

**SECTION 00 52 43**

**AGREEMENT**

THIS AGREEMENT is dated as of the \_\_\_\_\_ day of \_\_\_\_\_  
in the year 2009 by and between the

GOLDEN URBAN RENEWAL AUTHORITY  
(hereinafter called Owner) and

TC2, Inc.  
(hereinafter called Contractor)

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1. WORK**

Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**13<sup>th</sup> STREET GATEWAY ARCH – Option 1 or Option 2**

**ARTICLE 2. ENGINEER/ARCHITECT**

The site design is by TST Inc. of Denver (hereinafter called "Engineer") who will assume all duties and responsibilities, and have the rights and authority assigned to "Engineer" in the contract documents in connection with completion of the Work in accordance with the Contract Documents. The architectural detailing for the arch and decorative pavements is by Winston Associates, Inc. (hereinafter called "Architect") and who will assume all duties and responsibilities, and have the rights and authority assigned to "Architect" in the contract documents in connection with completion of the Work in accordance with the Contract Documents. The structural design for the arch is by Loris and Associates (hereinafter called "Structural Engineer") and who will assume all duties and responsibilities, and have the rights and authority assigned to "Structural Engineer" in the contract documents in connection with completion of the Work in accordance with the Contract Documents.

**ARTICLE 3. CONTRACT TIME**

3.1 The Work to be provided under all awarded schedules shall be substantially completed by June 1, 2009, approximately seventy (70) days after the date when the Contract Time commences to run as provided in Paragraph 2.03 of the General Conditions. Final completion for all work awarded shall be within one hundred (100) calendar days after the date when the Contract Time commences to run as provided in Paragraph 2.03 of the General Conditions.

a. Because of the potential disruption to traffic and pedestrian flow in the Project area, all site work is to be completed within thirty (30) days from the beginning of construction activates, or sooner if possible.

3.2 Liquidated Damages: Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not substantially complete within the time specified in Paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not substantially completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay

(but not as a penalty) Contractor shall pay Owner Five Hundred Dollars (\$500.00) for each day that expires after the time specified in Paragraph 3.1 above for substantial completion until the Work is substantially complete. After Substantial Completion if Contractor shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner Five Hundred dollars (\$500) for each day that expires after the time specified in Paragraph 3.1 above for completion and readiness for final payment.

#### ARTICLE 4. CONTRACT PRICE

Contractor shall be paid for completion of the Work in current funds in accordance with the Contract Documents and in accordance with the attached bid schedules.

As provided in paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed by Owner, Architect or Engineer, and determinations of actual quantities and classification are to be made by Owner's Representative as provided in paragraph 9.07 of the General Conditions and any applicable Supplementary Conditions attached hereto. Unit prices have been computed as provided in paragraph 11.03.C of the General Conditions.

#### ARTICLE 5. PAYMENT PROCEDURES

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

5.1 Progress Payments. Owner shall make progress payments on account of the Contract Price on the basis of a Contractor's Applications for Payment as recommended by Owner's Representative. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in paragraph 2.07 of the General Conditions (and in case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Conditions.

5.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Owner's Representative shall determine, or Owner may withhold, in accordance with paragraph 14.02.B.5 of the General Conditions.

a. 90% of Work completed (with the balance being retainage). If Work has been at least 50% completed as determined by Owner's Representative, and if the character and progress of the Work have been satisfactory to Owner and Owner's Representative, Owner, on recommendation of Owner's Representative, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage except as provided by the General Conditions, or State law.

b. 90% (with the balance being retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in Paragraph 14.02.A.1 of the General Conditions).

5.1.2 Upon Substantial Completion, an amount sufficient to increase total payments to Contractor to 95% of the Contract Price, less such amounts as Owner's Representative shall determine or Owner may withhold in accordance with Paragraph 14.02.B.5 of the General Conditions.

- 5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Owner's Representative as provided in said Paragraph 14.07, as amended by the supplementary conditions.

#### ARTICLE 6. INTEREST

All moneys not paid when due hereunder as provided in Article 14 of the General Conditions shall bear interest at the maximum rate of 8% per year.

#### ARTICLE 7. CONTRACTOR'S REPRESENTATIONS

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

- 7.1 Contractor has familiarized himself with the nature and extent of the Contract Documents, Work, site, locality, and with all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.
- 7.2 Contractor has studied carefully all reports of explorations and test of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions, and accepts the determination set forth in Paragraph SC-4.02 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which Contractor is entitled to reply.
- 7.3 Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies (in addition to or to supplement those referred to in Paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as Contractor considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.02 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.
- 7.4 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for accurately locating said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by Contractor in order to perform and furnish the Work at the Contract Price within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.03 of the General Conditions.
- 7.5 Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- 7.6 Contractor has given Architect and Engineer written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written

resolution thereof by Architect and Engineer is acceptable to Contractor.

#### ARTICLE 8. CONTRACT DOCUMENTS

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

- 8.1 This Agreement (Pages 1 to 7, inclusive).
- 8.2 Exhibit to this Agreement (pages n/a to n/a, inclusive).
- 8.3 Performance, Payment and other Bonds (identified as Exhibits 00 61 13.13 and 00 61 13.16 and consisting of 2 pages.)
- 8.4 Notice of Award.
- 8.5 Notice to Proceed.
- 8.6 General Conditions (Pages 1 to 59, inclusive) being the Standard General Conditions of the Construction Contract (2002 Edition).
- 8.7 Supplementary Conditions (Pages 1 to 11, inclusive).
- 8.8. Specifications bearing the title: "13<sup>th</sup> STREET GATEWAY ARCH" , dated February 16, 2009.
- 8.9 Addendum number    dated   .
- 8.10 Contractor's Bid, dated   .
- 8.11 Documentation submitted by Contractor prior to Notice of Award (Pages n/a to n/a, inclusive).
- 8.12 The following which may be delivered or issued after the Effective Date of the Agreement and are attached hereto: All written amendments and other documents amending, modifying, or supplementing of the Contract Documents pursuant to Paragraph 3.04 of the General Conditions.

The documents listed in Article 8 et. seq. above are attached to this Agreement (except as expressly noted otherwise above).

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

In case of discrepancy, the order of precedence of the following Contract Documents is as follows (i.e., the document with the lower numerical value shall govern over the documents with a higher value):

- 1. Change Orders
- 2. This Agreement
- 3. Addenda
- 4. Drawings
- 5. Supplementary Conditions
- 6. Specifications
- 7. General Conditions

ARTICLE 9. IMMIGRATION STATUS OBLIGATIONS.

- 9.1 Contractor certifies, through signature of its authorized representative executing this Agreement, that it does not knowingly employ or contract with an illegal alien and that it has participated or attempted to participate in the United States Department of Homeland Security Basic Pilot Program in order to verify that it does not employ any illegal aliens.
- 9.2 Contractor shall not:
- 1) Knowingly employ or contract with an illegal alien to perform work under this Agreement; or
  - 2) 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 the public contract for services.
- 9.3 Contractor has verified or attempted to verify through participation in the Basic Pilot Program that Contractor does not employ any illegal aliens and, if Contractor is not accepted into the Basic Pilot Program prior to entering into this Agreement that Contractor shall apply to participate in the Basic Pilot Program every three months until Contractor is accepted or the terms and conditions of this Agreement have been completed, whichever is earlier. The provision specified in this subparagraph shall not be required or effective if the Basic Pilot Program is discontinued.
- 9.4 Contractor is prohibited from using Basic Pilot Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.
- 9.5 If Contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, Contractor shall be required to:
- 1) Notify the subcontractor and the Owner within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
  - 2) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-subparagraph (B)(2) the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- 9.6 Contractor shall comply with any reasonable request by the State Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to its authority.
- 9.7 If Contractor violates any of the provisions set forth in this section, the Owner may terminate the Agreement and Contractor shall be liable for all actual and consequential damages incurred by the Owner.

## ARTICLE 10. MISCELLANEOUS

- 10.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- 10.2 Reference to the General Conditions shall include modifications thereof by the Supplementary Conditions.
- 10.3 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge that assignor from any duty or responsibility under the Contract Documents.
- 10.4 Except for the intended beneficiaries of the Labor and Material Payment Bond executed in conjunction with this Agreement, nothing in this Agreement shall be construed to give any rights or benefits by virtue of this Agreement to anyone other than Owner and Contractor, and all duties and responsibilities undertaken pursuant to this Agreement will be for sale and exclusive benefit of Owner and Contractor and not for the benefit of any other party.
- 10.5 Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 10.6 Any provision or part of the Contract Documents held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 10.7 The Owner and Contractor acknowledge and agree that the payments hereunder shall constitute current expenditures of the Owner payable in the fiscal years for which funds are appropriated for the payment thereof. The Owner's obligations under this Agreement shall be from year to year only and shall not constitute a multiple-fiscal year direct or indirect debt or other financial obligation of the Owner, or an obligation of the Owner payable in any fiscal year beyond the fiscal year for which funds are appropriated for the payment thereof, or payable from any funds of the Owner other than funds appropriated for the payment of current expenditures. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Owner monies, assets or properties.
- 10.8 To the extent this contract may be construed to be a "sole source contract" in excess of \$100,000.00 within the meaning of sections 15 through 17 of Article XXVIII of the Colorado Constitution, and to the extent these constitutional provision have not been enjoined or invalidated by a court of competent jurisdiction, the requirements and limitations of these constitutional provisions are hereby incorporated in this contract, including the following: Because of the presumption of impropriety between contributions to any campaign and sole source government contracts, contract holders shall contractually agree, for the duration of the contract and for two years thereafter, to cease making, causing to be made, or inducing by any means, a

contribution, directly or indirectly, on behalf of the contract holder or on behalf of his or her immediate family member and for the benefit of any political party or for the benefit of any candidate for any elected office of the state or any of its political subdivisions.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor, and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or by Engineer on their behalf.

This Agreement will be effective on \_\_\_\_\_, 200 \_\_.

OWNER:  
GOLDEN URBAN RENEWAL AUTHORITY

CONTRACTOR:

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

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

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

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

Attest:

Attest:

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

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

[SEAL]

[SEAL]

Address For Giving Notices:

OWNER:  
Golden Urban Renewal Authority  
922 Washington Ave. Suite 100  
Golden, CO 80401  
Att'n: Mark Heller

CONTRACTOR:

Att'n:

Approved as to Form:

\_\_\_\_\_  
Attorney for the Golden Urban Renewal Authority