

CONSTRUCTION CONTRACT  
(Contractor Payment Bond and Performance Bond)

This CONTRACT is made and entered into this 7th day of July by and between CITY OF CEDAR HILLS of Cedar Hills, Utah, a Municipal Corporation in the County of Utah, State of Utah, in the Contract Documents referred to as the "City," and ( Kilgore Companies ), herein referred to as the "Contractor".

RECITALS

WHEREAS, the City advertised that sealed Bids would be received for furnishing all labor, tools, supplies, equipment, materials and everything necessary and required for the Project described by the Contract Documents and known as 2015 ASPHALT LEVLEING, EDGE MILL & OVERLAY PROJECT; and

WHEREAS, the Contract has been awarded to the above named Contractor by the City, and said Contractor is now ready and able to perform the work specified in the Notice of Award, in accordance with the Contract Documents.

NOW, THEREFORE, in consideration of the mutual promises and performances stated herein, the sufficiency of which all parties acknowledge, it is agreed as follows:

ARTICLE 1

Contract Documents. It is agreed by the parties that the following list of instruments, drawings, and documents which are attached and incorporated by reference constitute and shall be referred to either as the Contract Documents or the Contract, and all of said instruments, drawings, and documents taken together as a whole constitute the Contract between the parties:

- a. Bid specifications for the Project;
- b. Official design prints and specifications furnished by or to the Contractor and approved by the City;
- c. Change orders, approved written instructions, and written contract amendments;
- d. Performance and Payment bonds;
- e. General and Supplementary Conditions; and
- f. Notice of Award.

## ARTICLE 2

Definitions. In accordance with Article 1, the definition of items provided in the General Contract Conditions applies to their usage in the Contract and other portions of the Contract Documents.

## ARTICLE 3

Contract Work. The Contractor agrees to furnish all labor, supervision, tools, supplies, equipment, materials, and all that is necessary and required to complete the tasks associated with or described in the Contract Documents, as limited to those items as indicated in the Notice of Award (the "Work"). Contractor warrants that all construction shall be completed in a workmanlike manner and in accordance with all plans, specifications, and applicable building codes.

a. Upon request, Contractor shall provide to the City a list of all subcontractors who will provide construction services under the Contract. All goods and services provided by subcontractors, material suppliers, and laborers shall be pursuant to written agreement between all such persons and the Contractor. Contractor shall be solely responsible for supervision of all of its employees and subcontractors, and assuring that work by those persons conforms to the Contract Documents. Contractor shall be solely responsible for payment to all laborers, subcontractors, and material suppliers in connection with work performed under the Contract. Any non-payment by Contractor of sums owing to laborers, material suppliers, or subcontractors is material breach of this Contract. The City, in its discretion, shall be authorized to contact subcontractors, material suppliers, and laborers working on the project for the purpose of verifying compliance with this Section.

## ARTICLE 4

Contract Time and Liquidated Damages. The Contractor hereby agrees to commence work under the Contract on or before the date specified in a written Notice to Proceed from the City, and to substantially and fully complete the work within the time specified in the Special Conditions. In the event that the work is not completed in the times set forth and as agreed upon, the Contractor further agrees to pay Liquidated Damages to the City as set forth in the Special Conditions.

Special Conditions: The Contractor shall complete the Work no later than October 31, 2015. Liquidated damages for delay in the amount of \$100 per day shall be assessed against the Contractor in the event that the Work is not finally complete and accepted by the City by the agreed completion date. Remedies under this Article 4 are cumulative to any other remedies provided in this Contract.

## ARTICLE 5

Contract Price and Payment Procedures. The Contractor shall accept as full and complete compensation for the performance and completion of all of the work specified in this Contract and the Contract Documents, the sum of \$ 85,580 ("Contract Price"). The Contract Price has been lawfully appropriated by the City Council of the City of Cedar Hills for the use and benefit of the Project. The Contract Price shall not be modified except by written change order, as set forth below.

a. Partial payments shall be made proportionate to the progress of the work according to the following schedule and (if applicable) the schedule of values in the Contract Documents.

Pay Applications shall be prepared by the Contractor and subject to review and approval by the Project Manager based upon the schedule, above. In no event shall the Contractor be entitled to progress payments exceeding percentage of the Work that is completed in accordance with the Contract Documents, less retainage, inclusive of materials ordered and delivered to the site as measured against the total Contract Price.

b. The City shall retain the sum of five percent (5%) of the total Contract Price, which sum shall be disbursed to Contractor no later than ten (10) days from the date when the Work is determined by the City to be finally complete and in conformity with the Contract Documents.

c. In the event of default under this Contract, the City may retain and deduct from the sums owing under this Contract amounts sufficient to cure or abate the breaching condition, damages, or event.

## ARTICLE 6

Bonds and Insurance. a. Contemporaneous with issuance of the Notice to Proceed Contractor shall furnish to the City payment and performance bonds acknowledged by a surety licensed and authorized to do business in the State of Utah, in a form acceptable to the City, and in an amount equal to the total Contract Price. The bonds shall be attached to and incorporate by reference the Contract Documents. The bonds shall be issued pursuant to U.C.A. § 63-56-38 for the use and benefit of subcontractors, laborers, and material suppliers, and for the use and benefit of the City to secure Contractor's performance of its construction obligations under this Contract. Alternately, Contractor may provide an irrevocable letter of credit in a form acceptable to the City and naming the City as beneficiary for the purpose of satisfying its payment and performance bond obligations.

b. Bonds in amounts of \$1,000.00 or less will be made in multiples of \$100.00; in amounts exceeding \$5,000.00, in multiples of \$1,000.00; provided that the amount of the bond shall be fixed at the lowest sum that fulfills all conditions of the Contract.

c. The letter of credit, payment bond, and performance bond shall be released no later than one year from the date of award of this Contract, provided that no person has provided a demand for payment as provided by law or commenced an action seeking payment against the City or under any such instrument within that time. In the event any person described in subsection (a), above, issues a demand or commences suit against the City, the City shall be entitled to draw upon the bond or letter of credit to the extent of all sums claimed, including reasonable attorney fees and court costs that may be

incurred by the City. At its option, the City may elect to interplead said funds into a court of competent jurisdiction, at which point the City will be discharged of any further liability. In the event the City declares default under this Contract, it shall be entitled to proceed against the Performance Bond.

d. Contractor shall obtain written lien and payment waivers as specified in Exhibit A, attached, from all laborers, subcontractors and material suppliers contemporaneous with each payment advanced to those persons under this Contract. Upon final completion of the Contract, or upon tender of the final payment to each such subcontractor or material supplier, Contractor shall obtain a final lien and payment waiver. The waivers shall be on forms acceptable to the City, and Contractor shall deliver all such waivers contemporaneous with each disbursement pursuant to the Contract.

e. Contractor shall provide a Certificate of Insurance as outlined in the following insurance requirements. The limits of liability for the insurance required by the Contractor shall provide coverage for not less the following amounts or greater where required by law:

#### Workers' Compensation

- |    |                       |                              |
|----|-----------------------|------------------------------|
| 1. | State:                | Statutory                    |
| 2. | Applicable Federal:   | Statutory                    |
| 3. | Employer's Liability: | State Insurance Requirements |

#### Comprehensive General Liability:

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|----|---|--|
| 1. | Bodily Injury:<br>\$1,000,000 (combined single limit CSL)<br>\$1,000,000  | Each Occurrence<br>Annual Aggregate, including<br>Products and Completed Operations Hazard |
| 2. | Property Damage:<br>\$1,000,000 CSL<br>\$1,000,000  | Each Occurrence<br>Annual Aggregate  |
| 3. | Property Damage Liability Insurance shall provide Explosion, Collapse, and Underground coverage where applicable. |  |
| 4. | Personal Injury, with employment exclusion deleted.<br>\$1,000,000 CSL  |  |

#### Comprehensive Automobile Liability:

- |    |  |                              |
|----|--|------------------------------|
| 1. | Bodily Injury:<br>\$1,000,000 CSL<br>\$1,000,000 CSL | Each Person<br>Each Accident |
| 2. | Property Damage:<br>\$1,000,000 CSL                  | Each Occurrence              |

Contractor shall maintain insurance covering casualty to materials purchased for the Work and stored on or off site.

f. The Comprehensive liability insurance shall include completed operations hazard insurance. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded or canceled, materially changed, or renewal refused until at least thirty days prior written notice has been given to the City by certified mail. All such insurance shall remain in effect until final acceptance of the Work by the City, and at all times thereafter when Contractor may be correcting, removing, or replacing defective work. The City shall be endorsed as an additional insured under the general liability policy.

g. Contractor shall record a Notice of Commencement and Notice of Completion and, as provided under U.C.A. § 38-1-31 and § 38-1-33.

## ARTICLE 7

Integrated Contract; Change Orders. The Contract Documents constitute the entire agreement between the City and Contractor, and shall supersede any prior representations or discussions. The Contract may only be altered, amended or repealed by a duly executed written agreement signed and lawfully approved by both parties, except as noted by subsection (b), below. This Contract shall not be assigned, in whole or in part, except upon approval in writing by both parties.

a. Contractor shall not be entitled to compensation in excess of the Contract Price, nor shall additional work be undertaken, except upon approval of a change order signed by both parties. The change order shall specify the upward or downward change in the Contract Price, the scope of the work to be performed or omitted, and the change in the Contract Time, if applicable.

b. In the event that budgetary, or other unforeseen circumstances, render completion of the Contract Work impracticable, the City, in its discretion, may unilaterally issue a construction change directive reducing the scope of the Work or omitting certain items from the Contract. In that event, the Contract Price will be proportionately reduced. Construction change directives may only be issued with respect to work that has not been performed as of the date of the change.

## ARTICLE 8

Warranties. The Contractor warrants to the City that all the construction performed under this Contract shall be constructed in a workmanlike manner, in accordance with approved plans and applicable building codes, and free from defects of workmanship, labor, and materials, for a period of one year from the date of final completion of the improvements, as certified by the Project Manager. Upon written notice from the City, Contractor agrees to repair or replace any Contract Work that is found to be defective.

## ARTICLE 9

Extensions. For good cause shown, the City may grant a reasonable extension of time for the completion of improvements pursuant to this Contract. Good cause may include acts of God, severe

weather disturbances (beyond those conditions which are typical to the Cedar Hills climate), floods, strikes, riots, or other acts or causes which are unforeseen and beyond the Contractor's control. Extensions of time or change orders for additional compensation shall not be authorized for inexcusable delay, which shall be defined to include, but not be limited to, inadequate crewing; inadequate supervision; late ordering of materials; failure to properly coordinate work; or similar events which could have been avoided with proper foresight, care, or planning by Contractor. All extensions shall be approved in the manner provided for change orders

## ARTICLE 10

Legal Compliance, Safety, Indemnity. Contractor hereby warrants that it is licensed and authorized to do business in the State of Utah; that it maintains complying policies for workers compensation coverage and that said coverage shall be in place for the duration of its performance under this Contract; that it maintains insurance coverage as described in this Contract; and that all such policies shall be in place for the duration of this Contract. Contractor further warrants that it shall perform this Contract in compliance with all applicable City, state, and federal laws, including all applicable regulations governing workplace safety, including but not limited to those promulgated by the Occupational Safety and Health Administration (OSHA). With respect to workplace safety, Contractor shall at all times employ properly trained individuals and subcontractors, who shall work under appropriate supervision. Contractor shall also hold regular safety meetings as necessary and appropriate, given the particular safety issues presented by the Work.

a. Contractor hereby agrees to indemnify and hold the City, its officers, employees, and agents harmless from all demands, claims, suits, or liabilities, including reasonable attorney fees, as result of damages, losses, or injuries, including death, to persons not a party to this agreement and deriving, directly or indirectly, from the actions, omissions, or breaches of duties by the Contractor, its officers, agents, employees, subcontractors, or suppliers in the performance of the Contract or in discharging its legal duties, generally. This duty to indemnify shall apply to all claims by Contractor's employees, subcontractors, or material suppliers with respect to any liabilities incurred by Contractor in the performance of this Contract.

## ARTICLE 11

Remedies. The failure by either party to perform or carry out any of the obligations in this Contract or to perform the construction in accordance with the Contract Documents shall be grounds to declare default. In the event of default, the non-breaching party shall be entitled to recover all actual damages resulting from breach, in addition to the other remedies specified in this Contract. Actual damages shall include reasonable and necessary costs of completion of the Work or repair or replacement of Work which does not conform to the Contract Documents. In no event shall either party be liable to the other for consequential damages. In addition to any other remedies, in any legal action arising from this Contract the substantially prevailing party shall be entitled to recover its reasonable attorney fees and court costs.

## ARTICLE 12

Venue, Choice of Law, Interpretation. The place of performance under this Contract is Grand County, Utah. In the event of any legal dispute concerning the subjects of this agreement the parties

stipulate to jurisdiction and venue in the District Court, Grand County, Utah. This contract shall be construed in accordance with the laws of the state of Utah.

- a. There are no known or intended third party beneficiaries to this Contract.
- b. This Contract is the product of mutual bargaining. It shall be construed in accordance with its plain meaning, regardless of the extent to which either party participated in the drafting.

### ARTICLE 13

Notice of Breach, Limitation of Actions. In the event of the occurrence of any breach of the terms of this contract the non-breaching party shall promptly deliver written notice of same to the other party and allow a reasonable period of time for the other party to cure or abate the breaching condition. It shall not be necessary for any party to deliver multiple notices in the case of repeat or ongoing violations. Any legal action arising from this Contract shall be filed not more than one year from the act, event, or omission constituting breach, and not thereafter.

a. Delivery of notice shall be deemed sufficient if personally delivered or sent by First Class mail as follows:

City Recorder  
City of Cedar Hills  
10246 N. Canyon Road  
Cedar Hills, Utah 84062

Contractor:

The City of Cedar Hills has caused this Contract to be subscribed by its City Manager and attested by its City Recorder on its behalf; and the Contractor has signed this Contract as set forth below.

City of Cedar Hills, Utah

Date: 8/21/15

By: [Signature]

ATTEST:

[Signature]  
City Recorder

(Seal)



Contractor:

Date: 8/26/15

By: [Signature]

Title Aren Manager

State of Utah )  
                          §  
County of Utah )

On the 26 day of August, personally appeared before me Winn Lindsey, who duly acknowledged to me that they executed the same.

[Signature]

Notary Public  
Residing in: Salt Lake City

My Commission Expires:  
2/28/17

