

**POCATELLO/CHUBBUCK  
SCHOOL DISTRICT NO. 25  
Bannock County, Idaho**

**CONSTRUCTION CONTRACT**

This contract is made and entered into, effective as of **May 17, 2016** by and between School District No. 25, Bannock County, Idaho, ("Owner"), and Klingler Asphalt Maintenance, ("Contractor"), a company duly licensed as a public works contractor in the State of Idaho, as follows:

1. **DESCRIPTION OF WORK.** Contractor shall perform the following described work, in accordance with the contract plans and specifications, more particularly described below:

Asphalt Overlay and Asphalt Seal Coating at Various Schools

2. **CONTRACT DOCUMENTS.** The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings Specifications, Addenda issues prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreement either written or oral.

3. **CONTRACT PRICE.** Owner agrees to pay Contractor, for the work described, the total price of \$11,889.38. Payment of this amount is subject to additions or deductions in accordance with the provisions of this contract.

4. **UNIT PRICES.** Unit prices, if any, are as follows:

**Jefferson Elementary School – Seal Coat (Project No. 5)**

5. **PAYMENT SCHEDULE.** Based upon applications for payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in these Contract Documents.

Each Application for Payment shall be based on the most recent statement of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials, or equipment, which have not been delivered and stored at the site.

Owner shall make final payment to Contractor no later than 30-days after the issuance of the Architect's final Certificate for Payment or within thirty (30) days after the work is completed, if the contract is at that time fully performed, and subject to the condition that final payment shall not be due until Contractor has delivered to Owner a complete release of all liens arising out of the contract, or receipts in full covering all labor, materials, and equipment for which a lien could be filed. Notwithstanding the above, Owner will retain five percent of the contract price from the final payment to be released to the Contractor when the Owner receives a tax release from the Idaho State Tax Commission. The five percent retainage may be used by Owner to offset any and all losses incurred by Owner in the course of the performance of the Contract by Contractor, including but not limited to tax liens, defective performance, defective products – including those of subcontractors or other damage caused by Contractor in the performance of this Contract. Owner shall provide Contractor with a written itemization of all sums retained by Owner at the time of its issuance of final payment. Under no circumstances shall Owner retain more than five percent of the contract price without written agreement of Contractor. In the event that progress payments will be made under this contract, the payment schedule will be set forth below or in an attachment hereto:

*Provided that an Application for Payment is received by the Owner not later than the Twenty Fifth (25<sup>th</sup>) day of a month, the Owner shall make payment to the Contractor not later than the Fifteenth (15<sup>th</sup>) day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Owner receives the Application for Payment."*

**6. EFFECT OF PAYMENT.** Owner by making payment waives all claims except those arising out of:

- A. Faulty work appearing after final payment is made;
- B. Work that does not comply with this contract;
- C. Outstanding claims of lien; or
- D. Failure of Contractor to comply with any special guarantees required by the contract. Contractor, by accepting final payment, waives all claims except those that he has previously made in writing, and which remain unsettled at the time of acceptance.

**7. STARTING AND COMPLETION DATES.** Construction under this contract shall begin on June 6, 2016, and be completed by August 1, 2016.

**8. RESPONSIBILITIES OF OWNER.** Owner shall furnish all necessary surveys for the work, and shall secure and pay for easements for permanent structures or permanent changes in existing structures or facilities on the work site, or which are necessary for its proper completion.

Owner reserves the right to let other contracts for construction work to be performed at the work site. Contractor shall cooperate with all other contractors to the effect that their work shall not be impeded by his construction, and shall give such other contractors access to the work site necessary to perform their contracts.

**9. RESPONSIBILITIES OF CONTRACTOR.** Contractor's duties and rights in connection with the above-described project are as follow:

- A. Responsibility for the Supervision of Construction. Contractor shall be solely responsible for all construction under this contract, including the techniques, sequences, procedures, and means, and for coordination for all work. Contractor shall supervise and direct the work to the best of his ability, and give it all the attention necessary for such proper supervision and direction. The project shall be completed in a proper, workmanlike manner, consistent with the highest standards of quality in the community.
- B. Furnishing of Labor, Materials, etc. Contractor shall provide and pay for all labor, materials, and equipment, including tools, equipment, and machinery, utilities, including water, transportation, and all other facilities and services necessary for the proper completion of work on the project in accordance with the contract. Ninety-five percent (95%) of Contractor's employees must be bona fide Idaho residents as required by Idaho Code § 44-1001.
- C. Procurement of Licenses and Permits. Contractor shall pay all taxes required by law in connection with work on the project in accordance with this contract including sales, use, and similar taxes, and shall secure all licenses and permits necessary for proper completion of the work, paying the fees for such licenses and permits. Contractor represents that he is authorized to do business in the State of Idaho and, pursuant to Idaho Code §63-1502, shall provide evidence that he is so qualified.
- D. Payment of Taxes.
  - i. Pursuant to Idaho Code §63-1503, Contractor agrees to pay promptly when due all taxes (other than on real property), excises and license fees due to the state, its subdivisions, and municipal and quasi-municipal corporation therein accrued or accruing during the term of this contract, whether or not the same shall be payable at the end of such term. If the said taxes, excises, and license fees are not payable at the end of said term, but liability for the payment thereof exists, even though the same constitute liens upon his property, to secure the same to the satisfaction of the respective officers charged with the collection thereof. In the event of the Contractor's default in the payment or securing of such taxes, excises, and license fees, the Contractor hereby consents that the Owner may withhold from any payment due to the Contractor under this contract, the estimated amount of such accrued and accruing taxes, excises, and license fees for the benefit of all taxing units to which said Contractor is liable.
  - ii. Pursuant to Idaho Code §63-1502, Contractor shall provide evidence that he has paid or secured to the satisfaction of the respective taxing units, as defined in Idaho Code §63-1501, all taxes for which he or his property is liable then due or delinquent.
  - iii. Pursuant to Idaho Code §63-1504, before Owner shall approve any claim on account of construction work performed as required by this contract, Contractor (or any sub-contractor claimant) must furnish evidence to Owner that he (i.e. Contractor or any sub-contractor, as the case may be) has paid all taxes, excises and license fees due to the state and its taxing units, due and payable during the term of this contract for such construction, and that he has secured all such taxes, excises, and license fees liability for the payment of which has accrued during the term of this contract, notwithstanding they may not yet be due or payable.

- E. Except as otherwise provided in Idaho Code §44-1002, Contractor must employ ninety-five percent (95%) bona fide Idaho residents as employees on the project unless fifty (50) or less persons are employed in which event Contractor may employ ten percent (10%) nonresidents, provided however, in any case Contractor must give preference to the employment of bona fide residents in the performance of said work.
- F. Compliance with Construction, State, and Federal Laws and Regulations. Contractor shall comply with all laws and ordinances, and the rules, regulations, or orders of all public authorities relating to the performance of the work under and pursuant to this contract. If any of this contract is at variance with any such laws, ordinances, rules, regulations, or orders, he shall notify Owner promptly on discovery of such variance. The Contractor must notice the District of any Registered Sex Offenders working on School Property and obtain written permission from the District prior to the commencement of any work.
- G. Responsibility for Negligence of Employees and Subcontractors. Contractor assumes full responsibility for acts, negligence, or omissions of all his employees on the project, for those of his subcontractors and their employees, and for those of all other persons doing work under a contract with him. Smoking and alcohol are prohibited on school property. Unauthorized persons are not allowed on the job site.
- H. Warranty of Fitness of Equipment and Materials. Contractor represents and warrants to Owner that all equipment and materials used in the work, and made a part of the structures on such work, or placed permanently in connection with such work, will be new, of good quality, free of defects, and in conformity with this contract. It is understood and agreed between the parties to this contract that all equipment and materials not so in conformity will be considered defective.
- I. Clean-up. Contractor agrees to keep the work premises and adjoining ways free of waste material and rubbish caused by his work or that of his subcontractors. Contractor further agrees to remove all such waste material and rubbish on termination of the project, together with all of his tools, equipment, machinery, and surplus materials. Contractor agrees, on terminating his work at the site, to conduct general clean-up operations, including the cleaning of all glass surfaces, paved streets and walks, steps, and interior floors and walls.
- J. Indemnity and Hold Harmless Agreement.
  - i. Contractor agrees to indemnify and hold harmless Owner, and its agents and employees, from and against any and all claims, damages, losses, and expenses, including reasonable attorney's fees in case it shall be necessary to file an action, arising out of performance of the work in this contract, that is (a) for bodily injury, illness, or death, or for property damage, including loss of use, and (b) caused in whole or in part by Contractor's intentional and/or negligent act or omission, the act of an employee or agent of the Contractor or that of a subcontractor.
  - ii. Contractor further agrees to indemnify, save harmless, and make whole, Owner from any and all defects appearing or developing in the workmanship or materials performed or furnished under this Contract for a period of one (1) year after the acceptance thereof by Owner.
- K. Performance and Payment Bonds. Contemporaneously with the execution of this contract, Contractor shall provide performance and payment bonds in the form required by Idaho Code § 54-1926. The bonds shall be eighty-five percent (100%) of the contract price and shall provide Owner with security for faithful performance of the contract and also provide security for protection of persons supplying labor and/or materials for the contract.

10. **TIME OF ESSENCE; EXTENSION OF TIME.** All times stated in this contract are of the essence. The time stated in this contract may be extended by a change order from Owner for such reasonable time as it may determine, when

in its opinion Contractor is delayed in work progress by changes ordered, labor disputes, fire, prolonged transportation delays, injuries, or other causes beyond Contractor's control or which justify the delay. Otherwise, in the event the project is not completed by the scheduled completion date, Contractor shall be required to pay Owner as liquidated damages the sum of \$200 for each calendar day, after the scheduled completion date, that the project is unfinished.

11. **SUBCONTRACTORS.** Contractor agrees to furnish Owner, prior to the execution of this contract, with a list of names of subcontractors to whom he proposes to award the principal portions of the work to be subcontracted by him.

A subcontractor, for the purposes of this contract, shall be a person with whom Contractor has a direct contract for work at the project site.

Contractor agrees not to employ a subcontractor to whose employment Owner reasonably objects, nor shall Contractor be required to hire a subcontractor to whose employment he reasonably objects.

All contracts between Contractor and subcontractor shall conform to the provisions of this contract, and shall incorporate in them the relevant provisions of this contract.

12. **ARBITRATION.** All claims and disputes relating to this contract shall be subject to arbitration at the option of either Owner or Contractor in accordance with the Arbitration Rules of the American Arbitration Association for the construction industry.

A. A formal written demand for Arbitration shall be filed with BOTH the other party to this contract AND with the American Arbitration Association, within a reasonable time after the dispute has arisen, but NOT LATER THAN SIXTY (60) DAYS after the claim or dispute arose.

B. A "claim" or "dispute" under this Paragraph arises when the claiming or disputing party FIRST knew or reasonably should have known of the subject matter of the "claim" or "dispute." The purpose of this Paragraph is to encourage the prompt resolution of any and all "claims" or "disputes." As a result, any doubts regarding the determination of when such notice occurred shall be resolved by giving all due deference to the EARLIEST date of notice. The determination of when a "claim" or "dispute" occurred shall not be determined by reference to the date where an "impasse" had occurred.

C. The Arbitrator is authorized to award reasonable attorney fees to the prevailing party.

13. **INSURANCE.** Contractor agrees to keep in force at his own expense during the entire period of construction on the project such liability insurance as will protect him from claims, under workers' compensation and other employee benefit laws, for bodily injury and death, and for property damage, that may arise out of work under this contract, whether directly or indirectly by Contractor, or directly or indirectly by a subcontractor. The minimum liability limits of such insurance shall not be less than the limits required by law for that type of damage claim. Proof of such insurance shall be

filed by Contractor with Owner within a reasonable time after execution of this contract. Contractor shall be responsible for insuring all construction materials, tools and equipment stored at the job site.

14. **CORRECTING WORK.** When it appears to the Owner or the Contractor during the course of construction that any work does not conform to the provisions of this contract, Contractor shall make necessary corrections so that such work will so conform, and in addition will correct any defects caused by faulty materials, equipment, or quality of performance in work supervised by him or by a subcontractor, appearing within one (1) year from the date of final payment, or within such longer period as may be prescribed by law.

15. **WORK CHANGES.** Owner reserves the right to order work changes in the nature of additions, deletions, or modifications, without invalidating this contract, and agrees to make corresponding adjustments in the contract price and time for completion.

All changes will be authorized by a written change order signed by Owner. The change order will include conforming changes in the contract price and completion time.

Work shall be changed, and the contract price and completion time shall be modified only as set out in the written change order. No work is to be initiated without the written change order in place.

Any adjustment in the contract price resulting in a credit or a charge to Owner shall be determined by mutual contract of the parties, or by arbitration, before starting the work involved in the change.

The total allowance for combined overhead and profit for changes shall be included in the total cost to the owner and shall be based on the following schedule.

- A. For the Contractor, 10% over cost.
- B. For the Sub-Contractor, 15% over cost to be divided 10% for Sub-Contractor and 5% for Contractor.
- C. For any Sub-Subcontractor, 15% over cost to be divided 5% for Contractor, 5% for Sub-Contractor, and 5% for Sub-Subcontractor.

16. **CONTRACTOR'S TERMINATION.** Owner may, on five days notice to Contractor, terminate this contract before the completion date specified in this contract, or extended times provided by approved change orders, and without prejudice to any other remedy they may have, if Contractor defaults in performance of any provision in this contract, or fails to carry out his work in accordance with the provisions of the contract documents. If the unpaid balance on the contract price at the time of such termination exceeds the expense of finishing the work, owners will pay such excess to Contractor. If the expense of finishing the work exceeds the unpaid balance at the time of termination, Contractor agrees to pay the difference to Owners.

17. **GOVERNING LAW.** It is agreed that this contract shall be governed by, construed, and enforced in accordance with the laws of the State of Idaho.

18. **GENDER AND NUMBER.** As used in this contract, the masculine, feminine, or neuter gender, and the singular or plural number, each shall be deemed to include the other whenever the context so indicates.

19. **ATTORNEY FEES.** In the event that any action, including Arbitration, is filed in relation to this contract, the unsuccessful party in the action shall pay to the prevailing party, in addition to all the sums that either party may be called on to pay at Arbitration, a reasonable sum for the successful party's attorney's fees.

20. **ENTIRE AGREEMENT.** This contract shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this contract shall not be binding upon either party except to the extent incorporated in this contract.

21. **MODIFICATION OF AGREEMENT.** Any modification of this contract or additional obligation assumed by either party in connection with this agreement shall not be binding upon either party except to the extent an amendment in writing, executed by both the Owner and the Contractor.

22. **NOTICES.** Any notice provided for or concerning this contract shall be in writing and be deemed sufficiently given when sent by certified or registered mail and addressed as follows:

To: Owner  
School District No. 25  
3115 Poleline Rd.  
Pocatello, Idaho 83201-6119

To: Klingler Asphalt Maintenance  
P. O. Box 202  
Moreland, ID 83256

23. **ASSIGNMENT OF RIGHTS.** The rights of each party under this contract are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

24. **PARAGRAPH HEADINGS.** The titles to the paragraphs of this contract are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this contract.

**IN WITNESS WHEREOF** the parties have executed this contract on the date indicated below:

**CONTRACTOR:**  
Klingler Asphalt Maintenance

Dated: June 9, 2016

By: Denton G. Klingler

Title: President

Attest: Karen V. Klingler

**OWNER:**  
School District No. 25  
Bannock County, Idaho

Dated: 5-25-16

By: Bart J. Reed

Bart J. Reed  
Director of Business Operations

Attest: CB Giese

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Reviewed/Approved/BR