

DISTRICT SERVICE CONTRACT

THIS DISTRICT SERVICE CONTRACT ("Agreement") is made and entered into on May 19, 2014, by and between Waterfall Metropolitan District No. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District"), and **Goltz Asphalt Company** ("Contractor"), collectively the "Parties".

For consideration herein set forth, the Parties agree as follows:

1. Scope of Services. Contractor shall perform such services for the District as outlined in the Scope of Services attached hereto as **Exhibit A** and incorporated herein by reference ("Services"). Contractor shall, at its own expense, provide all Services in a good and workmanlike manner and in accordance with any and all approved plans, documents, and specifications described in Contractor's proposal to provide such Services to the District; furnish, or cause to be furnished, all labor, materials, equipment, permits and accessories, as necessary, to provide such Services; and take all precautions necessary for safely and prudently conducting the Services required by this Agreement, including maintaining insurance as required by Paragraph 3 of this Agreement.

2. Compensation. The District hereby agrees to pay to Contractor the amounts required for the completed Services at the unit prices set forth in the Contractor's proposal/quote attached hereto as Exhibit A. It is specifically understood and agreed that the **Contractor's quotation dated March 25, 2014**, and attached hereto as Exhibit A, with the Scope of Services to be performed hereunder, are each and all included in and made a part of this Agreement.

Invoicing shall be done on a monthly basis reflecting completed and accepted work done on a progress of completion basis. Invoices shall be submitted to the District by the 5th of the month for work completed in the preceding month. The invoices will be reviewed for accuracy and processed for the partial payment. The District reserves the right to inspect all services completed and invoiced for payment to ensure services have been provided in accordance with this Agreement. In the event inspected services are not accepted for payment by the District, the District shall notify Contractor in writing that Contractor is in default and has two (2) days to cure said default. The District shall be entitled to pursue all remedies provided by law and in equity if Contractor fails to cure the default.

Upon receipt of payment from the District, Contractor hereby agrees to certify, and agrees to submit to the District a "Release and Certification of Payment" form as attached hereto as **Exhibit B**, that all costs, charges and expenses incurred by it or on its behalf for work, labor, services, materials and equipment supplied and/or used in connection with its work pursuant to this Agreement through the payment date of this Agreement, have been duly paid and that, to the best of its knowledge and belief (based upon reasonable investigation), each of its subcontractors and material men have duly paid all costs, charges and expenses incurred by them or on their behalf for work, labor, services, materials and equipment supplied and/or used by them in connection with Consultant's work pursuant to this Agreement through the payment date of this

Agreement have been duly paid, and that in consideration of receipt of payment, Consultant releases and discharges the District and the District's premises and property from all claims, liens and obligations of every nature arising out of or in connection with the performance of the work as claimed.

3. Insurance. This Agreement shall not be in force nor take effect until said Contractor has furnished and delivered to the District proof of adequate workmen's compensation and liability insurance in force and effect, as provided herein, for the duration of the project. The District shall be listed as additional insured on the General and Auto Liability policy, which must be reflected on the required insurance certificate (Acord 25). General Liability and Auto Liability coverage shall be primary. Waiver of subrogation applies to General Liability and Workers Compensation insurance.

At all times during the Term of this Agreement, Contractor shall carry and maintain, at its sole cost and expense, including through change orders as may be provided herein, such commercial general liability and other insurance in amounts no less than set forth below, as will provide protection from claims set forth below that may arise out of or result from Contractor's performance or obligation pursuant to this Agreement, whether such performance is by Contractor, by anyone directly or indirectly employed by Contractor, or by anyone or whose acts on behalf of Contractor:

(1) Commercial General Liability Insurance:

General Aggregate	\$ 2,000,000
Products and Completed Operations	\$ 2,000,000
Personal and Advertising Injury	\$ 1,000,000
Each Occurrence	\$ 1,000,000
Damage to Rented Premises	\$ 100,000
Medical Expenses (Any one person)	\$ 5,000

(2) Comprehensive Automobile Liability Insurance shall include all motor vehicles owned, hired, leased, or borrowed, with a combined single limit for bodily injury and property damage of not less than \$500,000 each occurrence.

(3) Workmen's Compensation and Employer Liability Insurance

Worker's Compensation	Per Colorado Statutes
Employers' Liability	\$ 1,000,000

(4) Umbrella: \$ 1,000,000

All policies listed herein shall be on an occurrence basis.

In addition, unless otherwise crossed out and initialed and dated by both Parties, the following coverage shall be obtained by Contractor, on an occurrence basis:

- (1) ~~Performance Bond~~
- (2) Inland Marine including Builder's Risk, Installation Floater, Contractor's Equipment
- (3) ~~Professional Liability Insurance, such as Architects & Engineers Errors & Omissions or as applicable, claims made is acceptable~~
- (4) Pollution Liability, claims made is acceptable

4. Term. The term of this Agreement shall begin on the date set forth above, shall be effective as of such date regardless of the date of execution hereof, and shall expire upon completion of the Services described in Paragraph 1 of this Agreement. Funding for this Agreement shall be subject to annual appropriations by the District as provided in Paragraph 9 herein.

5. Termination. The District reserves the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by delivery of a written notice of termination to Contractor at least thirty (30) days prior to the effective date of termination. Contractor may terminate this Agreement, with cause, by delivery of written notice of termination to the District at least thirty (30) days prior to the effective date of termination. Such notice shall specify the extent of termination and the effective date. Contractor shall stop rendering services pursuant to this Agreement upon the effective date of termination. In the event of termination by either Party, the District shall pay Contractor for all of the work satisfactorily performed prior to the designated termination date. Compensation for work in progress shall be prorated as to the percentage of work completed as of the date of notice of termination or the effective date of termination, as applicable. In ascertaining the services actually rendered hereunder up to the date of notice of termination or the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress pertaining to the work contemplated herein.

6. Illegal Aliens.

A. Certification. Prior to the execution of this Agreement, Contractor shall certify to the District, as attached hereto as **Exhibit C**, that at the time of certification, it does not knowingly employ or contract with an illegal alien who will perform work pursuant to this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program (the "Department Program"), as further described in Section 6.F. herein, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work pursuant to this Agreement.

B. Prohibited Acts. Contractor shall not:

(1) Knowingly employ or contract with an illegal alien to perform work pursuant to this Agreement; or

(2) Enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work pursuant to this Agreement.

C. Verification.

(1) Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work pursuant to this Agreement through participation in either the E-Verify Program or the Department Program.

(2) Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

(3) If Contractor obtains actual knowledge that a subcontractor performing work pursuant to this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:

(i) Notify the subcontractor and the District within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(ii) Terminate the subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to subparagraph (i) hereof, the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

D. Duty to Comply With Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation conducted pursuant to Section 8-17.5-102 (5), C.R.S. to ensure that Contractor is complying with this Section 6 of the Agreement.

E. Breach. If Contractor violates a provision of this Section 8, the District may terminate the Agreement for breach of the Agreement. If the Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the District. The District shall notify the Colorado office of the Secretary of State if Contractor violates a provision of this Section 6 of the Agreement and the District terminates the Agreement.

Agreement. For purposes of this Agreement, "Work Product" includes, but is not limited to, any and all finished or unfinished design, development and/or construction documents, drawings, reports, writings, data, studies, graphics, maps, plans, specifications, electronic files and other documents, materials and information, in every form and/or format, which Contractor prepared and/or used in connection with this Agreement. All drawings, specifications and other documents prepared by Contractor pursuant to this Agreement are not intended or represented to be suitable for reuse by the District or others on extensions of the work or on any other project.

9. Subject to Annual Appropriations. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The District's payment obligations hereunder are subject to annual appropriations. The District has appropriated sufficient funds for this Agreement for the current fiscal year. Any Services resulting in additional compensation and as approved by the District shall be subject to annual appropriations by the District.

10. Indemnification. Contractor is and shall be considered an independent contractor pursuant to this Agreement. Nothing herein contained shall constitute or designate Contractor or any of its employees or agents as employees or agents of the District, nor shall Contractor be deemed or considered to be a partner of the District. Contractor shall have full power and authority to select the means, manner, and method of performing its duties pursuant to this Agreement without detailed control or direction of the District except as set forth in this Agreement. It shall be Contractor's responsibility as an independent contractor to pay any and all taxes on payments which it receives pursuant to this Agreement and to pay its own costs and expenses incurred in connection with performance of this Agreement.

11. Governmental Immunity. Nothing in this Agreement shall be construed to be a waiver, in whole or in part, of any right, privilege, or protection afforded the District or its Board of Directors, officers, employees, servants, agents, or authorized volunteers, pursuant to the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S.

12. Modification. This Agreement may not be amended, modified, or changed, in whole or in part, without a written agreement executed by both the District and Contractor.

13. Assignment. No portion of the Agreement shall be sublet, assigned or otherwise disposed of except with the written consent of the District, and such consent when given shall not be construed to relieve the Contractor of any responsibility for the fulfillment of this Agreement. Written consent will be given only after the District has been assured that each proposed subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

15. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not

affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance.

16. Attorneys' Fees. In the event that litigation is brought by either party hereto in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any terms, conditions, or provisions hereof.

17. Binding Agreement. This Agreement shall inure to and be binding upon the respective Parties hereto and their successors and permitted assigns.

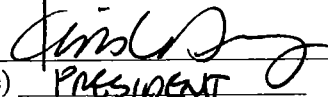
18. Entire Agreement. This Agreement, including all Exhibits attached hereto, constitutes the entire Agreement between the Parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations.

(Remainder of Page Left Intentionally Blank.)

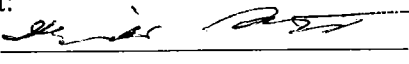
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

District: Waterfall Metropolitan District No. 1

Attest: 
By: _____

By 
(Title) PRESIDENT

Contractor: Goltz Asphalt Company

Attest: _____
By: 


By 
(Title) Secy / Treas.

EXHIBIT A

SCOPE OF SERVICE AND CONTRACTOR'S QUOTE

Goltz Asphalt Company
 3466 E. Cty. Rd. 20C, #B5
 Loveland, CO 80537
 Phone: 970-663-2343
 Fax: 970-669-4340

Estimate

DATE	ESTIMATE #
3/25/2014	7591

NAME / ADDRESS
Pinnacle Consulting Group, Inc. Attn: Carla Hawkins 5110 Granite Street 1627 E. 18 th Street Loveland, CO 80538

TERMS	PROJECT

DESCRIPTION	QTY	Unit Price	TOTAL
Project: Orthopedic Center of the Rockies, 3470 E. 15th St. Revised 3-25-14			
Sealcoat 2/coats - bottom coat Squeegee Application; top coat Spray application - The areas to be sealed shall be cleaned to remove light debris (dirt, silt, gravel, etc.), using mechanically powered forced air blowers. Apply asphalt emulsion sealer.			
WEST LOT - Approx. 3184 sq. yards completed for the lump sum of \$3710.07		3,710.07	3,710.07
EAST AND NORTH LOTS- Approx. 4134 sq. yards completed for the lump sum of \$4615.66		4,615.66	4,615.66
*Reduction in price if both lots sealed together - less \$690.00		-690.00	-690.00
Striping - Restripe existing parking areas with yellow or white traffic paint.			
WEST LOT - Completed for the lump sum price of \$301.75		301.75	301.75
EAST AND NORTH LOTS - Completed for the lump sum price of \$583.00		583.00	583.00
Crackseal (All Lots) Includes: Clean and fill cracks larger than one quarter (1/4") inch in size with hot pour rubberized crackfiller. Settling of crackseal material may occur, but does not affect performance. If asphalt has alligatored areas, they will not be cracksealed. Patching is recommended in these areas. Completed for the lump sum price of \$1646.85		1,646.85	1,646.85
*Excludes Permits, testing, and traffic control.			
*Customer responsible for notifying homeowners or tenants of work schedule; vehicles and other objects must be cleared before contractor arrives to do job.			
*Should an additional trip be required due to no fault of the contractor (sprinkler systems, cars on lot, etc.), a return charge per trip shall be added to price.			
Thank you for letting us bid on this project!			

Submitted by: Bryan J. Goltz	TOTAL	\$10,167.33
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The following quotation, subject to terms and conditions, as noted, and on the reverse side, if accepted, shall constitute a contract between the parties to this quotation.

Acceptance/Date _____

EXHIBIT B

RELEASE AND CERTIFICATION OF PAYMENT

EXHIBIT C

CERTIFICATION REGARDING ILLEGAL ALIENS

**CERTIFICATION
REGARDING ILLEGAL ALIENS**

To: WATERFALL METROPOLITAN DISTRICT NO. 1

I, Judith A Goltz, as Sec'y/Treas of Goltz Asphalt Company, the prospective "Contractor" for that certain contract for sealcoat, striping, and crackseal services ("Agreement") to be entered into with Waterfall Metropolitan District No. 1, do hereby certify on behalf of said Contractor that, as of the date of this Certification, Contractor does not knowingly employ or contract with an illegal alien who will perform work pursuant to this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program pursuant to Section 8-17.5-102(5)(c), C.R.S. in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work pursuant to this Agreement.

Executed on the 19th of May, 2014.

GOLTZ ASPHALT COMPANY

By: _____
Its: _____

Judith A Goltz
Sec'y/Treas