

CONTRACT AGREEMENT

THIS CONTRACT AGREEMENT (the "Contract") is made and entered into effective this ____ day of _____, 2014 (the "Effective Date"), by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality whose address is 7887 East 60th Avenue, Commerce City, CO 80022 (the "City"), and ZAK DIRT, INC., a Colorado corporation whose principal business address is 14290 Hilltop Road, Longmont, CO 80504 ("Contractor").

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

1. Project. Contractor shall commence and complete East 104th Avenue Improvements Phase 3B, Project Number 9062-11 (the "Project"), in accordance with the Contract Documents.
2. Changed Conditions. Contractor specifically waives any claim for additional compensation for any changed condition, unless such changed condition is caused in whole or in part by acts or omissions within the control of the City or persons acting on behalf thereof, arising out of any of the following:
 - a. A physical condition of the site of an unusual nature;
 - b. A condition differing materially from those ordinarily encountered and generally recognized as inherent in work of the character and at the location provided for in the Contract; or
 - c. Any force majeure.
3. Prosecution of the Work. Contractor shall, at its own expense, do all work and furnish all labor, materials, tools, supplies, machinery, utilities and other equipment that may be necessary for the completion of the Project, in a professional and workmanlike manner, as outlined in the Plans/Drawings, Specifications, General and Special Conditions and this Contract.
4. Rate of Progress. Contractor acknowledges and understands that it is an essential term of this Contract that Contractor maintain a rate of progress in the Work that will result in completion of the Project in accordance with the Contract requirements, and to that end, Contractor agrees to proceed with all due diligence to complete the Work in a timely manner in accordance with this Contract.
5. Commencement of Work. Contractor understands and agrees that the Work shall be commenced within seven (7) calendar days from and including the date of the Notice to Proceed, and Contractor shall have all the work called for under this Contract fully completed within six hundred sixty (660) calendar days from the date of the Notice to Proceed.
6. Compensation. Contractor agrees to perform the Work described in the Contract Documents and to comply with the terms therein for the sum of **Eighteen Million Six Hundred Thirty Thousand Seven Hundred Seventy dollars and seventy-two cents (\$18,728,270.72)**. The City shall make payment(s) to Contractor in the manner and at such times as set forth in the General Conditions such amounts as are required by the Contract Documents.
7. Contract Documents. The term "Contract Documents" includes the following, each and all of which are a part thereof and have the same force and effect as if spread at length herein:

- a. Advertisement for Bids
 - b. Invitation to bid
 - c. Vicinity Map
 - d. Instructions to Bidders
 - e. Bid Bond
 - f. Contract Proposal with Bid Form(s)
 - g. Listing of Names and Addresses of Major Material Suppliers and Subcontractors
 - h. Notice of Award
 - i. Insurance and Workers' Compensation Certificates
 - j. Performance and Payment Bonds
 - k. Contract Agreement
 - l. Notice to Proceed
 - m. Acceptance of Notice
 - n. General Conditions
 - o. Addenda, if any (issued before a contract is signed)
 - p. Schedules of Construction
 - q. Drawings
 - r. Modification or change orders, if any (issued after Contract is signed)
 - s. Special Conditions (Technical Specifications)
 - t. Plans
8. Conflicting Provisions – Priority. In the event of any conflict among the various Contract Documents, the priority of such documents, and therefore the order in which the provisions of such documents shall govern, shall be as follows:
- a. Change Orders, if any
 - b. Addenda, if any
 - c. Special Conditions/Provisions
 - i. Project Special Provisions
 - ii. Standard Special Provisions
 - d. General Conditions
 - f. Plans/Drawings
 - i. Detailed Plans
 - ii. Standard Plans
 - g. Contract Agreement, Plans/Drawings
 - h. Latest edition of the Commerce City Engineering Construction Standards and Specifications
 - i. Latest edition of the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction
9. Appropriation. The City confirms that the amount of money appropriated for this Contract is equal to or in excess of the contracted amount, and it is agreed that no change order, or other form of order or directive by the City requiring additional compensable work to be performed or that causes the aggregate amount payable under this Contract to exceed the amount appropriated for the original Contract, shall be issued unless Contractor is given written assurance by the City that lawful appropriations to cover the costs of the additional work have been made or unless payment for such work is otherwise provided for by the City.
10. Original Contracts. This Contract may be executed in two or more copies, each of which shall be deemed an original. The City shall retain one copy, and one copy shall be delivered to Contractor. Additional copies, if any, shall be provided to any additional parties

11. Governing Law and Venue; Recovery of Costs. This Contract shall be governed by the laws of the State of Colorado, and venue shall be in the County of Adams, State of Colorado. In the event legal action is brought to resolve any dispute among the parties related to this Contract, the prevailing party in such action shall be entitled to recover from the non-prevailing party reasonable court costs and attorney fees.
12. Governmental Immunity. No term or condition of this Contract 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.*
13. No Assignment. Contractor shall not assign this Contract without the City's prior written consent.
14. No Partnership or Agency. Notwithstanding any language in this Contract or any representation or warranty to the contrary, neither the City nor Contractor shall be deemed or constitute a partner, joint venturer or agent of the other. Any actions taken by the parties pursuant to this Contract shall be deemed actions as an independent contractor of the other.
15. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the parties. It is the express intention of the parties that any person other than the City and Contractor shall be deemed to be only an incidental beneficiary under this Contract.
16. No Waiver.
 - a. The waiver of any term, provision or requirement of this Contract shall not be construed or deemed as a waiver of any other term, provision or requirement of this Contract.
 - b. The one-time waiver of any continuing obligation under this Contract shall not be construed or deemed as a continuing waiver of such obligation.
 - c. The waiver of any breach of a term, provision or requirement of this Contract shall not be construed or deemed as waiver of any subsequent breach thereof.
17. Severability. In the event a court of competent jurisdiction holds any provision of this Contract invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Contract.

[Remainder of this page intentionally left blank – signature page(s) follow(s).]

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

CITY OF COMMERCE CITY

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, CMC, City Clerk

Approved as to form:

Gregory D. Graham, Assistant City Attorney

Recommended for approval:

Brian K. McBroom, City Manager

Maria A. D'Andrea, P.E., Director
Department of Public Works

Daren A. Sterling, P.E., City Engineer

ZAK DIRT, INC.

Signature

Printed Name & Title

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2014,
by _____, _____, of ZAK DIRT, INC.

Witness my hand and official seal.

My Commission Expires _____.

Notary Public