

**TOWN OF TIMNATH, COLORADO  
RESOLUTION NO. 74, SERIES 2015**

**A RESOLUTION APPROVING THE AGREEMENT WITH MCCAULEY  
CONSTRUCTORS, INC. FOR THE  
TOWN OF TIMNATH COMMUNITY PARK**

**WHEREAS**, the Town Council of the Town of Timnath (“Town”) pursuant to C.R.S. § 31-15-103, has the power to pass resolutions; and

**WHEREAS**, attached hereto as Exhibit A is the Agreement between the Town of Timnath and McCauley Constructors, Inc. (the “Agreement”); and

**WHEREAS**, the Town Council is familiar with the Agreement and finds it to be in the best interest of the Town, its residents, and the general public.

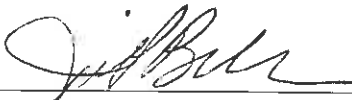
**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO as follows:**

**Section 1. Approval**

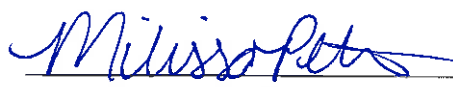
The Agreement is hereby approved in substantially the form as attached hereto, subject to technical or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants.

**INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON OCTOBER 13, 2015.**

**TOWN OF TIMNATH, COLORADO**

  
\_\_\_\_\_  
Jill Grossman-Belisle, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Milissa Peters, CMC  
Town Clerk



**EXHIBIT A**  
**AGREEMENT**

# **AGREEMENT**

This agreement is dated as of the 13th day of October, 2015 by and between:

Town of Timnath (hereinafter called Owner) and

McCauley Constructors, Inc. (hereinafter called Contractor).

Owner 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 in the Contract Documents. The work is generally described as follows: Town of Timnath Community Park

## **ARTICLE 2. ENGINEER**

The project has been designed by TST, Inc. Consulting Engineers who is hereinafter called Engineer and who will assume all duties and responsibilities and will have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the work in accordance with the Contract Documents.

## **ARTICLE 3. CONTRACT TIME**

- 3.1 The work will be substantially completed by 5/1/2016 or within 180 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions by 6/1/2016 or within 270 calendar days after the date when the Contract Time commences to run.
- 3.2 **Liquidated Damages:** Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the work is not substantially complete on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner five hundred dollars (\$500.00) for each calendar day that expires after the time specified in paragraph 3.1 for substantial completion until the work is substantially complete.
- 3.3 After Substantial Completion if Contractor shall neglect, refuse or fail to complete the remaining work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner five hundred dollars (\$500.00) for each calendar day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

#### **ARTICLE 4. CONTRACT PRICE**

4.1 Owner shall pay Contractor for performance of the work in accordance with the Contract Documents in current funds as follows: two million, six hundred ninety-nine thousand, forty-two dollars and sixteen cents. \$2,699,042.16.

#### **ARTICLE 5. PAYMENT PROCEDURES**

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

5.1 **Progress Payments.** Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, on or about the 10th day of each month following the month that the Engineer received and processed the application during construction as provided below. All progress payments will be on the basis of the progress of the work measured by the schedule of values established in paragraph 2.07 of the General Conditions (and in the case of Unit Price work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

5.1.1 Prior to Substantial Completion progress payments will be in the amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall determine, or Owner may withhold, in accordance with paragraph 14.02 of the General Conditions.

Ninety-five percent (95%) of work completed.

Ninety-five percent (95%) of materials and equipment not incorporated in the work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in paragraph 14.02 of the General Conditions).

5.1.2 Upon Substantial Completion in an amount sufficient to increase total payments to Contractor to ninety-five percent (95%) of the Contract Price, less such amounts as Engineer shall determine or Owner may withhold in accordance with paragraph 14.02 of the General Conditions.

5.2 **Final Payment.** Upon final completion and acceptance of the work in accordance with paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph 14.07.

#### **ARTICLE 6. INTEREST**

All moneys not paid when due hereunder as provided in Article 14 of the General Conditions shall bear interest at a rate not exceeding 12.0 percent per annum.

#### **ARTICLE 7. CONTRACTOR'S REPRESENTATIONS**

In order to induce Owner to enter into this Agreement Contractor makes the following representations:

- 7.1 Contractor has familiarized himself with the nature and extent of the Contract Documents, work, site, locality, and with all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the work.
- 7.2 Contractor has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions, and accepts the determination set forth in paragraph SC-4.02 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which Contractor is entitled to reply.
- 7.3 Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies (in addition to or to supplement those referred to in paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.02 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.
- 7.4 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents 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 the Contract Documents, including specifically the provisions of paragraph 4.04 of the General Conditions.
- 7.5 Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- 7.6 Contractor has given Engineer written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.

## **ARTICLE 8. CONTRACT DOCUMENTS**

The Contract Documents which comprise the entire agreement between Owner and Contractor concerning the work consist of the following:

- 8.1 This Agreement (pages 1 to 6, inclusive).
- 8.2 Performance and Labor and Material Payment Bond.
- 8.3 Notice of Award.
- 8.4 General Conditions (pages 1 to 62, inclusive).
- 8.5 Supplementary Conditions (pages 1 to 9, inclusive).

- 8.6 Drawings, consisting of a cover sheet and sheets numbered 1 through 8 inclusive with each sheet bearing the following general title: Harmony Median Landscape Improvements.
- 8.7 Contractor's Bid.
- 8.8 The following which may be delivered or issued after the Effective the date of the Agreement and are attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

#### **ARTICLE 9. MISCELLANEOUS**

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents 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 under the Contract Documents.
- 9.3 Owner 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 the Contract Documents.

#### **ARTICLE 10. PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS**

1. The Contractor shall not:
  - (A) Knowingly employ or contract with an illegal alien who will perform work under the public contract for services; or
  - (B) 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 who is newly hired to perform work under the public contract for services.
2. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the employment verification program established pursuant to C.R.S. 8-17.5-102(5) ("the Department Program") or the electronic employment verification program created in Public Law 104-208, as amended, and expanded in Public Law 108-156, as amended and jointly administered by the United States Department of Homeland Security and the Social Security Administration , or its successor program ("the E-verify Program")

3. The Contractor shall use either the E-verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.
4. The Contractor shall, within twenty days after hiring an employee who is newly hired for employment to perform work under the public contract, affirm that the contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. 1324a, and not altered or falsified the identification documents for such employees. The contractor shall provide a written, notarized copy of the affirmation to the Owner.
5. If the Contractor obtains actual knowledge that a Subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall:
  - (A) Notify the Subcontractor and the Owner within three days that the Contractor has actual knowledge that the Subcontractor is employing or contracting with an illegal alien; and
  - (B) Terminate the subcontract with the Subcontractor if within three days of receiving the notice required pursuant to paragraph 4(A) 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.
6. The Contract shall comply with any reasonable request by the Colorado Department of Labor and Employment ("the Department") made in the course of an investigation that the Department is undertaking pursuant to C.R.S. 8-17.5-102(5)(a).
7. If a Contractor violates a provision of the public contract for services required pursuant to paragraphs 1-5, the Owner may terminate the contract for breach of the contract. If the contract is so terminated, the Contractor shall be liable for actual and consequential damages to the Owner.

**ARTICLE 11. OTHER PROVISIONS**

In witness whereof, the parties hereto have signed this Agreement in triplicate. One counter part each has been delivered to Owner, Contractor and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or by Engineer on their behalf.

This Agreement will be effective on \_\_\_\_\_, 2015.

Owner: Town of Timnath

Contractor: McCauley Constructors, Inc.

By: 

By: \_\_\_\_\_



(CORPORATE SEAL)

Attest: 

Attest: \_\_\_\_\_

Address for giving notices  
Town of Timnath  
4800 Goodman St.  
Timnath, CO 80547

Address for giving notices  
McCauley Constructors, Inc.  
650 Innovation Circle  
Windsor, CO 80550

License No. \_\_\_\_\_