

**CITY OF LEADVILLE, COLORADO  
RESOLUTION NO. 11  
SERIES 2021**

**A RESOLUTION APPROVING A CONSTRUCTION CONTRACT WITH CMH  
CIVIL LLC FOR CONSTRUCTION AND INSTALLATION OF SIDEWALKS**

**WHEREAS**, the City of Leadville (“City”) has the authority to enter into contracts for any lawful municipal purpose pursuant to C.R.S. § 31-15-101; and

**WHEREAS**, in 2020 the Colorado Department of Transportation completed an extensive highway construction project along U.S. Highway 24 (Harrison Avenue) within the City that included, among other work, accessibility improvements, sidewalk additions, and reconstruction of certain curbs and gutters; and

**WHEREAS**, the City issued an invitation for bids for the construction and installation of a portion of sidewalks within the City limits along Harrison Avenue that was not included in the 2020 CDOT project (“Project”); and

**WHEREAS**, the City received a single bid for the Project from CMH Civil LLC (“Contractor”) and the Contractor worked with the City to lower the bid price to be within the City’s budget by having the City’s Street Department determine which portions of the original scope of work the Street Department could complete; and

**WHEREAS**, Contractor has represented that it is qualified to complete the Project; and


**WHEREAS**, the City desires to award and approve entering into a construction contract (“Contract”) with Contractor so that Contractor may complete the Project, as more particularly described in the Contract, attached hereto as **Exhibit 1**.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Leadville, Colorado as follows:

**Section 1.** The Leadville City Council hereby: (1) approves the Construction Contract between the City and CMH Civil LLC in substantially the same form as attached hereto as **Exhibit 1** for an amount not to exceed **Seventy Thousand One Hundred Eighty-Nine Dollars and Fifty Cents (\$70,189.50)**; (2) authorizes the City Attorney, in consultation with the Mayor, to make such changes to the Contract as may be necessary that do not materially increase the obligations of the City; (3) authorizes the Mayor to execute and the Deputy City Clerk to attest to the Contract on behalf of the City when in final form; and (4) directs staff to issue a Notice of Award to CMH Civil LLC.

**Section 2. Effective Date.** This Resolution shall take effect upon its adoption by the City Council.

CITY OF LEADVILLE, COLORADO:

By:   
Greg Labbe, Mayor

ATTEST:  
  
Deputy City Clerk

ADOPTED by a vote of 7 in favor and 0 against, and 0 abstaining, this 25th day of May, 2021.

**EXHIBIT 1**  
**CONSTRUCTION CONTRACT**

*[See attached contract]*





May 12, 2021

City of Leadville  
Attn: Mr. Greg Labbe  
800 Harrison Avenue  
Leadville, CO 80461

RE: Revised Proposal for Sidewalk Construction

Mr. Labbe,

Please see the following revised proposal as per our site visit on May 5<sup>th</sup>, 2021.

ITEM	QTY	UOM	UNIT PRICE	TOTAL
Mobilization	1	LS	\$5,147.00	\$5,147.00
Bonds	1	LS	\$4,125.00	\$4,125.00
Traffic Control	0	0	\$0.00	\$0.00
Erosion Control	1	LS	\$500.00	\$500.00
Sawcut Asphalt	594	LF	\$5.00	\$2,970.00
Asphalt Removal	0	0	\$0.00	\$0.00
Class 6 Roadbase	103	Ton	\$75.00	\$7,725.00
Sidewalk - 4" w/ wiremesh	2977	SF	\$12.50	\$37,212.50
Faux Curb - 6"	554	LF	\$15.00	\$8,310.00
Handicap Ramps	0	0	\$0.00	\$0.00
Earthwork	1	LS	\$4,200.00	\$4,200.00
				<b>\$70,189.50</b>

Proposal Clarifications / Assumptions:

- Traffic control line item has been deleted. CMH will provide orange barrels placed along the shoulder of Hwy. 24. Any additional traffic control required will be provided by the City of Leadville.
- Asphalt removal line item has been deleted, and will be provided by the City of Leadville (CMH will provide sawcutting).
- Rebar has been removed from the sidewalk section. Wiremesh is to remain.
- Handicap ramps line item has been deleted.
- Quantity's shown are an estimate only. Final contract value will be based on actual quantities installed as measured in the field.



May 12, 2021

Continued

- Construction water will be provided by the City of Leadville from the nearest accessible hydrant to the project.
- Geotechnical testing will not be required.
- Concrete will be gray 4500 psi class D (standard CDOT mix).
- Work is anticipated to take four weeks.
- Progress payments will be made as follows (and predicated on satisfactory construction progress as determined by the City of Leadville). Draw 1 will be for 50% of the contract value and become payable one week after construction has started. Draw 2 will be for the remainder (adjusted to reflect actual quantity's) of the contract value and will become payable at project completion. No retainage will be withheld.
- Warranty period is for one year and covers materials and craftsmanship.

We are looking forward to a successful project. Thank you for the opportunity.

Sincerely,

Chuck Sizer  
CMH Civil

End

Authorized Signature for City of Leadville:

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(Print)

(Sign)

(Date)



**CONSTRUCTION CONTRACT  
FOR THE FOLLOWING PROJECT:  
Construction and Installation of Sidewalk in Leadville**

City of Leadville Project No.: 2021-001

This Construction Contract (“Contract”) is made and entered into by and between **CMH CIVIL LLC** (hereinafter, “Contractor”), a Colorado limited liability company with a principal office address of 1243 Rainbow Drive, Silverthorne, Colorado 80498 and the **CITY OF LEADVILLE** (hereinafter, “City” or “Owner”), a municipal corporation of the State of Colorado, having an address of 800 Harrison Avenue, Leadville, Colorado 80461 (collectively, the City and Contractor may be referred to herein as the “Parties” or individually as “Party”).

In consideration of the mutual covenants hereinafter set forth, the Parties agree as follows:

**PART 1 – WORK; TIME**

1.01 The Contractor agrees to furnish all of the technical, administrative, professional, and other labor, all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources necessary to perform in a workmanlike manner all Work required by the Contract Documents.

1.02 This Contract shall be effective as of the date of its mutual execution by the Parties (“Effective Date”). The Contractor agrees to undertake the performance of the Work within **TEN (10) business days** following the date of the Notice to Proceed and agrees that the Work will be completed within **FORTY (40) working days (holidays, weekends, and inclement weather excluded)** of the date of the Notice to Proceed unless the contract time is extended by the City as provided in the Contract Documents.

1.03 The Parties agree that, in any section in which the Contractor prepares any document for “the approval of the City,” such subsequent approval by the City does not mean that City is responsible for the accuracy, thoroughness, or judgment contained in the document. The City does not waive the right to hold the Contractor responsible for the accuracy, thoroughness, or judgment expressed in the document, as it is expressly agreed by the Parties that the City is relying on the expertise of the Contractor for the timely completion of the Work required by the Contract Documents.

**PART 2 – CONTRACT PRICE AND PAYMENT**

2.01 The City shall pay the Contractor for performance of the Work in accordance with the Contract Documents the amount(s) shown on Contractor's Revised Proposal for Sidewalk Construction, dated May

12, 2021, which shall not exceed **Seventy Thousand One Hundred Eighty-Nine Dollars and Fifty Cents (\$70,189.50)**. The amount the City has appropriated for this Contract is an amount that is, at a minimum, equal to the Contract Sum stated in this paragraph.

2.02 The City shall make payments as set forth in Article 9 of the General Conditions, subject to the City's obligation to retain a portion of the payments until final completion and acceptance by the City of all Work included in the Contract Documents.

2.03 Prior to final payment, all Work specified by the Contract Documents must be completed. Payment shall be made only after the procedure specified by the General Conditions is completed.

2.04 The City represents that either an appropriation for the price specified in this Construction Contract has been made by the City Council or that sufficient funds have otherwise been made available for the payment of this Construction Contract.

2.05 The Parties understand and acknowledge that the City of Leadville is subject to Article X § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Contract. It is understood and agreed that this Contract does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Contract to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of the funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City of Leadville and other applicable law. Upon the failure to appropriate such funds, this Contract shall be terminated.

2.06 Beginning on the Effective Date, Contractor may apply for payment to the Project Manager no more often than every thirty (30) days for Work completed or as set forth in the Contractor's Revised Proposal for Sidewalk Construction, dated May 12, 2021, as applicable. Upon issuance of a Certificate for Payment by the Project Manager, the City shall pay Contractor in accordance with Article 9 of the General Conditions.

### **PART 3 – CONTRACTOR'S REPRESENTATIONS**

3.01 In order to induce the City to enter into this Construction Contract, the Contractor makes the following representations:

(a) The Contractor has familiarized itself with the nature and the extent of the Contract Documents, Work, the location and site of the Work and any and all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

(b) Contractor has carefully studied all physical conditions at the site and existing facilities affecting cost, progress or performance of the Work.

(c) Contractor has given the City written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and, if applicable, the written resolution(s) thereof by the City is/are acceptable to the Contractor.

(d) Contractor shall not knowingly employ or contract with an illegal alien to perform work



under this Contract. Contractor shall not contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with any illegal aliens to perform work under this Contract. By entering into this Contract, Contractor certifies as of the date of this Contract that has confirmed the employment eligibility of all employees who are newly hired for employment and who will perform work under the public contract for services through participation in the e-verify program or department program. The Contractor is prohibited from using either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Contract is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the subcontractor and the City within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the City may terminate this Contract, and the Contractor may be liable for actual and/or consequential damages incurred by the City, notwithstanding any limitation on such damages otherwise provided by this Contract.

3.02 Contractor agrees to remedy all defects appearing in the Work or developing in the materials furnished and the workmanship performed under this Construction Contract for a period of one (1) year or such other time that is specified in the Contract Documents after the date of acceptance of the Work by the City, and further agrees to indemnify and save the City harmless from any costs encountered in remedying such defects. Contractor shall provide a performance, payment, maintenance and warranty bond that shall remain in effect until all defects are corrected as required by this paragraph.

#### **PART 4 - CONTRACT DOCUMENTS**

4.01 The Contract Documents, which comprise the entire Construction Contract between the City and the Contractor, are attached to this Construction Contract and made a part hereof by this reference, including:

- Invitation for Bids
  - Instructions to Bidders
  - Bid Bond
  - Bid Form
  - Notice of Award
  - Notice to Proceed
  - Construction Contract
  - Construction Drawings, if applicable
  - Specifications
  - Right-of-Way Standards
  - Performance, Payment, Maintenance and Warranty Bond
  - General Conditions, including table of contents
  - Construction Contract Addenda
  - Change Orders, Change Order Directives, and Orders for Minor Change in Work
  - Insurance Certificates and Endorsements
  - Tax-Exempt Certificates
- Other: \_\_\_\_\_

In the event of an inconsistency between any provisions of the Contract Documents, the more specific provisions shall govern the less specific provisions, and written addenda, change orders, or other modifications approved in writing by both Parties subsequent to the date of this Contract as set forth on page 1 hereof shall govern the original Contract Documents.

4.02 There are no Contract Documents other than those listed above. The Contract Documents may only be altered, amended or repealed by a modification, in writing, executed by the City and the Contractor as provided in Part 9 of this Contract and as otherwise provided in the Contract Documents.

## **PART 5 - PROJECT MANAGER AND SUPERINTENDENT**

5.01 The Project Manager, for the purposes of the Contract Documents, is the following, or such other person or firm as the City may designate in writing:

Name: Sarah Dallas  
Address: 800 Harrison Avenue, Leadville, Colorado 80461  
Telephone: 719-486-2092 EXT 106  
Email: [adminservices@leadville-co.gov](mailto:adminservices@leadville-co.gov)

The Project Manager is authorized to represent and act as agent for the City with respect to City's rights and duties under the Contract Documents, provided, however, the Project Manager shall not have any authority to approve any Change Order or approve any amendment to the Construction Contract or Contract Documents, except for those minor Change Orders defined in paragraph 7.4.1 of the General Conditions, such authority being specifically reserved to the duly authorized official of the City having such approval authority pursuant to the City's Charter and ordinances. In the event of doubt as to such authority, the Contractor may request a written representation from the City Manager resolving such doubt and designating the person with authority under the circumstances, which written representation shall be conclusive and binding upon the City.

5.02 The Contractor's Superintendent, for purposes of the Contract Documents, is the following and is subject to Article 3 (Section 3.9) of the General Conditions and such other obligations as the Contract Documents may specify:

Name: Chuck Sizer, CMH Civil  
Office Address: 1243 Rainbow Drive, Silverthorne, Colorado 80498  
Mailing Address: P.O. Box 4369, Dillon, Colorado 80435  
Telephone: 970-368-6395 (Office)  
Email: [chuck@cmhcivilllc.com](mailto:chuck@cmhcivilllc.com)

## **PART 6 - ASSIGNMENT**

6.01 No assignment by a party hereto of any rights under or interest 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 the assignor from any duty or responsibility under the Contract Documents. This restriction on assignment includes, without limitation, assignment of the Contractor's right to payment to its surety or lender.

6.02 It is agreed that this Construction Contract shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, assigns and successors.

#### **PART 7 - GOVERNING LAW AND VENUE**

7.01 This Construction Contract shall be governed by the laws of the State of Colorado and the Charter and ordinances of the City of Leadville.

7.02 This Construction Contract shall be deemed entered into in Lake County, State of Colorado, as the City is located in said county. The location for settlement of any and all claims, controversies and disputes arising out of or related to this Construction Contract or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in Lake County.

#### **PART 8 - LIQUIDATED DAMAGES**

8.01 The City and the Contractor recognize that time is of the essence in this Construction Contract and that the City will suffer financial loss if the Work is not substantially completed within the time specified in paragraph 1.02 above, plus any extensions thereof allowed by the City by written Change Order. They also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City if the Work is not substantially complete on time. Accordingly, rather than requiring any such proof, the City and the Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay the City the applicable amount set forth in the General Conditions for each day that expires after the time specified in paragraph 1.02 until the Work is complete. It is agreed that this is a reasonable estimate of the damages likely to be suffered by the City for late completion of the Work. If the Contractor shall fail to pay such liquidated damages promptly upon demand therefor, the Surety on the Performance, Payment, Maintenance and Warranty Bond shall pay such damages. In addition, and at the City's option, the City may withhold all or any part of such liquidated damages from any payment due the Contractor.

#### **PART 9 - MODIFICATIONS**

This Construction Contract shall be modified only by written Change Orders or Addenda agreed upon by the Parties hereto, duly issued in form approved by the City Attorney and in conformance with the other Contract Documents. Pursuant to Article 7 of the General Conditions, the Contract Sum and Contract Time may be changed by a Change Order only. The City shall not approve any Contract modification that increases the Contract Sum without providing Contractor written assurance that the City has appropriated funds for the additional amounts.

#### **PART 10 - CONTINGENCY**

This Construction Contract is expressly contingent upon the approval of the City of all of the terms set forth herein. In the event this Construction Contract is not approved in its entirety by the City, neither Party shall be bound to the terms of this Construction Contract.

The person or persons signing and executing this Construction Contract on behalf of each Party, do hereby warrant and guarantee that he/she or they have been fully authorized to execute this Construction Contract and to validly and legally bind such Party to all the terms, performances and provisions herein set forth.

No officer or employee or agent of the City shall be personally responsible for any liability arising under or growing out of the Contract.

INSURANCE CERTIFICATES REQUIRED BY THE GENERAL CONDITIONS OF THIS CONTRACT SHALL BE SENT TO THE CITY OF LEADVILLE, ATTENTION: SARAH DALLAS, PROJECT MANAGER

If this box is checked, Contractor is not required to obtain Builder's Risk/Property Insurance as set forth in Section 11.3 of the General Conditions. Contractor is required to obtain and maintain all other types and amounts of insurance coverage set forth in the General Conditions.

**PART 11 – INDEPENDENT CONTRACTOR**

11.01 General. Contractor is an independent contractor. Notwithstanding any other provision of this Contract, all personnel assigned by Contractor to perform work under the terms of this Contract shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a City employee for any purposes.

11.02 Liability for Employment-Related Rights and Compensation. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person completing the Work hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. The Contractor will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. Accordingly, the City shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever, unless otherwise specifically provided herein.

11.03 Insurance Coverage and Employment Benefits. The City will not include the Contractor as an insured under any policy the City has for itself. The City shall not be obligated to secure nor provide any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, subcontractors, agents, or representatives, including but not limited to coverage or benefits related to: local, state, or federal income or other tax contributions, FICA, workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension or retirement account contributions, profit sharing, professional liability insurance, or errors and omissions insurance. The following disclosure is provided in accordance with Colorado law:

**CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE CITY PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS CONTRACT.**

11.04 Employee Benefits Claims. To the maximum extent permitted by law, the Contractor waives all claims against the City for any Employee Benefits; the Contractor will defend the City from any claim and will indemnify the City against any liability for any Employee Benefits for the Contractor imposed on the City; and the Contractor will reimburse the City for any award, judgment, or fine against the City based on the position the Contractor was ever the City's employee, and all attorneys' fees and costs the City reasonably incurs defending itself against any such liability.

## **PART 12 – MISCELLANEOUS PROVISIONS**

12.01 Compliance with Laws and Regulations. All of the Work performed under this Contract by the Contractor shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado. The Contractor shall also comply with all applicable ordinances, regulations, and resolutions of the City and shall commit no trespass on any public or private property in the performance of any of the Work identified in this Contract.

12.02 Severability. In the event any of the provisions of this Contract are held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining provisions shall not be affected, provided that the remaining provisions without the invalidated provisions are consistent with the Parties' intent. Should either party fail to enforce a specific term of this Contract it shall not be a waiver of a subsequent right of enforcement, nor shall it be deemed a modification or alteration of the terms and conditions contained herein.

12.03 Retention and Open Records Act Compliance. All records of the Contractor related to the completion of the Work hereunder, including public records as defined in the Colorado Open Records Act ("CORA"), and records produced or maintained in accordance with this Contract, are to be retained and stored in accordance with the City's records retention and disposal policies. Those records which constitute "public records" under CORA are to be at the City offices or accessible and opened for public inspection in accordance with CORA and City policies. Public records requests for such records shall be processed in accordance with City policies. Contractor agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this paragraph shall result in the immediate termination of this Contract by the City. For purposes of CORA, the City Clerk is the custodian of all records produced or created as a result of this Contract. Nothing contained herein shall limit the Contractor's right to defend against disclosure of records alleged to be public.

12.04 No Third-Party Beneficiaries. The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Contractor, and nothing contained in this Contract shall give or allow any such claim or right of action by any other or third person under such Contract.

12.05 Headings. The headings contained in this Contract are for reference purposes only and shall not in any way affect the meaning or interpretation of this Contract.

12.06 Entire Agreement. The Parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any elected official, officer, director, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications to this Contract, except those which are expressly reserved herein to the Project Manager and/or the Superintendent, shall be valid unless they are contained in writing and executed by all the Parties with the same formality as this Contract.



12.07 Force Majeure. Neither Party shall be liable for damages, delays, or failure to perform its obligations under this Contract if performance is made impractical or impossible, or unpredictably and abnormally difficult or costly, as a result of any unforeseen occurrence, including but not limited to fire, flood, acts of God, civil unrest, failure of a third party to cooperate in providing services other than Contractor's subcontractors, or other occurrences beyond the reasonable control of the party invoking this Force Majeure clause. The Party invoking this Force Majeure clause shall notify the other Party immediately by verbal communication and in writing of the nature and extent of the contingency within five (5) business days after its occurrence or discovery of its occurrence, and shall take reasonable measures to litigate any impact of the event that triggered the invoking of this Force Majeure clause. If the Force Majeure event shall impact schedule or increase the costs incurred by Contractor, such items shall be handled in accordance with Section 2 and 3.

12.08 Contract Controls. In the event a conflict exists between this Contract and any term in any exhibit attached or incorporated into this Contract, the terms in this Contract shall supersede the terms in such exhibit.

12.09 Release of Information. The Contractor shall not, without the prior written approval of the City, release any privileged or confidential information obtained in connection with the Services or this Agreement.

12.010 Survival. The Parties understand and agree that all terms and conditions of the Contract that require continued performance, compliance, or effect beyond the termination date of the Contract shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

12.011 Binding Effect. The parties agree that this Contract, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this section shall not authorize assignment.

12.012 Protection of Personal Identifying Information. In the event the Work includes or requires the City to disclose to Contractor any personal identifying information as defined in C.R.S. § 24-73-101, Contractor shall comply with the applicable requirements of C.R.S. §§ 24-73-101, et seq., relating to third-party service providers.

12.013 Authority. The individuals executing this Contract represent that they are expressly authorized to enter into this Contract on behalf of the City of Leadville and the Contractor and bind their respective entities.

12.014 Counterparts. This Contract may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

*Remainder of page intentionally left blank*

*Signature pages follow*

IN WITNESS WHEREOF, the parties hereto have executed this Construction Contract to be effective as set forth herein. All portions of the Contract Documents have been signed or identified by the City and the Contractor.

**CITY OF LEADVILLE, COLORADO:**

By: \_\_\_\_\_  
Greg Labbe, Mayor

Date of execution: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy City Clerk

\_\_\_\_\_  
City Attorney

**CONTRACTOR:** CMH Civil LLC, a Colorado limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of execution: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing Construction Contract was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_ as \_\_\_\_\_ of CMH Civil LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
**Notary Public**  
*(Required for all contracts pursuant to C.R.S. § 8-40-202(2)(b)(IV))*



## **VIII. PERFORMANCE, PAYMENT, MAINTENANCE AND WARRANTY BOND**

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_, as Principal, herein called Contractor, and \_\_\_\_\_, as surety, herein called Surety, are hereby held and firmly bound to the City of Leadville, Colorado, as Obligee, herein called Owner or City, in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_), for the payment of which the Contractor and Surety bind themselves as well as their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor and Owner have entered into a written construction contract dated the \_\_\_ day of \_\_\_\_\_ 20\_\_\_, (the "Construction Contract"), which includes all Contract Documents as that term is defined in the Construction Contract, for the construction and completion of \_\_\_\_\_ (City of Leadville Project No. \_\_\_\_\_), which Construction Contract is by reference made a part hereof.

WHEREAS, Contractor and Surety are jointly and severally liable under the provisions of this bond and action against either or both may proceed without prior action against the other, and both may be joined in one action.

NOW, THEREFORE, the conditions of this obligation are as follows:

FIRST. The Contractor shall: (1) faithfully perform all requirements and obligations of the Construction Contract, specifically including all extended warranty or guarantee provisions, and other applicable law, and satisfy all claims and demands incurred for the same; (ii) fully indemnify and hold harmless the City from all costs and damages which the City may incur in making good any default of the Contractor under the Construction Contract.

SECOND. The Contractor shall protect, defend, indemnify and save harmless the City and its officers, agents, servants and employees, from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims losses, damages or liability on account of injury, disease, sickness, including death, to any person, or damage to property, including, in part, the loss of use, resulting therefrom, based upon or allegedly based upon any act, omission or occurrence of the Contractor, or its employees, servants, agents, subcontractors or suppliers, or anyone else under the Contractor's direction and control (regardless of whether or not cause in part by a party indemnified hereunder), and arising out of, occurring in connection with, resulting from, or caused by the performance or failure of performance of any work or services called for by the Construction Contract (the "Work"), or from conditions created by the performance or non-performance of the Work.

Whenever Contractor shall be, and is declared by Owner to be in default under the Construction Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

1. Complete the Construction Contract in accordance with its terms and conditions; or
2. Obtain a bid or bids for completing the Construction Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or if the City elects, upon determination by the City and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the City, and make

available as work progresses (even though there should be a default or a default or a succession of defaults under the Construction Contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph of this bond. The term "balance of the Contract Sum," as used in this paragraph, shall mean the total amount payable by the City to Contractor under the Construction Contract and any amendments thereto, less the amount properly paid by the City to Contractor; or

3. Complete or cause to be completed any repairs or other work required to be completed under the applicable one (1) year warranty period.

THIRD. The Contractor shall pay all persons, firms and corporations, all just claims due them for the payment of all laborers and mechanics for labor performed, for all materials and equipment used or rented in the performance of the Work described in the Construction Contract subject, however, to the following conditions.

1. A claimant is defined as one having a direct contract with the Contractor, or with a Subcontractor of the Contractor for labor, material or both, used or reasonably required for use in performance of the Construction Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Construction Contract.
2. The above named Contractor and Surety hereby jointly and severally agree with the City that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's Work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be due the claimant, and have execution thereon. The City shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
  - a. Unless claimant, other than one having a direct contract with the Contractor, shall have given written notice to any two of the following: the Contractor, the City, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the Work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the Work or labor was done or performed. Such notice shall be served by mailing same by registered mail or certified, postage prepaid, in an envelope addressed to the Contractor, City, or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid Project is located, save that such service need not be made by a public officer.
  - b. After expiration of six (6) months following the date on which Contractor ceased Work on said Construction Contract; it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

- c. Unless claimant brings such action in a state court of competent jurisdiction in and for Lake County, Colorado, or such other county in which the Work (as described in the Construction Contract) is to be completed, and not elsewhere.

FOURTH. The Contractor and Surety shall guarantee and warrant that all Work shall remain in good order and repair for a period of **one (1) year** from date of final acceptance from all causes arising from defective workmanship and materials, and shall make all repairs arising from said causes during such period without further compensation, and shall further guarantee that all areas within the public rights-of-way affected by the Work shall remain in good order and repair without further compensation from the City for a period of **one (1) year** from and after final acceptance of the Work by the City. The determination of the necessity for the repair or replacement of any Work or areas within public rights-of-way shall rest entirely with the City, and the City's decision upon the matter shall be final and obligatory upon the Contractor, subject to judicial review pursuant to applicable law.

The Surety hereby waives the right to special notification of any alterations, omissions or reductions, extra or additional work, extensions of time, Change Orders, or any other act or acts of the City or its authorized agents under the terms of the Construction Contract; and failure to notify Surety of such shall in no way relieve Surety of its obligations under this bond.

Further, the Surety shall pay to the City all costs and attorney fees necessary to enforce the provisions of the bond provisions contained herein.

Unless prohibited by law, an action on this bond may be brought by the City or any person entitled to the benefits of this bond at any time within three (3) years from the date on which final payment under the Construction Contract falls due.

Upon full compliance with all the obligations of the Construction Contract, the City shall release this bond, in writing. This bond shall remain in effect until released by the City or the City consents in writing to acceptance of a substitute bond.

SIGNED AND SEALED THIS \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

PRINCIPAL (CONTRACTOR)

SURETY

\_\_\_\_\_  
(Name of Company)

\_\_\_\_\_  
(Name of Company)

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

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

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

NOTE: Surety companies executing bonds must be authorized to transact business in the State of Colorado and be acceptable to the City of Leadville.

(Accompany this bond with Attorney-in-Fact's authority from the Surety to execute the bond, certified to include the date of the bond.)

**END OF SECTION**