 5/10/2018 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 5/10/2018

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

Agenda Date: 5/15/2018

Revised April 2015

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT is made this ___ day of _____, 20__, by and between _____ (hereinafter referred to as "Contractor"), and the Gunnison County, Colorado; (hereinafter the "Owner").

WITNESSETH:

WHEREAS, the Owners desires that Contractor perform the duties of general contractor for the construction of certain improvements, namely the Multi-Agency 2018 Slurry Seal Project (hereinafter the "Project"); and

WHEREAS, Contractor desires to perform such duties pursuant to the terms and conditions provided for in this Agreement; and

WHEREAS, the parties hereto desire to set forth certain understandings regarding the Project in writing.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Statement of Work. Contractor agrees to manage and supervise the construction of the 2018 Slurry Seal Project located in Gunnison County, Colorado, as directed by the Owners and pursuant to the individual owners Municipal Codes and according to the bid schedule and attached slurry seal specification. Contractor shall (a) furnish all tools, equipment, supplies, superintendence, transportation and other construction accessories, services and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete work; (c) provide and perform all necessary labor in a substantial and skillful manner and in accordance with the provisions of this Agreement; and (d) execute, construct and complete all work included in and covered by this Agreement.

2. Time of Commencement and Completion. Construction under this Agreement shall be completed by **July 30, 2018** ("Completion Date"). The Completion Date may, at the Owner's sole discretion, be extended if approved by the Owner in writing. If, due to misconduct or neglect, Contractor fails to complete the Project on or before the Completion Date, the Owner may deduct liquidated damages in the amount of $100.00 from the contract price per day for each day Contractor works beyond this date. It is understood by Contractor and the Owner that actual damages caused by Contractor's failure to complete this Agreement on time are impracticable or extremely difficult to fix, and that the per diem deduction from the contract price will be retained by the Owner as payment by Contractor of liquidated damages, and not as a penalty.

3. Compensation. Owner shall pay and Contractor shall receive the contract price of $_____ as stipulated in the Notice of Award, attached to this contract as Exhibit A and incorporated herein by this reference, as FULL compensation for everything furnished and done by Contractor under this Agreement, including all loss or damage arising out of the work or from the action of the elements; for any unforeseen obstruction or difficulty encountered in the prosecution of the work, including increased prices for or shortages of materials for any reason, including natural disasters; for all risks of every description associated with the work; for all expenses incurred due to the suspension or discontinuation of the work; and for well and faithfully completing the work as provided in this Agreement.

4. Draw Requests. Contractor agrees to perform all work on the Project according to the schedules set forth in the approved Bid Proposal attached hereto as Exhibit B and incorporated herein by this reference. Contractor shall submit bi-weekly progress reports to the Maintenance Supervisor or his designee showing actual costs incurred and work completed. Upon review and approval of the progress reports and draw requests by the Maintenance Supervisor or his designee, the Owner agrees to pay Contractor the amounts shown on all draw requests, minus a ten percent (10%) retainage, no later than the fifteenth (15th) business day following the date the draw request was submitted and approved. Payments may be withheld if:

A. Work is found defective and not remedied;

B. Contractor fails to meet schedules as agreed to, as may be amended by the actual construction commencement date.

C. Contractor does not make prompt and proper payments to subcontractors;

D. Contractor does not make prompt and proper payments for labor, materials, or equipment furnished;

E. Another contractor is damaged by an act for which Contractor is responsible;

F. Claims or liens are filed on the job; or

G. In the opinion of the Owner, Contractor's work is not progressing satisfactorily.

The Owner shall disburse the total retainage and the final draw request submitted by Contractor upon acceptance of the Project as described in Paragraph 12 below.

5. Liability for Damages. The Owner its officers, agents or employees, shall not in any manner be answerable or responsible for any loss or damage to the work or to any part of the work; for any loss or damage to any materials, building, equipment or other property that may be used or employed in the work, or placed on the worksite during the progress of the work; for any injury done or damages or compensation required to be paid under any present or future law, to any person, whether an employee of Contractor or otherwise; or for any damage to any property occurring during or resulting from the work. Contractor shall indemnify the Owner, its officers,

agents and employees, against all such injuries, damages and compensation arising or resulting from causes other than the Owner's neglect, or that of its officers, agents or employees.

6. Inspection of Work and Materials.

A. The Owner Manager or his designee may appoint and employ such persons as may be necessary to act as inspectors or agents for the purpose of supervising in the interests of the Owner materials furnished and work done as the work progresses.

B. The Owner shall at all times have unrestricted access to all parts of the work and to other places where or in which the preparation of materials and other integral parts of the work are being carried on and conducted. Contractor shall fully cooperate with the Owner's staff and appointed inspectors during the course of the work.

C. Contractor shall provide all facilities and assistance required or requested to carry out the work of supervision and inspection by the Owner, including soil, concrete, hot mix asphalt and other material tests.

D. Inspection of the work by the above-mentioned authorities or their representatives shall in no manner be presumed to relieve in any degree the responsibility or obligations of Contractor.

E. No material of any kind shall be used in the work until it has been inspected and accepted by the Owner. All rejected materials shall be immediately removed from the premises. Any materials or workmanship found at any time to be defective shall be replaced or remedied at once regardless of previous inspection. Inspection of materials shall be promptly made, and, where practicable, at the source of supply.

F. Whenever the specifications, the instructions of the Owner or the laws, ordinances or regulations of any public authority require work to be specially tested or approved, Contractor shall give the Owner timely notice of its readiness for inspection, and if the inspection is by another authority, of the date fixed for the inspection.

7. Insurance. Contractor shall not commence work under this Agreement until Contractor has obtained all insurance required under this section and the insurance has been approved by the Owner Manager or his designee. Similarly, Contractor shall not allow any approved subcontractor to commence work on his or her subcontract until all similar insurance required of subcontractor has been so obtained and approved. The following insurance shall be required:

A. Commercial General Liability Insurance: At a minimum, combined single limits of $1,000,000 per occurrence and $1,000,000 for general aggregate for bodily injury and property damage, which coverage shall include products/completed operations, independent contractors, and contractual liability each at $1,000,000 per occurrence.

B. Workers' Compensation and Employer's Liability: Workers' compensation insurance for all of Contractor's employees engaged in work at the site of the project including occupational disease coverage in accordance with scope and limits as required by the State of Colorado.

C. Comprehensive Automobile Liability Insurance: Including coverage for all owned, non-owned, and rented vehicles with $1,000,000 combined single limit for each occurrence.

The Owner shall be named as an additional insured. All insurance policies must be written in a manner consistent with the requirements of the Standard Form Agreement. Certificates of insurance shall be issued prior to execution of the Notice to Proceed.

8. Performance Bond. To secure performance of Contractor's obligations under this Agreement, the Contractor shall provide the Owner with a Performance Bond in the amount of the full contract price. Prior to execution of this Agreement, the Contractor shall provide the form of the Performance Bond to the Owner for its review and approval. The Owner shall be authorized to draw upon the Performance Bond to correct any default by Contractor under this Agreement, which default shall be determined and substantiated by an Affidavit of Default signed by the Owner Manager. The Performance Bond shall be held by the Owner through the one-year warranty period specified in Paragraph 13 below.

9. Payment of Labor and Materials Bond. To secure performance of Contractor's obligations under this Agreement to its subcontractors and suppliers, Contractor shall provide the Owner with a Payment of Labor and Materials Bond in the amount of the full contract price. Prior to execution of this Agreement, the Contractor shall provide the form of the Payment of Labor and Materials Bond to the Owner for its review and approval. The Owner shall be authorized to draw upon the Payment of Labor and Materials Bond to correct any default by Contractor under this Agreement, which default shall be determined and substantiated by an Affidavit of Default signed by the Owner Manager. The Payment of Labor and Materials Bond shall be held by the Owner through the one-year warranty period specified in Paragraph 13 below.

10. Notice to Proceed. Notice to Proceed shall be issued within ten (10) calendar days of the execution of this Agreement by all parties. If the Owner fails to issue such Notice to Proceed within that time limit, Contractor may terminate the Agreement without further liability on the part of either party. Such notice of termination must be tendered in writing to the Owner. Additionally, the parties may mutually agree that the time for the Notice to Proceed may be extended.

11. Compliance with Laws. Contractor and every subcontractor or person doing or contracting to do any work contemplated by this contract shall keep himself or herself fully informed of all national and state laws and all municipal ordinances and regulations in any manner affecting the work or performance of his or her contract or any extra work, and shall at all times observe and comply with such laws, ordinances and regulations, whether or not the laws, ordinances or regulations are mentioned in this contract, and shall indemnify the Owner, its officers, agents and employees, against any claim or liability arising from or based on the violation of any such laws, ordinances or regulations.

12. Certificates and Permits. Contractor shall secure at Contractor 's own expense all necessary certificates, licenses and permits from municipal or other public authorities required in connection with the work contemplated by this Agreement or any part of this Agreement, and shall give all notices required by law, ordinance or regulation. Contractor shall pay all fees and charges incident to the due and lawful prosecution of the work contemplated by this Agreement, and any extra work performed by Contractor.

13. Termination. The Owner may, at its sole discretion, terminate this Agreement without liability in the event that Contractor fails to provide the Performance Bond and/or Payment of Labor and Materials Bond, Certificates of Insurance required by Paragraph 7, or otherwise fails to meet the conditions precedent to issuance of the Notice to Proceed set forth in Paragraph 10 above. The Owner may also, at its sole discretion, on one week's notice to Contractor, terminate this Agreement without liability before the completion date, and without prejudice to any other remedy the Owner may have, when Contractor defaults in the performance of any provision, or fails to carry out the construction of the Project in accordance with the provisions of this Agreement.

14. Substantial Completion/Acceptance. The date of substantial completion of the Project shall be a date mutually agreed upon by the Owner and Contractor. In the event that the Owner and Contractor do not reach an agreement as to the date of substantial completion, the Owner Council shall determine such date. Upon the date of substantial completion, Contractor or its engineer shall certify in writing that the improvements have been completed in conformance with the plans and specifications and submit to the Owner a completed acceptance checklist utilizing a form approved by the Owner. Thereafter, and within thirty (30) business days after a request for final inspection by Contractor, the Owner shall inspect the Project and notify Contractor in writing and with specificity of their conformity or lack thereof to the plans and specifications. Contractor shall make all corrections necessary to bring the Project into conformity with the plans and specifications. Once any and all corrections are completed, the Owner shall promptly notify Contractor in writing that the Project is in conformance with the approved plans and specifications, and the date of such notification shall be known as the Acceptance Date. The Acceptance Date shall coincide with the commencement of the one year warranty period described in Paragraph 15 below. Within thirty (30) days of the Acceptance Date, the Owner shall pay Contractor the amount shown on the final draw request; provided, however, that the amount of funds left from the contract price specified in the Notice of Award are sufficient to cover this amount.

15. Warranty. Contractor shall warrant any and all improvements constituting the Project constructed for the Owner pursuant to this Construction Agreement for a period of twelve (12) months from the Acceptance Date as set forth in Paragraph 14 herein. Specifically, but not by way of limitation, Contractor shall warrant that:

A. Any and all improvements constituting the Project shall be free from any security interest or other lien or encumbrance; and

B. Any and all improvements and structures so conveyed shall be free of any defects in materials or workmanship for a period of one (1) year, as stated above. Additionally, the culvert backfill, road base and paving shall be warranted for a period of 2 years from the time of final completion.

16. Corrections to Project. If, within one (1) year after the date of substantial completion, any of Contractor's work on the Project is found to be not in accordance with the standards set forth in the preceding Paragraph 15, Contractor shall, at Contractor's expense, correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously accepted such condition. Such notice shall be either delivered personally or by overnight express courier, or sent by registered or certified mail, postage prepaid, return receipt requested, and must be received by Contractor as soon as practicable after the Owner discovers the defect or the loss or damage caused by such defect, but in no event later than the date that the warranty given hereby expires.

17. Modifications. The Owner may modify this Agreement with respect to the arrangement, character, alignment, grade or size of the work or appurtenances whenever in its opinion it shall deem it necessary or advisable to do so. Contractor shall accept such modifications when ordered in writing by the Owner Manager or his designee. Any such modifications shall not subject Contractor to increased expense without equitable compensation, which compensation may be approved by the Owner pursuant to its Purchasing Policy. If any modification results in a decrease in the cost of work involved, an equitable deduction from the contract price shall be made. These deductions shall be determined by the Owner Manager or his designee. The determination of any such additional compensation or deduction shall be based on the bids submitted and accepted. No modifications in the work shown on the plans and described in the specifications shall be made, unless the nature and extent of the modifications has first been certified by the Owner in writing and sent to Contractor.

18. Attorneys' Fees; Survival; Costs of Collection. Should this Agreement become the subject of legal action to resolve a claim of default in performance by any party, including the collection of past due amounts, the non-prevailing party shall pay the prevailing party's reasonable attorneys' fees, expenses, and court costs. All rights concerning remedies and/or attorneys' fees shall survive any termination of this Agreement.

19. Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement.

20. Assignment. This Agreement may not be assigned without the prior written consent of the non-assigning party.

21. Amendment. This Agreement shall not be amended, except by subsequent written agreement of the parties.

22. Entire Agreement. This Agreement, **along with any addendums and attachments hereto**, constitutes the entire agreement between the parties. The provisions of this Agreement may be amended at any time by the mutual consent of both parties. The parties shall not be bound by any other agreements, either written or oral, except as set forth in this Agreement.

23. Captions. The captions in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit, or prescribe the scope or intent of this Agreement or any part thereof.

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

25. Invalid Provision. If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect. It is the intention of the parties hereto that, if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

26. Notices. Written notices required under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the Owner: Joe Fitzpatrick – Town Manager – Town of Mt. Crested Butte
David Gardner – Public Works Director – City of Gunnison
Marlene Crosby – Public Works Director – Gunnison County

If to Contractor: _____ –

27. Authority. Each person signing this Agreement represents and warrants that he is fully authorized to enter into and execute this Agreement, and to bind the party it represents to the terms and conditions hereof.

28. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed one and the same instrument.

WHEREFORE, the parties hereto have executed duplicate originals of this Construction Agreement on the day and year first written above.

[CONTRACTOR]:

By _____
Name _____
Title _____

Representing: _____, COLORADO:

By _____
Owner/Manager

ATTEST:

_____
Owner Clerk

Packet Materials Submittal Form

The deadline for form submittal is 12 noon on Thursday prior to the meeting.

Date of Submittal	05/02/18
Scheduled Agenda Data *	5/8/2018
Agenda Item Name *	Award of Multi-Jurisdictional Slurry Seal Bid
Fiscal Impact *	Please provide your assessment of the financial impact to the City. Include the total cost and whether or not your request is already included in the budget or requires modification to the existing budget. Request to award bid is a budged item of the 2018 city budget.
Submitter Comments	Optional: Enter any comments you would like to convey to the reviewers of your submittal. Original Engineer Estimate of Probable Cost was $567,064.00. Low bid received is in the amount of $328,500.00. This is a savings of $238,564.00.
Document Upload *	Upload or drag packet files here. You may use any format. If sending an ordinance or resolution, please be sure to submit that Word document as well. If you are submitting multiple files, please name them in a fashion that identifies the desired order. ,

Bid Tabulation April 30 2018.xlsx	56.78KB
Bid Schedule Executed Addendum Intermountain Slurry.pdf	167.93KB
scanner@gcinc.com_20180502_165304.pdf	469.49KB
Bid Bond Intermountain Slurry Seal.pdf	318.57KB
Slurry Seal Award memo May 8 2018 (3).docx	212.31KB
Notice Waiver 80 Percent Colorado Labor Requirement 2018 via Intermountain (2).docx	13.78KB

Department *	Public Works Department
Submitted By *	David M. Gardner
Email *	dgardner@gunnisonco.gov
Department Head *	David Gardner
Director Email *	dgardner@gunnisonco.gov

Multi Agency - 2018 Slurry Seal Project

Bid Schedule and Form

Item #	Quantity (SY)	Description	Unit Price/SY	Total Price
1	152,000	City of Gunnison Road	1.68	255,360.00
2	32,000	Gunnison County Roads	1.68	53,760.00
3	10,200	Town of Mt. Crested Butte Roads	1.90	19,380.00
			TOTAL BID:	$328,500.00

TOTAL Project: $Three hundred twenty eight thousand Five hundred
(written)

Intermountain Slurry Seal, Inc.
company

Shawn Fielding
authorized person

Shawn Fielding / Construction Manager
typed/printed title

ADDENDUM ORDER #1

DATE: April 12, 2018

NAME OF PROJECT: 2018 Multi-Agency Roads Slurry Seal Projects PROJECT BID DATE: April 30, 2018

OWNER: City of Gunnison, Town of Mt Crested Butte and Gunnison County

ENGINEER: SGM Inc.

The following clarifications and changes and/or clarifications are made to the Contract Documents:

1. Clarification: The Bid Opening Date is April 30, 2018 at 11:00 AM.
2. The Bid Advertisement shall be changed to read:

   "The work of this project shall be completed no later than July 30, 2018."
3. This addendum form must be signed and returned with the contractors bid forms.

PREPARED BY:

/s/ G. Burgess SGM Inc.

ADDENDUM ACKNOWLEDGED BY (contractor):
Intermountain Slurry Seal, Inc.
Shawn Fielding, Construction Manager

(contractor signature)

April 12, 2018
Date

City of Gunnison Public Works
Certified Bid Tabulation
2018 Multi-Agency Roads Slurry Seal Projects

					Avery Asphalt Inc. 7770 Venture St. Colorado Springs, CO		A-One Chip Seal 2505 E. 74th Ave. Denver, CO		Inter Mountain Slurry 520 N 400 W North Salt Lake, UT		Vance Brothers 380 W 62nd Ave Denver, CO 80216	
M NO.	**Addend yes/no**	**DESCRIPTION**	**ITEM UNIT**	**EST QTY**	**UNIT PRICE**	**TOTAL PRICE**	**UNIT PRICE**	**TOTAL PRICE**	**UNIT PRICE**	**TOTAL PRICE**	**UNIT PRICE**	**TOTAL PRICE**
1	y	City of Gunnison Roads	SY	152,000	$ 4.00	$ 608,000.00	$ 2.08	$ 316,160.00	$ 1.68	$ 255,360.00	$ 2.16	$ 328,320.00
2	y	Gunnison County Roads	SY	32,000	$ 4.90	$ 156,800.00	$ 2.08	$ 66,560.00	$ 1.68	$ 53,760.00	$ 2.16	$ 69,120.00
3	y	Town of Mt. Crested Butte Roads	SY	10,200	$ 5.50	$ 56,100.00	$ 2.63	$ 26,826.00	$ 1.90	$ 19,380.00	$ 2.16	$ 22,032.00
		TOTAL BID				$ 820,900.00		$ 409,546.00		$ 328,500.00		$ 419,472.00

This is a certified tabulation of the bids received on April 30, 2018 for the City of Gunnison, CO - Mulit Jurisdictional Bids

Signed: _____

David M. Gardner, PE
Public Works Director