CITY OF CENTRAL, COLORADO
NOTICE OF A SPECIAL MEETING of the CITY COUNCIL to be held on
Wednesday, June 27, 2018 @ 12:00 p.m.
141 Nevada Street, Central City, Colorado

AGENDA

The City Council meeting packets are prepared several days prior to the meetings and available for public inspection at City Hall during normal business hours the Monday prior to the meeting. This information is reviewed and studied by the City Council members, eliminating lengthy discussions to gain basic understanding. Timely action and short discussion on agenda items does not reflect lack of thought or analysis. Agendas are posted on the City’s website, the City Hall bulletin board and at the Post Office the Friday prior to the Council meeting.

12:00pm Council Meeting

1. Call to Order.

2. Roll Call
   Mayor Kathryn Heider
   Mayor Pro-Tem Shirley Voorhies
   Council members Judy Laratta
   Jeff Aiken
   Mary Bell

3. Pledge of Allegiance

4. Additions and/or Amendments to the Agenda.

5. Conflict of Interest.

PUBLIC FORUM/AUDIENCE PARTICIPATION — (public comment on items on the agenda not including Public Hearing items): the City Council welcomes you here and thanks you for your time and concerns. If you wish to address the City Council, this is the time set on the agenda for you to do so. When you are recognized, please step to the podium, state your name and address then address the City Council. Your comments should be limited to three (3) minutes per speaker. The City Council may not respond to your comments this evening, rather they may take your comments and suggestions under advisement and your questions may be directed to the City Manager for follow-up. Thank you.

ACTION ITEMS: NEW BUSINESS –

6. Resolution No. 18-15: A resolution of the City Council of the City of Central, Colorado, authorizing the Manager to execute a Construction Contract with Avery Asphalt, Inc. (Hoover)

PUBLIC FORUM/AUDIENCE PARTICIPATION — for non-action items not Action or Public Hearing items on this agenda (same rules apply as outlined in the earlier Public Forum section).

ADJOURN. Next Council meeting July 17, 2018.

Posted 6/29/2018
AGENDA ITEM # 6

CITY COUNCIL COMMUNICATION FORM

TO: Mayor Heider and Members of City Council
FROM: Sam Hoover, Public Works Director
THROUGH: Marcus McAskin, City Attorney
DATE: June 20, 2018 (Meeting Date June 26, 2018)
ITEM: Resolution No. 18-15

ORDINANCE
X MOTION / RESOLUTION
__ INFORMATION

I. REQUEST OR ISSUE: Resolution 18-15 ("Resolution") awards a bid for the City’s Spring Street Rehabilitation Project (Engineer Project No. 1910.33c) (the “Project”) to Avery Asphalt, Inc., a Colorado corporation (the “Contractor”) and authorizes the City Manager to finalize and execute the construction contract with the Contractor.

II. BACKGROUND: On or about May 17, 2018, the City solicited bids for the Project in accordance with Colorado law by posting a project manual/invitation for bid (“IFB”) on the Rocky Mountain Bid Net System. A total of five (5) bids were received by the applicable due date. The City Engineer has reviewed and evaluated the unit price bids received from the five firms that that submitted proposals to determine the responsible and responsive bidder for the Project.

A copy of the bid tabulation summary is on file with the City Clerk. The bids submitted ranged from $313,275.50 to $427,330.89. A copy of the Engineer’s recommendation dated July 19, 2018 is attached to this CCF and is incorporated by reference.
The work associated with the Project will involve all necessary labor, supervision, equipment, tools, and materials to perform both full depth pavement replacement as well as mill and overlay of portions of Spring Street, together with construction of concrete curb, gutter, sidewalk, storm inlets, and related mobilization and de-mobilization costs. In accordance with the Engineer's recommendation, the Resolution awards the bid to the Contractor in the not to exceed sum of $313,275.50.

I will be available to answer any Project-specific questions at the June 26th regular City Council meeting.

III. **RECOMMENDED ACTION / NEXT STEP:** Approve Resolution No. 18-15.

IV. **FISCAL IMPACTS:** Funds for the Project are appropriated in the City’s 2018 budget, as adopted by City Council.

V. **LEGAL ISSUES:** N/A

VI. **CONFLICTS OR ENVIRONMENTAL ISSUES:** N/A

VII. **SUMMARY AND ALTERNATIVES:** City Council may approve the Resolution or table the item for further discussion and consideration.

**PROPOSED MOTION:** “I MOVE TO APPROVE RESOLUTION NO. 18-15, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CENTRAL, COLORADO AWARDING A BID FOR THE CENTRAL CITY SPRING STREET REHABILITATION PROJECT (ENGINEER PROJECT NO. 1910.33C) AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH AVERY ASPHALT, INC.”

**Attachments:**

1. Engineer's recommendation dated June 19, 2018
MEMO

TO: Sam Hoover
Public Works Director
FIRM: City of Central
ADDRESS: 141 Nevada Street
Central City, CO 80427

DATE: June 19, 2018
JOB NO: 1910.33c
PROJECT: Spring Street Rehabilitation
SUBJECT: Recommendation for Contractor Notice of Award

On May 17, 2018, JVA Inc. (JVA) advertised an invitation to bid for the Spring Street Rehabilitation on behalf of the City of Central (City). Bids were received by the 2:00 PM, June 5, 2018 deadline from Straight Line Saw Cutting, Avery Asphalt, PLM Asphalt & Concrete, Martin Marietta, and The Perfect Patch Asphalt. This memo provides an overview of the total price of the bids received and a recommendation to the City for selection of a contractor for construction of the roadway project.

The bid price component of the evaluation, summarized in Table 1 below, compares the total bid price to perform the street rehabilitation. JVA prepared an overall bid tabulation and checked all the bids for math addition accuracy. Based on comments received after the addendum period, the quantities for the Full Depth Asphalt and Light Duty Paving likely need to be modified and finalized after award of bid. The lowest bidder was Avery Asphalt Inc.

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Total Bid Price for Construction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Avery Asphalt</td>
<td>$313,275.50</td>
</tr>
<tr>
<td>The Perfect Patch Asphalt</td>
<td>$329,164.25</td>
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<tr>
<td>PLM Asphalt &amp; Concrete</td>
<td>$359,364.55</td>
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<td>Martin Marietta</td>
<td>$387,412.16</td>
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<tr>
<td>Straight Line Saw Cutting</td>
<td>$427,330.89</td>
</tr>
</tbody>
</table>

JVA contacted two of the references provided and received favorable responses for projects of similar scope and size. Avery Asphalt did not include a list of proposed subcontractors and plans to self-perform the construction.

Based on the bids and the responsive reference comments, JVA recommends the City of Central present a Notice of Award for the Central City Rehabilitation to Avery Asphalt Inc for a Total Contract Price of $313,275.50. For construction administration, we will provide a separate letter agreement for these engineering services.
As always, feel free to contact me with any questions or comments at 303.444.1951 or ccantrell@jvajva.com.

Sincerely,

JVA, Incorporated

Signed: Chad Cantrell, P.E., CFM
        Project Manager

Copies to:
CITY OF CENTRAL, COLORADO
RESOLUTION NO. 18-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CENTRAL, COLORADO AWARDDING A BID FOR THE CENTRAL CITY SPRING STREET REHABILITATION PROJECT (ENGINEER PROJECT NO. 1910.33C) AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH AVERY ASPHALT, INC.

WHEREAS, on or about May 17, 2018 the City of Central ("City") solicited proposals for the Central City Spring Street Rehabilitation Project (Engineer Project No. 1910.33c) (the "Project") in accordance with Colorado law by posting a project manual and invitation for bid for the Project (the "IFB") on the Rocky Mountain Bid Net System; and

WHEREAS, City Engineer and City Staff has evaluated the unit price bids received from the five (5) firms that submitted proposals by the applicable due date together with the specific criteria set forth in the IFB to determine the responsible and responsive bidder for the Project; and

WHEREAS, a copy of the tabulated bid/proposal sheet for the Project is on file with the City Clerk’s Office; and

WHEREAS, it is the desire and intent of the City Council to award the construction contract to the responsible and responsive bidder who submitted a proposal in compliance with the reasonable and stated specifications contained within the IFB; and

WHEREAS, the City Council, after full consideration of the bids submitted and the recommendation of the City Engineer, finds that AVERY ASPHALT, INC., a Colorado corporation (the successful bidder, hereinafter the "Contractor") submitted the responsible and responsive bid for the Project; and

WHEREAS, it is in the best interests of the City to award the bid for the Project to the Contractor in the not to exceed amount of Three Hundred Thirteen Thousand Two Hundred Seventy-Five and 50/100 Dollars ($313,275.50), based on the unit price(s) set forth in the Contractor’s bid; and

WHEREAS, the City desires to enter into a construction contract with the Contractor to have the Contractor perform the work described with particularity in the IFB and contract documents for the benefit of the City of Central, which construction contract shall be in the form incorporated as Section 00501 in the IFB (the "Construction Contract").

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CENTRAL, COLORADO, THAT:
Section 1. The City Council hereby: (a) awards the Project to the Contractor in the not to exceed amount of Three Hundred Thirteen Thousand Two Hundred Seventy-Five and 50/100 Dollars ($313,275.50); (b) authorizes the City Attorney to finalize and to make such changes as may be needed to correct any nonmaterial errors or language or to negotiate such changes to the Construction Contract as may be appropriate that do not substantially increase the obligations of the City; and (c) authorizes the City Manager to execute the Construction Contract on behalf of the City.

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

ADOPTED THIS 27th DAY OF JUNE, 2018.

CITY OF CENTRAL, COLORADO

By: __________________________________________
    Kathryn A. Heider, Mayor

ATTEST:

By: __________________________________________
    Reba Bechtel, City Clerk

APPROVED TO FORM:

By: __________________________________________
    Marcus McAskin, City Attorney
SECTION 00501

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT, entered into as of the ___ day of _______, 2018, by and between City of Central, a home rule municipal corporation of the State of Colorado hereinafter called “City,” and AVERY ASPHALT, INC., a Colorado corporation hereinafter called “Contractor.”

In consideration of the mutual covenants and obligations hereinafter set forth, it is agreed by and between the parties hereto as follows:

Article 1.  Contract Documents. The contract documents consist of this Agreement, exhibits to this agreement, the conditions of the contract (general, supplementary, and other conditions), the drawings consisting of 18 sheets, specifications, Notice of Award, Notice to Proceed, Contractor’s Bid, and all addenda issued prior to, and all modifications issued after execution of this Agreement. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement.

Article 2.  Contractor’s Representations. In order to induce the City to enter into this Contract, Contractor makes the following representations:

A. Contractor has familiarized itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the work.

B. 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 to 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 Section 4.03 of the General Conditions.

C. Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

D. Contractor has given the Engineer, JVA, Inc., written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by JVA, Inc., is acceptable to Contractor.
Article 3. **Assignment.** It is understood that the City enters into this Agreement based on the special abilities and representations of the Contractor and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Contractor shall neither assign any responsibilities, nor delegate any duties arising under this Agreement without the prior written consent of the City.

Article 4. **Scope of Work.** All necessary labor, supervision, equipment, tools, and materials to perform both full depth pavement replacement as well as mill and overlay of portions of Spring Street. Additionally, construction of concrete curb, gutter, sidewalk, and storm inlets. Work to include all associated site work relating to the project.

Article 5. **Time of Completion.** Contractor shall begin work within ten (10) days after notice to proceed and agrees to substantially complete all work within sixty (90) calendar days. Final completion is required after thirty (30) additional calendar days from Substantial Completion. Any extensions of the time limit set forth above must be agreed upon in writing by the parties hereto.

Article 6. **Liquidated Damages.** It is specifically recognized by and between the parties hereto that the City will suffer certain unspecified damages in the event the project is not completed within the time set forth above. In recognition of the difficulty of ascertaining the actual damages to be sustained by the City, the parties agree that the assessment of liquidated damages shall be appropriate. In the event the project is not completed within the specified time, there shall be assessed against the Contractor, and the Contractor hereby authorizes the City to retain from any monies due the Contractor, the sum of One-Thousand ($1,000.00) dollars per calendar day for each and every calendar day the project remains unfinished for Substantial Completion until the work is Substantially Complete. In no event shall liquidated damages exceed ten percent (10%) of the total project cost.

Article 7. **Contract Price.** Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item) as set forth in Exhibit A attached hereto. The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

B. Total of Unit Price Work (subject to final Unit Price adjustment): **Three Hundred Thirteen Thousand Two Hundred Seventy-Five and 50/100 Dollars.**

C. For all Work, at the prices stated in Contractor’s Bid, attached hereto as Exhibit B.

Article 8. **Payment Procedures.** Contractor shall submit Applications for Payment in
accordance with Article 14 of the General Conditions. Applications for Payment will be processed by the City’s Engineer, JVA Incorporated as provide in Article 14 of the General Conditions.

A. Progress Payments. All progress payments will be on the basis of the progress of the Work measured by the schedule of values as established in the Section 2.07 of the General Conditions.

B. Retainage. The City shall retain from progress payments, until payment is due under the terms and conditions governing final payments, amounts as follows:

1. The City shall authorize partial payments of the amount due at is next regularly scheduled meeting or as soon thereafter as practicable if the Contractor is satisfactorily performing the Contract. The City shall withhold five percent (5%) of the calculated value of the completed work. The City shall retain the five percent (5%) until the Contract is completed satisfactorily and finally accepted by the City.

2. Upon completion and acceptance of the Work, all retained amounts will be released to Contractor under the terms and conditions governing final payment. Consent of the Surety shall be obtained before retainage is paid by City. Consent of the Surety, signed by an agent, must be accompanied by a certified copy of such agent’s authority to act for the Surety.

3. Retainage shall apply to materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing upon which Contractor requests progress payment.

4. Retainage withheld by the City shall not be subject to substitution by the Contractor with securities or any arrangements involving an escrow or custodianship therefore.

Article 9. Hazardous Materials. The parties shall deal with hazardous materials and environmental conditions at the work site in accordance with Section 4.06 of the General Conditions.

Article 10. Final Payment. The City shall make a final settlement in accordance with 24-91-103 C.R.S. within sixty (60) days after the Contract is completed satisfactorily and finally accepted by the City.

Article 11. Change Orders. The City may order changes within the scope of the Work without invalidating this Agreement. If such changes increase or decrease the amount due under the Contract Documents, or the time required for the performance of the Work, such alteration shall be approved by the parties in writing for the change order. The Contractor shall not proceed with any work covered by a proposed change order until he receives a properly executed change

A. The Contractor shall fully and faithfully comply with all terms of this Contract for the Work described herein and hereby guarantees the workmanship and materials for a period of two years, commencing on the date of the City's final acceptance of the Work. Contractor agrees to repair or replace, any workmanship or materials that become defective, within said two year period, even though notice thereof be given by the City after said two year period. Repairs or replacement shall be at the Contractor's sole cost and expense. The necessity of repairs or replacement is at the sole determination of the City.

B. The Contractor shall fully and faithfully discharge the Contractor's obligation with respect to the Work during the installation and construction period and with respect to those that may arise as a result of the Contractor's two year guaranty.

C. The performance and completion of the warranty work are to be further guaranteed by Performance, Payment and Guarantee Bonds in an amount at least equal to the Contract Price, in the form and substance attached herewith.


A. General Liability. The Contractor will indemnify and hold harmless the State and the City and all its officers, agents and employees against all liability and loss, and against all claims and actions based upon or arising out of damage or injury, including death, to persons or property, caused by any acts or omissions of the contractor or sustained in connection with the performance of any contract related to the project or by conditions created thereby, or based upon any violation of any statute, ordinance, regulation, and the defense of any such claims or actions.

B. Governmental Immunities Act. The City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any rights, immunities and protection provided by the Colorado Governmental Immunities Act (C.R.S. § 24-10-101 et seq.) as from time to time amended, or otherwise available to the City, its officers, agents, employees, attorneys, engineers, planners, indemnifiers and insurers.

Article 14. Construction Completion. The City shall have the right, but shall have no obligation or duty, to perform or pay for the performance of any of the Contractor's obligations hereunder, including, without limitation, payment of any subcontractor or supplier of labor or materials, anything herein to the contrary notwithstanding.
Article 15. Independent Contractor. The Contractor in performing the Work hereunder is an independent contractor and reserves the right to control Contractor’s employees and representatives, and the City reserves only the right of inspection to ascertain that the completed Work conforms with the requirements of this Agreement. Contractor acknowledges that no governmental immunity is waived and that no specific relationship with, or duty of care to, the Contractor or third party is assumed by such review or approval.

Article 16. City Representative. The City’s project representative is JVA Incorporated, who shall make, within the scope of their authority, all necessary and proper decisions with reference to the project. All requests for contract interpretations, change orders, and other clarification or instructions shall be directed to the District representative.

Article 17. Notice. Any notice to be sent pursuant to this Agreement shall be deemed delivered if mailed to the other party at the following addresses. Any such notice shall be sent certified or registered mail, return receipt requested, postage prepaid.

CONTRACTOR: Avery Asphalt, Inc.
7770 Venture Street
Colorado Springs, 80951

ENGINEER: Chad Cantrell, P.E.
JVA, Incorporated
1319 Spruce Street
Boulder, CO 80302

CITY: Sam Hoover
Central City Public Works
141 Nevada St, P.O. Box 249
Central City, CO 80427

Article 18. Public Employee Financial Interest. The signatories hereto aver that to their knowledge, no employee of the State or municipality has any personal or beneficial interest whatsoever in this contract as prescribed by C.R.S. § 24-18-201 and C.R.S. §24-50-507.

Article 19. Colorado Labor Preference. In accordance with C.R.S. § 8-17-101, et. seq., Colorado labor shall be employed to perform the work as provided by law.

Article 20. Bid Preference - Public Projects. In accordance with C.R.S. § 8-19-101, et. seq., Colorado resident bidders shall be allowed a preference against a nonresident bidder from a state or foreign country equal to the preference given are required by the state or foreign country in which the nonresident bidder is a resident to perform the work as provided by law.

Article 21. Discrimination and Affirmative Action. The Contractor agrees to comply with the letter and spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.
Article 22. 

Bribery and Corrupt Influences; Abuse of Public Office. The signatories hereto aver that they are familiar with C.R.S. § 18-8-301, et seq. (Bribery and Corrupt Influences) and C.R.S. § 18-8-401. et seq., (Abuse of Public Office), and that no violation of such provisions is present.

Article 23. 

Workmen’s Compensation Coverage. The Contractor is responsible for providing Workmen’s Compensation Coverage for all of its employees to the extent required by law, and for providing such coverage or requiring its subcontractors to provide such coverage for the subcontractor’s employees. In no case is the Owner responsible for providing Workmen’s Compensation Coverage for any employees or subcontractors of Contractor pursuant to this Agreement, and Contractor agrees to indemnify the Owner for any costs for which the Owner may be found liable in this regard.

Article 24. 

Illegal Aliens. The Contractor certifies that the Contractor shall comply with the provisions of CRS 8-17.5-101, et seq. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract or 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 to perform work under this public contract. The Contractor represents, warrants, and agrees that it (i) has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this public contract through participation in the e-verify program or the department program. The Contractor shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision or CRS 8-17.5-101, et seq., the City may terminate this contract for breach of contract, and the Contractor shall be liable for actual and consequential damages to the City. 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 public 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:

A. Notify the subcontractor and the City 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 sub-paragraph (a) above, the subcontractor does not stop employing or contracting with the illegal alien, unless the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Article 25. 

Archaeological Artifacts. In the event archaeological artifacts or historical sources are unearthed during construction excavation of the project, Contractor shall stop or cause to be stopped, construction activities and will notify the State Historical Conservation Office and the
City of such uneartning.

Article 26. No Lobbying. No portion of the payments received for the Work may be used for lobbying, or propaganda as prohibited by 18 U.S.C. §1913 or Section 607 (a) of Public Law 96-74.

Article 27. Binding Arbitration.

A. The parties agree that all disputes between them will be submitted to a mutually agreeable neutral mediator, as a condition precedent to Arbitration. The fee and costs of the mediator shall be apportioned equally between the parties at the time of mediation.

B. Neither party will be liable to the other for special, incidental, consequential or punitive losses or damages, including but not limited to damages resulting from delay, loss of use, loss of profits or revenue, or cost of capital.

C. As to any dispute not resolved by mediation between City and Contractor it is agreed that binding arbitration shall be the sole remedy. The City and Contractor waive any right either may have to submit any dispute between them arising out of this Agreement to try to a court or to a jury. Any party may demand arbitration by serving upon the other written demand for arbitration. Thereafter, within 30 days the parties shall agree upon the person to act as the single arbitrator. In the event the parties are unable to agree either party may request a court of competent jurisdiction to appoint an arbitrator and to enforce the terms of this arbitration provision. Said application to a court for appointment of arbitrator or enforcement of the arbitrations provision shall not constitute a waiver of the agreement that arbitration shall be the sole remedy for resolution of dispute and shall not confer upon the court jurisdiction to resolve any dispute except for the appointment of an arbitrator and to enforce the arbitration provision. The arbitration shall occur in the County of Gilpin, State of Colorado. It is intended that this arbitration provision shall be interpreted in the broadest possible fashion to effect the intent of the parties that all disputes arising between them under this Agreement or as a result of this Agreement shall be submitted to binding arbitration as the sole remedy for the resolution of the dispute. Each side shall equally pay the initial cost of the arbitration. The arbitrator shall award as part of any arbitration award, attorney's fees and costs to either party deemed by the arbitrator to be the prevailing party. The arbitrator shall not have authority to enter any award for punitive or exemplary damages. Any arbitration award may be filed with the Court and made an order of the court pursuant to applicable arbitration resolution statutes then in effect in the State of Colorado. Venue for filing the arbitration award in court shall be in the City Court in and for the County of Gilpin, State of Colorado.

Article 28. Binding on Successors. Except as herein otherwise provided, this Contract shall inure to the benefit of and be binding upon the parties, or any subcontractors hereto, and their
respective successors and assigns in respect of all covenants, agreements and obligations contained in the Contract Documents.

Article 29. Attorney Fees. Should it be necessary for either party to institute arbitration proceedings to enforce the terms of this Agreement, the prevailing party shall recover, in addition to any damages proved, all attorney's fees, costs and other expenses of the litigation.

Article 30. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Contract and the exhibits and attachments hereto which may require continued performance or compliance beyond the termination date of the Contract shall survive such termination date and shall be enforceable by the Owner as provided herein in the event of such failure to perform or comply by the Contractor or its subcontractors.

Article 31. Complete Agreement. This Agreement constitutes the sole agreement between the parties concerning the subject matter hereunder and all prior negotiations, representations, understandings, or agreements concerning the subject matter hereunder are hereby canceled. No modification, change, or alteration of the Agreement shall be of any legal force or effect unless in writing, signed by all the parties hereto.

Article 32. Compliance with Applicable Laws. At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable Federal and State laws that have been or may hereafter be established.

Article 33. Governing Law. This Agreement shall be governed by the laws of the State of Colorado.

Article 34. Partial Invalidity. If any provision of this agreement are in violation of any statute or rule of law of the State of Colorado, then such provision shall be deemed null and void to the extent that they may be violative of law, but without invalidating the remaining provisions hereof.

Article 35. Original Counterparts. This Agreement may be executed in counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument. This Contract is to be executed in quadruplicate.

Article 36. Appropriations. Pursuant to C.R.S. §24-91-103.6, the following applies:

A. The amount of money appropriated by the City is equal to or in excess of the contract amount.

B. No change order shall be permitted requiring additional compensable work to be performed which work causes the aggregate amount payable under the contract to exceed the amount appropriated for the original contract, unless the contractor is given written assurance by the City that lawful appropriations to cover the costs

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of the additional work have been made and the appropriations are available prior to performance of the additional work or unless such work is covered under another provision for a remedy-granting provision in this contract; and

C. For any form of change order or directive by the City requiring additional compensable work to be performed, the City shall reimburse the contractor for the contractor's costs on a periodic basis, as those terms are defined in this contract, for all additional directed work performed until a change order is finalized. In no instance shall this periodic reimbursement be required before the contractor has submitted an estimate of cost to the City for the additional compensable work to be performed. This provision shall only apply when additional compensable work is required on an emergency basis and it is necessary that work begin without a change order as required by Article 11 of this Construction Agreement.

Article 37. Miscellaneous.

A. Terms used in this Contract which are defined in Article I of the General Conditions will have the meanings indicated in the General Conditions.
IN WITNESS WHEREOF, the parties hereto have executed this Construction Agreement effective the day and year first above written. In accordance with Article 35 above, this Agreement is executed in quadruplicate.

CITY OF CENTRAL, COLORADO

By: ______________________________
    Daniel Miera, City Manager

(Pursuant to Authority Set Forth in Resolution No. 18-15)

ATTEST: ______________________________

City Clerk

REVIEWED BY: ______________________________

For City Attorney’s Office

CONTRACTOR: AVERY ASPHALT, INC., a Colorado corporation

By: ______________________________

Name: ______________________________
Title: ______________________________

STATE OF COLORADO )
 ) ss.
COUNTY OF ________________)

The foregoing Construction Agreement was acknowledged before me this ____ day of ____________, 2018, by __________________ as __________________ of Avery Asphalt, Inc., a Colorado corporation.

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))

00501-10           JVA 1910.33c
## Exhibit A

<table>
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<th>ITEM NO.</th>
<th>ITEM</th>
<th>UNIT</th>
<th>TOTAL QUANTITY</th>
<th>UNIT PRICE</th>
<th>COST</th>
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<td>Removal of Sidewalk</td>
<td>SF</td>
<td>4,550</td>
<td>$ 3.30</td>
<td>$ 15,165.00</td>
</tr>
<tr>
<td>6</td>
<td>Removal of Curb, and Gutter</td>
<td>LF</td>
<td>185</td>
<td>$ 13.45</td>
<td>$ 2,488.25</td>
</tr>
<tr>
<td>7</td>
<td>Removal of Asphalt Mat (Assume 4&quot;)</td>
<td>SF</td>
<td>3,600</td>
<td>$ 1.20</td>
<td>$ 4,320.00</td>
</tr>
<tr>
<td>8</td>
<td>Removal of Handrail</td>
<td>LF</td>
<td>320</td>
<td>$ 8.85</td>
<td>$ 2,824.00</td>
</tr>
<tr>
<td>9</td>
<td>Removal of Inlet</td>
<td>EA</td>
<td>1</td>
<td>$ 1,500.00</td>
<td>$ 1,500.00</td>
</tr>
<tr>
<td>10</td>
<td>Sawing of Asphalt</td>
<td>LF</td>
<td>60</td>
<td>$ 3.90</td>
<td>$ 234.00</td>
</tr>
<tr>
<td>11</td>
<td>Unclassified Excavation</td>
<td>CY</td>
<td>350</td>
<td>$ 51.00</td>
<td>$ 18,850.00</td>
</tr>
<tr>
<td>12</td>
<td>Embankment Material (Import)</td>
<td>CY</td>
<td>45</td>
<td>$ 155.00</td>
<td>$ 6,975.00</td>
</tr>
<tr>
<td>13</td>
<td>Reset Sign</td>
<td>EA</td>
<td>7</td>
<td>$ 334.00</td>
<td>$ 2,338.00</td>
</tr>
<tr>
<td>14</td>
<td>Signage (large panel including post)</td>
<td>EA</td>
<td>1</td>
<td>$ 1,505.00</td>
<td>$ 1,505.00</td>
</tr>
<tr>
<td>15</td>
<td>Signage (small panel including post)</td>
<td>EA</td>
<td>1</td>
<td>$ 1,155.00</td>
<td>$ 1,155.00</td>
</tr>
<tr>
<td>16</td>
<td>Pipe Bollard (6&quot; dia, conc filled)</td>
<td>EA</td>
<td>1</td>
<td>$ 495.00</td>
<td>$ 990.00</td>
</tr>
<tr>
<td>17</td>
<td>Reset Flashing Beacon</td>
<td>EA</td>
<td>4</td>
<td>$ 1,150.00</td>
<td>$ 4,500.00</td>
</tr>
<tr>
<td>18</td>
<td>Reset Manhole</td>
<td>EA</td>
<td>4</td>
<td>$ 1,150.00</td>
<td>$ 4,500.00</td>
</tr>
<tr>
<td>19</td>
<td>Reset Valve/Cleanout</td>
<td>EA</td>
<td>12</td>
<td>$ 130.00</td>
<td>$ 1,560.00</td>
</tr>
<tr>
<td>20</td>
<td>Aggregate Base Course (Class 6)</td>
<td>TON</td>
<td>420</td>
<td>$ 40.55</td>
<td>$ 17,031.00</td>
</tr>
<tr>
<td>21</td>
<td>Hotmix Asphalt (Full Depth)</td>
<td>SF</td>
<td>6,670</td>
<td>$ 14.00</td>
<td>$ 93,380.00</td>
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<td>Hotmix Asphalt (2&quot; Min Edge Mill and Overlay)</td>
<td>SF</td>
<td>19,000</td>
<td>$ 2.20</td>
<td>$ 41,800.00</td>
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<tr>
<td>23</td>
<td>Inlet Type 16</td>
<td>EA</td>
<td>2</td>
<td>$ 5,000.00</td>
<td>$ 10,000.00</td>
</tr>
<tr>
<td>24</td>
<td>12&quot; Sidewalk Chase</td>
<td>LF</td>
<td>4</td>
<td>$ 850.00</td>
<td>$ 3,400.00</td>
</tr>
<tr>
<td>25</td>
<td>Curb and Gutter (4&quot; High)</td>
<td>LF</td>
<td>500</td>
<td>$ 27.70</td>
<td>$ 13,850.00</td>
</tr>
<tr>
<td>26</td>
<td>Curb and Gutter (4&quot; High Mountable)</td>
<td>LF</td>
<td>165</td>
<td>$ 40.35</td>
<td>$ 6,557.75</td>
</tr>
<tr>
<td>27</td>
<td>Curb and Gutter (9&quot; max ht)</td>
<td>LF</td>
<td>470</td>
<td>$ 30.35</td>
<td>$ 14,264.50</td>
</tr>
<tr>
<td>28</td>
<td>Stamped Concrete Sidewalk (4&quot; Thick)</td>
<td>SF</td>
<td>4,165</td>
<td>$ 7.20</td>
<td>$ 29,988.00</td>
</tr>
<tr>
<td>29</td>
<td>Concrete for Stairs and Turn Down Edge</td>
<td>CY</td>
<td>13</td>
<td>$ 994.00</td>
<td>$ 12,922.00</td>
</tr>
<tr>
<td>30</td>
<td>Concrete Ramp w/ Truncated Dome</td>
<td>SF</td>
<td>240</td>
<td>$ 26.75</td>
<td>$ 6,420.00</td>
</tr>
<tr>
<td>31</td>
<td>Sealing</td>
<td>SF</td>
<td>2,600</td>
<td>$ 2.00</td>
<td>$ 5,200.00</td>
</tr>
</tbody>
</table>

**TOTALS:** $313,275.50
Exhibit B
Contractor Bid
(attached)
BID FORM

Project: Central City – Spring Street Rehabilitation

1.01 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices within this Bid and in accordance with the other terms and conditions of the Bidding Documents.

1.02 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

1.03 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

<table>
<thead>
<tr>
<th>Addendum No.</th>
<th>Bidders Signature</th>
<th>Date Acknowledged</th>
</tr>
</thead>
<tbody>
<tr>
<td>#1</td>
<td></td>
<td>5-30-18</td>
</tr>
<tr>
<td>#2</td>
<td></td>
<td>5-30-18</td>
</tr>
</tbody>
</table>

B. Bidder is familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder is familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, and performance of the Work.

E. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.

F. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.

I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
1.04 Bidder certifies that:

A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;

B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;

C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and

D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph:

1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;

2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and

4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

1.05 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

1.06 Unit Pricing

A. Unit Prices have been computed in accordance with Paragraph 11.03.B of the General Conditions.

B. Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined in the Contract Documents provided.

C. Description of measurement and payment procedures is provided in Standard Specifications and Revisions

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<table>
<thead>
<tr>
<th>LINE NO.</th>
<th>PAY ITEM</th>
<th>UNIT</th>
<th>EST. QTY.</th>
<th>UNIT PRICE</th>
<th>EXTENDED AMOUNT (TOTAL COST)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mobilization and Demobilization</td>
<td>LS</td>
<td>1</td>
<td>15,000.00</td>
<td>15,000.00</td>
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<td>Traffic Control</td>
<td>LS</td>
<td>1</td>
<td>25,000.00</td>
<td>25,000.00</td>
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<tr>
<td>3</td>
<td>Erosion Control</td>
<td>LS</td>
<td>1</td>
<td>2,500.00</td>
<td>2,500.00</td>
</tr>
<tr>
<td>4</td>
<td>Construction Surveying</td>
<td>LS</td>
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<td>6,500.00</td>
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<td>SF</td>
<td>4550</td>
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<td>15,015.00</td>
</tr>
<tr>
<td>6</td>
<td>Removal of Curb, and Gutter</td>
<td>LF</td>
<td>185</td>
<td>13.45</td>
<td>2,488.00</td>
</tr>
<tr>
<td>7</td>
<td>Removal of Asphalt Mat (Assume 4&quot;)</td>
<td>SF</td>
<td>9600</td>
<td>1.20</td>
<td>11,520.00</td>
</tr>
<tr>
<td>8</td>
<td>Removal of Handrail</td>
<td>LF</td>
<td>320</td>
<td>9.85</td>
<td>2,832.00</td>
</tr>
<tr>
<td>9</td>
<td>Removal of Inlet</td>
<td>EA</td>
<td>1</td>
<td>1500.00</td>
<td>1,500.00</td>
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<tr>
<td>10</td>
<td>Sawing of Asphalt</td>
<td>LF</td>
<td>60</td>
<td>3.90</td>
<td>234.00</td>
</tr>
<tr>
<td>11</td>
<td>Unclassified Excavation</td>
<td>CY</td>
<td>350</td>
<td>61.00</td>
<td>21,350.00</td>
</tr>
<tr>
<td>12</td>
<td>Embankment Material (Import)</td>
<td>CY</td>
<td>45</td>
<td>155.00</td>
<td>6,975.00</td>
</tr>
<tr>
<td>13</td>
<td>Reset Sign</td>
<td>EA</td>
<td>7</td>
<td>334.00</td>
<td>2,338.00</td>
</tr>
<tr>
<td>14</td>
<td>Signage (large panel including post)</td>
<td>EA</td>
<td>1</td>
<td>1505.00</td>
<td>1505.00</td>
</tr>
<tr>
<td>15</td>
<td>Signage (small panel including post)</td>
<td>EA</td>
<td>1</td>
<td>1165.00</td>
<td>1165.00</td>
</tr>
<tr>
<td>16</td>
<td>Pipe Bollard (6&quot; dia, conc filled)</td>
<td>EA</td>
<td>4</td>
<td>495.00</td>
<td>1980.00</td>
</tr>
<tr>
<td>17</td>
<td>Reset Flashing Beacon</td>
<td>EA</td>
<td>1</td>
<td>960.00</td>
<td>960.00</td>
</tr>
<tr>
<td>18</td>
<td>Reset Manhole</td>
<td>EA</td>
<td>4</td>
<td>1260.00</td>
<td>4640.00</td>
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</table>

05/21/2018 00310-3  JVA 1910.33c
<table>
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<tr>
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<th>Description</th>
<th>Unit</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>19</td>
<td>Reset Valve/Cleanout</td>
<td>EA</td>
<td>12</td>
<td>130.00</td>
<td>1,560.00</td>
</tr>
<tr>
<td>20</td>
<td>Aggregate Base Course (Class 6)</td>
<td>TON</td>
<td>420</td>
<td>40.55</td>
<td>18,696.00</td>
</tr>
<tr>
<td>21</td>
<td>Hotmix Asphalt (Full Depth)</td>
<td>SF</td>
<td>6670</td>
<td>4.00</td>
<td>26,680.00</td>
</tr>
<tr>
<td>22</td>
<td>Hotmix Asphalt (2&quot; Min Full Width Mill and Overlay) w/ Pavement Markings</td>
<td>SF</td>
<td>19000</td>
<td>2.20</td>
<td>41,800.00</td>
</tr>
<tr>
<td>23</td>
<td>Inlet Type 16</td>
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<td>2</td>
<td>50.00</td>
<td>10,000.00</td>
</tr>
<tr>
<td>24</td>
<td>12&quot; Sidewalk Chase</td>
<td>LF</td>
<td>4</td>
<td>850.00</td>
<td>3,400.00</td>
</tr>
<tr>
<td>25</td>
<td>Curb and Gutter (4&quot; High)</td>
<td>LF</td>
<td>500</td>
<td>27.70</td>
<td>13,850.00</td>
</tr>
<tr>
<td>26</td>
<td>Curb and Gutter (4&quot; High Mountable)</td>
<td>LF</td>
<td>165</td>
<td>40.35</td>
<td>6,458.00</td>
</tr>
<tr>
<td>27</td>
<td>Curb and Gutter (9&quot; max ht High)</td>
<td>LF</td>
<td>470</td>
<td>30.35</td>
<td>14,265.00</td>
</tr>
<tr>
<td>28</td>
<td>Stamped Concrete Sidewalk (4&quot; Thick)</td>
<td>SF</td>
<td>4165</td>
<td>7.20</td>
<td>29,988.00</td>
</tr>
<tr>
<td>29</td>
<td>Concrete for Stairs and Turn Down Edge</td>
<td>CY</td>
<td>13</td>
<td>994.00</td>
<td>12,922.00</td>
</tr>
<tr>
<td>30</td>
<td>Concrete Ramp w/ Truncated Dome</td>
<td>SF</td>
<td>240</td>
<td>26.25</td>
<td>6,420.00</td>
</tr>
<tr>
<td>31</td>
<td>Seeding</td>
<td>SF</td>
<td>2,600</td>
<td>2.00</td>
<td>5,200.00</td>
</tr>
</tbody>
</table>

BIDDER acknowledges that the Owner has the right to delete items in the Bid or change quantities at his sole discretion without affecting the Agreement or prices of any item so long as the deletion or change does not exceed twenty-five percent (25%) of the total Contract Amount.

The undersigned Bidder agrees to furnish all required Bonds in the form required by the District and to enter into a contract within the time specified in the Instructions to Bidders and further agrees to complete all Work covered by the Bid, in accordance with specified requirements, within the time specified in the Agreement. Bidder accepts the provisions of the Agreement as to liquidated damages.

In submitting this Bid it is understood that the right is reserved by Owner to reject any and all bids, and it is understood that this Bid may not be withdrawn during a period of 60 days after the scheduled time for the receipt of bids.

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PROJECT TOTAL $313,276.00

(IN WORDS) Three hundred Thirteen Thousand Two hundred Seventy Six Dollars

1.07 Construction Schedule

A. Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

1.08 The following documents are submitted with and made a condition of this Bid:

A. Required Bid security;
B. List of Proposed Subcontractors;
C. List of Proposed Suppliers;
D. List of Project References;
E. Evidence of authority to do business in the State of Colorado;
F. United States Environmental Protection Agency Certification Regarding Debarment, Suspension, and Other Responsibility Matters

1.09 The Engineer may require the apparent low responsive bid and second low responsive bid General Contractors to submit the following Statement of Qualifications after the bid opening:

A. General Information

1. Please provide official firm name, license, contact person for bidding, title, phone number, e-mail address, and mailing address. Provide a list of current projects under construction in detail, including Owner’s name and contact information, Engineer’s name and contact information, contract price, percent complete, and brief description of work.

B. Project Experience

1. Provide brief summaries of a minimum of three (3) comparable projects in which your firm served as General Contractor in last three (3) years. Include the following information with each project summary:

   a. Owner and Engineer contact information
   b. References and contact information
   c. Project contract price and final construction cost
d. Construction dates

C. Experience of key personnel to be assigned to this project.

1. For each key person identified, list at least two comparable projects in which they have played a primary role. For other projects provide:
   
a. Description of project  
b. Role of the person  
c. Project's original contracted construction cost and final construction cost  
d. Construction dates  
e. Project Owner  
f. Reference information (two names with telephone numbers for each project)

D. Safety Record

1. Provide the firm's OSHA reportable accident rate and current workman's compensation insurance multiplier for the last three (3) years. Address and describe the company's safety program and any additional information that would highlight the General Contractor's approach to creating and maintaining a safe project site.

E. Financial Statement

1. Provide a recent financial statement, including balance sheet and income statement showing:
   
a. Current assets and other assets  
b. Current liabilities and other liabilities  
c. Fixed assets and equipment

F. References

1. Provide name, address, and phone number of the General Contractor's banking reference

2. Provide name, address, and phone number of the General Contractor's insurance agent(s)
SIGNATURE OF BIDDER:

Date: ____________________________________________

If an Individual: ____________________________________________

Doing business as ____________________________________________

If a Partnership: ____________________________________________

By ____________________________, partner

If a Corporation: Avery Asphalt Inc (a __________ Corporation)

By ____________________________, __________ ATTEST

(SEAL & TITLE: ____________________________) Manager

ADDRESS: 7770 Venture St Colorado Springs CO 80951

TELEPHONE: 719-471-0110 Cell 719-243-5695

E-MAIL: Jason.Bayken@AveryAsphaltInc.com

END OF SECTION

05/21/2018  00310-7  JVA 1910.33c
PERFORMANCE BOND

CONTRACTOR (name and address):
Avery Asphalt, Inc
7770 Venture Street
Colorado Springs, CO 80951

SURETY (name and address of principal place of business):

OWNER (name and address): City of Central
141 Nevada Street
Central City, CO 80427

CONSTRUCTION CONTRACT
Effective Date of the Agreement: ______________, 2018
Amount: Three Hundred Thirteen Thousand Two Hundred Seventy-Five and 50/100 Dollars ($313,275.50)
Description (name and location): Spring Street Rehabilitation Project, Central City, Colorado

BOND
Bond Number:
Date (not earlier than the Effective Date of the Agreement of the Construction Contract): ______________, 2018
Amount: Three Hundred Thirteen Thousand Two Hundred Seventy-Five and 50/100 Dollars ($313,275.50)

Modifications to this Bond Form: None

__________________________
(Seal)

__________________________
(Seal)

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

__________________________
(seal)
Contractor’s Name and Corporate Seal

__________________________
By: __________________________
Signature

__________________________
Print Name

__________________________
Title

__________________________
Attest:
Signature
Title:

SURETY

__________________________
(seal)
Surety’s Name and Corporate Seal

__________________________
By: __________________________
Signature (attach power of attorney)

__________________________
Print Name

__________________________
Title

__________________________
Attest:
Signature
Title:
Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety’s obligation under this Bond shall arise after:

3.1 The owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor’s performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner’s notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety’s receipt of the Owner’s notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner’s right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety’s obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety’s expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor’s Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety’s liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which
the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows: N/A
PAYMENT BOND

CONTRACTOR (name and address):
Avery Asphalt, Inc
7770 Venture Street
Colorado Springs, CO 80951

SURETY (name and address of principal place of business):

OWNER (name and address):
City of Central
141 Nevada Street
Central City, CO 80427

CONSTRUCTION CONTRACT
Effective Date of the Agreement: ______________, 2018
Amount: Three Hundred Thirteen Thousand Two Hundred Seventy-Five and 50/100 Dollars ($313,275.50)
Description (name and location): Spring Street Rehabilitation Project

BOND
Bond Number:
Date (not earlier than the Effective Date of the Agreement of the Construction Contract): ______________, 2018
Amount: Three Hundred Thirteen Thousand Two Hundred Seventy-Five and 50/100 Dollars ($313,275.50)
Modifications to this Bond Form: NONE

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL
(seal)
Contractor’s Name and Corporate Seal
By: ____________________________
       Signature
Print Name
Title
Attest: ____________________________
       Signature
Title

SURETY
(seal)
Surety’s Name and Corporate Seal
By: ____________________________
       Signature (attach power of attorney)
Print Name
Title
Attest: ____________________________
       Signature
Title

EJCDC C-615, Payment Bond
Published December 2010 by the Engineers Joint Contract Documents Committee.
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Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

3. If there is no Owner Default under the Construction Contract, the Surety’s obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner’s property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.

4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety’s expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.

5. The Surety’s obligations to a Claimant under this Bond shall arise after the following:

5.1 Claimants who do not have a direct contract with the Contractor,

5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and

5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).

5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).

6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant’s obligation to furnish a written notice of non-payment under Paragraph 5.1.1.

7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety’s expense take the following actions:

7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

7.2 Pay or arrange for payment of any undisputed amounts.

7.3 The Surety’s failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney’s fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety’s total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney’s fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner’s priority to use the funds for the completion of the work.

10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.

11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in
the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with the said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 Claim: A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows: N/A