

**TOWN OF PARACHUTE, COLORADO
RESOLUTION NO. 2024-19**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PARACHUTE, COLORADO APPROVING AN AGREEMENT FOR PROFESSIONAL SERVICES WITH WBS COATINGS INC FOR WATER TANK RECOATING SERVICES

WHEREAS, the Town of Parachute wishes to contract for water tank recoating services within the Town (the “Services”); and

WHEREAS, WBS COATINGS Inc. wishes to provide such Services pursuant to the terms of the Agreement for Professional Services enclosed as **Exhibit A**, and the Town wishes to approve such Agreement and for WBS COATINGS Inc (the “Contractor”) to provide the Services.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PARACHUTE, COLORADO THAT:

- Section 1. The foregoing recitals are incorporated herein as if set forth in full.
- Section 2. The Town Council hereby approves the Agreement for Professional Services with the Contractor, enclosed as **Exhibit A** and incorporated herein, and authorizes the Town Manager to sign, contingent upon the award of a GCFMLD Grant Award and all Grant Agreements being fully executed by the Town Manager prior.
- Section 3. The Town Council hereby authorizes the Town Manager to make necessary additional minor modifications and negotiations that do not result in a significant increase in the contractual amount prior to executing the agreement.

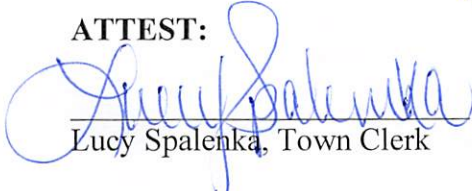
INTRODUCED, PASSED, ADOPTED, AND APPROVED by a vote of 3 to 0 of the Town Council of the Town of Parachute, Colorado at a regular meeting held at Town Hall in the Town of Parachute, Colorado, on the 18th day of April, 2024 and approved by the Mayor on the 18th day of April, 2024.

**TOWN COUNCIL OF THE
TOWN OF PARACHUTE, COLORADO**

By 
Tom Rugaard, Mayor



ATTEST:


Lucy Spalenka, Town Clerk

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT (“Agreement”) is made and entered into as of the date of the last signature hereto (“Effective Date”), by and between the TOWN OF PARACHUTE, COLORADO, a Colorado home-rule municipality (the “Town”), and WBS COATINGS INC. (“Contractor”).

WHEREAS, the Town desires that Contractor perform the services of Exterior Water Tank Preparation, Remediation, Recoating, and Logo/Decal application as an independent contractor, in accordance with the provisions of this Agreement, and more fully described in the proposal attached as **Exhibit A** (the “Services”); 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 services in writing.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Services. The Town agrees to retain Contractor to provide the Services set forth herein, and as further specified in **Exhibit A**, attached hereto and incorporated herein by reference and Contractor agrees to so serve. Contractor warrants and represents that it has the requisite authority, capacity, experience, and expertise to perform the Services in compliance with the provisions of this Agreement and all applicable laws and agrees to perform the Services on the terms and conditions set forth herein. The Town reserves the right to omit any of the Services identified in **Exhibit A** upon written notice to Contractor and request additional, as-needed services consistent with the Services identified in **Exhibit A**. In the event of any conflict between this Agreement and **Exhibit A**, the provisions of this Agreement shall prevail.

2. Compensation.

a. Subject to annual appropriation, the Town agrees to pay Contractor for the Services in accordance with the Amounts in **Exhibit A**; however, the total amount shall not exceed a sum of \$181,609. The Town shall make payment within thirty (30) days of receipt and approval of invoices submitted by Contractor, which invoices shall be submitted to the Town not more frequently than monthly and which shall identify the specific Services performed for which payment is requested.

b. For public construction projects exceeding \$150,000, the Town shall retain payment 5% of invoiced as retainage to be released after final project completion and acceptance of the project by the Town. The Contractor may elect to provide acceptable securities to the Town in lieu of retainage pursuant to C.R.S. § 24-91-105.

3. Term; Time of the Essence.

a. Unless extended by written agreement of the parties, the Term of this Agreement shall be from the Effective Date until the Services are completed or one year/364 days after the Effective

Date, whichever is sooner.

b. Contractor agrees and acknowledges that time is of the essence in the performance of the Services. Contractor shall substantially complete the Services not later than November 1, 2024 and shall fully complete the Services for final payment not later than December 1, 2024. Contractor acknowledges that the Town will suffer loss and damages that difficult to quantify if the Services are not completed within the timelines set above. Accordingly, the Parties agree that the Contractor shall be liable to the Town for liquidated damages of \$1,000.00 for each day the Services are not substantially complete following the substantial completion deadline until the Services are completed. In no event shall aggregate liability of Contractor to pay liquidated damages exceed 50% of the contract price.

4. Outside Support Services and Sub-Contractor. Any sub-Contractors shall be pre-approved by the Town. A rate sheet for such sub-Contractors shall be provided to the Town.

5. Ownership of Instruments of Service. The Town acknowledges the Contractor's work product, including electronic files, as instruments of professional service. Nevertheless, the final work product prepared under this Agreement shall become the property of the Town upon completion of the Services and payment in full of all monies due to the Contractor. For construction projects, Contractor agrees to provide Town with final as-built drawings of the final installation and construction of the materials in an electronic format, as deemed acceptable by the Town. Contractor further agrees that payment may be withheld by the Town, and the project deemed incomplete, until such final as-built files are delivered and received by the Town.

6. The Town's Obligations/Confidentiality. The Town shall provide Contractor with reports and such other data/information as may be available to the Town and reasonably required by Contractor to perform hereunder and Contractor is entitled to rely on that information. No project information shall be disclosed by Contractor to third parties without prior written consent of the Town or pursuant to a lawful court order directing disclosure. All documents provided by the Town to Contractor shall be returned to the Town at termination of this Agreement. Contractor is authorized by the Town to retain copies of such data and materials at Contractor expense during the term of this Agreement.

7. Monitoring and Evaluation. The Town reserves the right to monitor and evaluate the progress and performance of Contractor to ensure that the terms of this Agreement are being satisfactorily met in accordance with the Town's and other applicable monitoring and evaluating criteria and standards. Contractor shall cooperate with the Town relating to such monitoring and evaluation.

8. Independent Contractor. The parties agree that the Contractor shall be an independent contractor and shall not be an employee, agent, or servant of the Town. **Contractor is not entitled to workers' compensation benefits from the Town and is obligated to pay federal and state income tax on any money earned pursuant to this Agreement.**

9. Insurance Requirements. Unless waived in writing by the Town using the form set forth at **Exhibit C**, Contractor shall maintain the following insurance:

a. Comprehensive General Liability Insurance. Contractor shall procure and keep in

force during the duration of this Agreement a policy of comprehensive general liability insurance insuring Contractor and naming the Town as an additional insured against any liability for personal injury, bodily injury, or death arising out of the performance of the Services with at least One Million Dollars (\$1,000,000) each occurrence/ Two Million Dollars (\$2,000,000) aggregate. The limits of said insurance shall not, however, limit the liability of Contractor hereunder.

- b. Comprehensive Automobile Liability Insurance. Contractor shall procure and keep in force during the duration of this Agreement a policy of comprehensive automobile liability insurance insuring Contractor and naming the Town as an additional insured against any liability for personal injury, bodily injury, or death arising out of the use of motor vehicles and covering operations on or off the site of all motor vehicles controlled by Contractor which are used in connection with the Project, whether the motor vehicles are owned, non-owned, or hired, with a combined single limit of at least One Million Dollars (\$1,000,000). The limits of said insurance shall not, however, limit the liability of Contractor hereunder.
- c. Terms of Insurance.
 - (i) Insurance required by this Agreement shall be with companies qualified to do business in the State of Colorado with a general policyholder's financial rating of not less than A+3A as set forth in the most current edition of "Best's Insurance Reports" and may provide for deductible amounts as Contractor deems reasonable for the Services. No such policies shall be cancelable or subject to reduction in coverage limits or other modification except after thirty (30) days prior written notice to the Town. Contractor shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal Contractor changes to "occurrence," Contractor shall carry a six (6)-month tail. Contractor shall not do or permit to be done anything that shall invalidate the policies.
 - (ii) The policies described herein shall be for the mutual and joint benefit and protection of Contractor and the Town. Such policies shall provide that the Town, although named as an additional insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its officers, employees, and agents by reason of negligence of Contractor, its officers, employees, agents, subcontractors, or business invitees. Such policies shall be written as primary policies not contributing to and not in excess of coverage the Town may carry.
- d. Workers' Compensation and Other Insurance. During the term of this Agreement, Contractor shall procure and keep in force workers' compensation insurance and all other insurance required by any applicable law. If under Colorado law Contractor is not required to carry workers' compensation insurance, Contractor shall provide the Town an executed Certificate of Exemption From Statutory Workers' Compensation Law and Acknowledgment of Risk/Hold Harmless Agreement, which shall be attached hereto as **Exhibit B** and incorporated herein by reference.

- e. Evidence of Coverage. Before commencing work under this Agreement, Contractor shall furnish to the Town certificates of insurance policies evidencing insurance coverage required by this Agreement. Contractor understands and agrees that the Town shall not be obligated under this Agreement until Contractor furnishes such certificates of insurance.
- f. Subcontracts. Contractor agrees to include the insurance requirements set forth in this Agreement in all subcontracts. The Town shall hold Contractor responsible in the event any subcontractor fails to have insurance meeting the requirements set forth in this Agreement. The Town reserves the right to approve variations in the insurance requirements applicable to subcontractors upon joint written request of subcontractor and Contractor if, in the Town's opinion, such variations do not substantially affect the Town's interests.

10. Indemnification. Contractor hereby covenants and agrees to indemnify, save, hold harmless, and defend the Town, its officers, employees, and agents from any and all liability, loss, costs, charges, obligations, expenses, attorney's fees, litigation, judgments, damages, claims, and demands of any kind whatsoever arising from or out of any negligent act or omission or other tortious conduct of Contractor, its officers, employees, agents, or subcontractors in the performance or nonperformance of its obligations under this Agreement.

11. Waiver of Liability.

- a. Acknowledgment and Acceptance of Risk. Contractor acknowledges and accepts that its performance of the Services subjects Contractor to potential hazards, risks and dangers, both known and unknown. Without limitation, those risks include acts of God, the force of nature, the negligent and reckless acts of commission or omission by others (herein "Risks"). Contractor acknowledges and agrees that such list in no way limits the extent or reach of this Agreement. Acknowledging the above, Contractor voluntarily agrees and accepts full responsibility for all the Risks, possible risks, hazards and dangers of performing the Services.
- b. Waiver and Release. Contractor hereby releases, waives, and agrees not to sue or make any claim against the Town, its officers, agents, directors, members, managers, employees, subcontractors or independent contractors ("Protected Parties") from any and all foreseen and unforeseen injury, death, losses, actions, claims, judgments, or damages of any kind and nature, including attorney fees and court cost (singly a "Loss" and together "Losses") that Contractor, its heirs, personal representatives, executors, administrators, successors and assigns may now have or have in the future against the Protected Parties, or any of them on account of personal injury, property damage, lost or stolen property, death or accident of any kind arising out of or in any way related to its performance of the Services, however the Loss or Losses are caused. This Agreement shall serve as a complete release and express assumption of the Risks. Contractor shall be solely responsible for its own safety and well-being, and for all expenses that Contractor may incur that arise directly or indirectly from, on account of, or in connection with performance of the Services.

12. Termination.

a. Not for Cause.

- (i) The Town may terminate this Agreement without cause if it determines that such termination is in the Town's best interest. The Town shall effect such termination by giving written notice of termination to Contractor, specifying the effective date of termination, at least thirty (30) calendar days prior to the effective date of termination. In the event of such termination by the Town, the Town shall be liable to pay Contractor for Services performed as of the effective date of termination, if any, but shall not be liable to Contractor for anticipated profits. Contractor shall not perform any additional Services following receipt of the notice of termination unless otherwise instructed in writing by the Town.
- (ii) Contractor may terminate this Agreement without cause if it determines that such termination is in Contractor's best interest. Contractor shall effect such termination by giving written notice of termination to the Town, specifying the effective date of termination, at least sixty (60) calendar days prior to the effective date of termination.

- b. For Cause. If, through any cause, Contractor fails to fulfill its obligations under this Agreement in a timely and proper manner, violates any provision of this Agreement, or violates any applicable law, and does not commence correction of such nonperformance or violation within seven (7) calendar days of receipt of written notice and diligently complete the correction thereafter, the Town shall have the right to terminate this Agreement for cause immediately upon written notice of termination to Contractor. In the event of such termination by the Town, the Town shall be liable to pay Contractor for Services performed as of the effective date of termination, but shall not be liable to Contractor for anticipated profits. Contractor shall not perform any additional Services following receipt of the notice of termination. Notwithstanding the above, Contractor shall not be relieved of liability to the Town for any damages sustained by the Town by virtue of any breach of this Agreement, and the Town may withhold payment to Contractor for the purposes of setoff until such time as the exact amount of damages due to the Town from Contractor is determined.

13. Use of Software and other Intellectual Property. Contractor hereby represents and warrants that it has obtained all necessary rights and licenses to use any software or other intellectual property that may be required by Contractor to perform the Services. Contractor hereby agrees to indemnify, hold harmless and defend Town against any claim brought against Town for improper use or infringement upon any software or intellectual property interest.

14. Agreement Subject to Appropriation. To the extent this Agreement constitutes a multiple fiscal year debt or financial obligation of the Town, it shall be subject to annual appropriation pursuant to the Town of Snowmass Municipal Code and Article X, Section 20 of the Colorado Constitution. The Town shall have no obligation to continue this Agreement in any fiscal year in which no such appropriation is made.

15. Compliance with C.R.S. § 24-91-103.6. To the extent this Agreement constitutes a public works contract, as defined C.R.S. § 24-91-103.5(b), the Town has appropriated money equal to or in excess of the contract amount set forth herein. Contract modification, as defined in C.R.S. § 24-101-301(10), or other form of modification or directive by the Town requiring additional compensable Services to be performed, which work causes the aggregate amount payable under this Agreement to exceed the amount appropriated for the original Services, are prohibited unless the Contractor is given written assurance by the Town that lawful appropriations to cover the costs of the additional Services have been made and the appropriations are available prior to performance of the additional Services or unless such Services are covered under a remedy-granting provision in this Agreement. For such additional Services, the Town shall reimburse the Contractor for the Contractor's costs not more frequently than once every thirty (30) days for all additional directed Services performed until an amendment to the Agreement contract modification is finalized; however, in no instance shall reimbursement be required before Contractor has submitted an estimate of cost to the Town for the additional compensable Services to be performed.

16. Surety Bond. To the extent required by C.R.S. § 38-26-106, Contractor shall provide the surety and performance bonds.

17. Responsibilities. Contractor shall be responsible for all damages to persons or property caused by the Contractor, its agents, employees or sub-Contractors, to the extent caused by its negligent acts, errors and omissions hereunder, and shall indemnify and hold harmless the Town from any claims or actions brought against Contractor by reason thereof. Contractor shall comply with all applicable laws, rules, and ordinances, as well as any grant fund requirements that may apply to the Services.

18. 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. Contractor shall not be relieved of its obligations to perform the Service in accordance with this Agreement as a result of any course of dealing with the Town. Course of dealing, no matter how long, is not intended to be, and shall not be construed as, an amendment to this Agreement.

19. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and venue shall be in the County of Garfield, State of Colorado.

20. Governmental Immunity Act. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.*

21. Assignability. Contractor shall not assign this Agreement without the Town's prior written consent.

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

IN WITNESS WHEREOF, the parties have entered this Agreement as of the Effective Date.

TOWN OF PARACHUTE, COLORADO

By: _____

Title: _____

Date: _____

ATTEST:

Town Clerk

CONTRACTOR:

By: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2024 by _____.

Witness my hand and official seal.

Notary Public

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B

**CERTIFICATE OF EXEMPTION FROM STATUTORY WORKERS'
COMPENSATION LAW AND ACKNOWLEDGEMENT OF
RISK/HOLD HARMLESS AGREEMENT**

The undersigned Contractor certifies to the Town of Parachute (“Town”) that it is exempt from the provisions of the Colorado Workers’ Compensation Act.

If Contractor has any employees who will perform the Services or subsequently employs any person to perform the Services as set forth in this Agreement (other than subcontractors, who are not considered employees for the purposes of workers’ compensation), it agrees to provide the Town with a Certificate of Insurance as required by the Agreement indicating proof of statutory workers’ compensation coverage on such persons prior to their start of work for the Town.

Contractor acknowledges that it will be engaging in activities which exposes it to the risk of bodily injury, that it is physically capable of performing the activities, and that all necessary precautions to prevent injury to Contractor and others will be taken. Contractor shall not hold the Town liable for any injuries sustained, by it or others, which may arise out of or in the course of the work performed for or on behalf of the Town, and Contractor agrees to defend, indemnify, and hold harmless the Town from all such claims.

CONTRACTOR:

By: _____

Title: _____

EXHIBIT C

WAIVER OF INSURANCE

The Town has determined that the following insurance requirements of Paragraph 9 of this Agreement are not necessary for the Services subject to this Agreement and, by signing below, hereby waives the same:

- Comprehensive General Liability Insurance
- Comprehensive Automobile Liability Insurance

TOWN OF PARACHUTE, COLORADO

By: _____

Title: _____

Date: _____