

CONSTRUCTION CONTRACT AGREEMENT  
PURCHASING CONTRACT NUMBER FB 17-397

Project: **Re-Bid: HCD Painting Project**

Contractor: **Cheyenne Corporation dba AAA Action Painting**

Owner: **Planning and Development Services, Housing and Community Development Division**, City of Boise, Ada County, Idaho, a municipal corporation

**THIS AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, by and between the City of Boise, a municipal corporation organized under the laws of the State of Idaho, hereinafter referred to as "Owner", and Cheyenne Corporation dba AAA Action Painting, hereinafter referred to as "Contractor", a corporation organized under the laws of the State of Idaho.

1. Statement of Work: The Contractor shall furnish labor, material and equipment for, and perform the work described herein for the consideration stipulated, and in compliance with State and City Codes. Contract documents consist of the following together with any amendments that may be agreed to in writing by both parties:

Bid Proposal	Performance Bond
Contract Agreement	Labor & Payment Bond
Specifications	Liability Insurance
Acknowledgements	Automobile Insurance
Supplementary Conditions	Workers' Compensation

2. Amount of Contract: In an amount Not to Exceed: **\$111,875.00**

3. Term of Contract: The work to be performed under this contract shall commence upon receipt of Notice to Proceed as provided in the General Conditions, 30 days substantial completion with a 365 day contract term, unless sooner terminated as herein provided.

4. Indemnification and Insurance: The Contractor shall indemnify and save and hold harmless the Owner from and for any and all losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses caused or incurred by the Contractor, its servants, agents, employees, guests, and business invitees, and not caused by or arising out of the tortious conduct of Owner or its employees. In addition, the Contractor shall maintain, and specifically agrees that it will maintain, throughout the term of this Agreement, liability insurance, in which the Owner shall be named an additional insured in the minimum amount as specified in the Idaho Tort Claims Act set forth in Title 6, Chapter 9 of the Idaho Code (currently, a minimum of \$500,000). The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless Owner; and if Owner becomes liable for an amount in excess of the insurance limits, herein provided, the Contractor covenants and agrees to indemnify and save and hold harmless Owner from and for all such losses, claims, actions, or judgments for damages or liability to persons or property. The Contractor shall provide Owner with a Certificate of Insurance, or other proof of insurance evidencing compliance with the requirements of this paragraph and file such proof of insurance with the Owner. In the event the insurance minimums are changed, Contractor shall immediately submit proof of compliance with the changed limits.

Contractor shall maintain automobile insurance with a limit of no less than \$500,000 per occurrence for owned, non-owned and hired vehicles. If Contractor has no owned motor vehicles, then hired and non-owned motor vehicle liability coverage with limits not less than \$500,000 per accident for bodily injury and property damage is required. Where applicable, the City of Boise shall be named as an additional insured.

Additionally, the Contractor shall have and maintain during the life of this contract, statutory Workers Compensation, regardless of the number of employees, or lack thereof, to be engaged in work on the project under this agreement (including himself) in the statutory limits as required by law. In case any such work is sublet, the Contractor shall require the subContractor provide Workers Compensation Insurance for himself and any/all the latter's employees to be engaged in such work. Proof of insurance must be provided to the owner prior to the start of work.

Proof of insurance shall be provided to City of Boise, **Purchasing**, P.O. Box 500, Boise, ID. 83701.

5. Independent Contractor: In all matters pertaining to this agreement, the Contractor shall be acting as an independent contractor, and neither the contractor nor any officer, employee or agent of the contractor will be deemed an employee of City. The selection and designation of the personnel of the Owner in the performance of this agreement shall be made by the Owner.

6. Compensation: For performing the services specified in Section 1 herein, Owner agrees to reimburse Contractor according to the attached bid specification. Payment will not include any sub-contract or other personal services pay except as may be agreed to in writing in advance by the parties. Change Orders may be issued, subject to Purchasing/Council approval.

7. Method of Payment: Contractor will invoice the Planning and Development Services, Housing and Community Development Division directly for all current amounts earned under this Agreement. Owner will pay all invoices within forty-five (45) days after receipt.

8. Notices: Any and all notices required to be given by either of the parties hereto, unless otherwise stated in this agreement, shall be in writing and be deemed communicated when mailed in the United States mail, certified, return receipt requested, addressed as follows:

**City of Boise  
PDS, HCD Division  
PO Box 500  
Boise, Idaho 83701**

**Cheyenne Corporation  
dba AAA Action Painting  
PO Box 2635  
Eagle, Idaho 83616**

Either party may change their address for the purpose of this paragraph by giving written notice of such change to the other in the manner herein provided.

9. Attorney Fees: Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.

10. Time is of the Essence: The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder will constitute a breach of, and a default under, this Agreement by the party so failing to perform.

11. Force Majeure: Any delays in or failure of performance by Contractor shall not constitute a breach or default hereunder if and to the extent such delays or failures of performance are caused by occurrences beyond the reasonable control of Contractor, including but not limited to, acts of God or the public enemy; compliance with any order or request of any governmental authority; fires, floods, explosion, accidents; riots, strikes or other concerted acts of workmen, whether direct or indirect; or any causes, whether or not of the same class or kind as those specifically named above, which are not within the reasonable control of Contractor. In the event that any event of force majeure as herein defined occurs, Contractor shall be entitled to a reasonable extension of time for performance of its Services under this Agreement.

12. Assignment: It is expressly agreed and understood by the parties hereto, that the Contractor shall not have the right to assign, transfer, hypothecate or sell any of its rights under this Agreement except upon the prior express written consent of Owner.

13. Discrimination Prohibited: In performing the Services required herein, the Contractor, sub-recipient, or subcontractor shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity/expression, national origin or ancestry, age or disability. It is the Contractor's responsibility to ensure that the sub-contractor is in compliance with this section.

Further, if this is a Department of Transportation assisted contract, the Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of the contract. It is the Contractor's responsibility to ensure that all sub-contractors are in compliance with these requirements as well. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City deems appropriate.

14. Reports and Information: At such times and in such forms as Owner may require, there will be furnished to Owner such statements, records, reports, data and information as Owner may request pertaining to matters covered by this Agreement.

15. Audits and Inspections: At any time during normal business hours and as often as the Owner may deem necessary, there shall be made available to the Owner for examination all of Vendor's records with respect to all matters covered by this

Agreement. Vendor shall permit the Owner to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

16. Compliance with Laws: In performing the scope of services required hereunder, the Contractor shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments.

17. Changes: The Owner may, from time to time, request changes in the Scope of Work to be performed hereunder. Such changes, and any increase or decrease in the contractor's compensation, which are mutually agreed upon by and between the Owner and the Contractor, shall be incorporated in written amendments to this Agreement.

18. Termination for Cause: If, through any cause, the contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the Owner shall thereupon have the right to terminate this Agreement by giving written notice to the contractor of such termination and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. If this agreement is terminated for cause the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of this Agreement by the Contractor, and the Owner may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due the Owner from the Contractor is determined. This provision shall survive the termination of this agreement and shall not relieve the contractor of its liability to the Owner for damages, provided that the amount of such damages shall not exceed the total compensation provided for in section two of this agreement.

19. Termination for Convenience of City: Owner may terminate this Agreement at any time by giving at least fifteen (15) days notice in writing to the Contractor. If the Agreement is terminated by Owner as provided herein, Contractor will be paid an amount which bears the same ratio to the total compensation as the work actually performed bear to the total services of Contractor covered by this Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of Contractor, Section 18 hereof relative to termination will apply.

20. Contractor to Pay or Secure Taxes: The contractor in consideration of securing the business of providing: 1) To pay promptly when all taxes due (other than on real property), excises and license fees due the state, its subdivisions, and municipal and quasi-municipal corporations therein, accrued or accruing in accordance with conditions of this Agreement, whether or not the same shall be payable at the end of such term; 2) That if 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 the Contractor's property, to secure the same to the satisfaction of the respective officers charged with the collection thereof; and 3) That, in the event of default in the payment or securing of such taxes, excises, and license fees, that Boise City may withhold from any payment due the Contractor hereunder the   
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estimated amount of such accrued taxes, excises and license fees for the benefit of all taxing units to which said the Contractor is liable.

21. Construction and Severability: If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

22. Non-Appropriation: Should funding become not available, due to lack of appropriation, the Owner may terminate this agreement upon 30 (thirty) days notice.

23. Entire Agreement: This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

24. Applicable Law: This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho, and the ordinances of the City of Boise.

25. Approval Required: This Agreement shall not become effective or binding until approved by the City of Boise.

26. Acceptance and Final Payment: Upon receipt of notice that the work is ready for final acceptance and inspection, the Owner's representative will make such inspection and when he finds the work acceptable and the contract fully performed he will have the Contractor issue a final payment request.

END OF AGREEMENT

IN WITNESS WHEREOF, the City and the contractor/vendor have executed this Agreement as of the date first above written.

**Cheyenne Corporation dba AAA Action Painting**  
**PO Box 2635**  
**Eagle, Idaho 83616**

William Proctor  
Signature \_\_\_\_\_ Date \_\_\_\_\_  
William Proctor  
Print Name \_\_\_\_\_

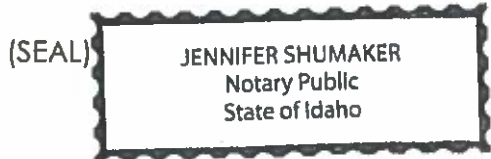
ACKNOWLEDGEMENT

State of Idaho  
) ss  
County of Ada

On this 5 day of September 2017, before me personally appeared William Proctor known to me and known by me to be the person who executed the above instrument, who, being by me first duly sworn, did depose and say that he/she is President and that he/she executed the foregoing instrument on behalf of said firm for the use and purposes stated therein.

Witness my hand and official seal

Jennifer Shumaker  
(notary signature)  
6/9/2023



PURCHASING CONTRACT NUMBER FB 17-397

APPROVED AS TO FORM AND CONTENT:

\_\_\_\_\_  
Department Date

\_\_\_\_\_  
Purchasing Agent Date

\_\_\_\_\_  
Legal Department Date

\_\_\_\_\_  
Risk Management Date

CITY OF BOISE

APPROVED BY:

\_\_\_\_\_  
David H. Bieter, Mayor Date

ATTEST:

CONTRACT AMOUNT:  
**NTE \$111,875.00**

\_\_\_\_\_  
City Clerk Date

CONTRACTOR'S AFFIDAVIT CONCERNING TAXES

STATE OF ID

COUNTY OF Ada

Pursuant to the Idaho Code, Title 63, Chapter 15, I, the above signed, being duly sworn, depose and certify that all taxes, excises and license fees due to taxing units in the State of Idaho, for which I or my property is liable then due or delinquent, have been paid, or secured to the satisfaction of the respective taxing units.

Tax ID# 82-0374169 (IF EIN IS NOT AVAILABLE, DO NOT INCLUDE SS#)

Cheyenne Corporation  
dba: AAA Action Painting  
(Contractor Name)

P.O. Box 2635  
(Address)

Eagle, ID 83616  
(City and State)

Willie Proctor  
(Signature)

Subscribed and sworn to before me the 5<sup>th</sup> day of September, 2017.

Jennifer Shumaker  
(Notary Republic)

Boise Idaho  
(City and State)

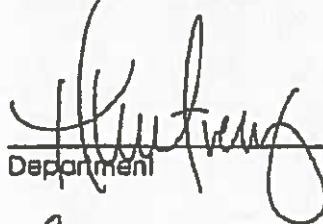



Commission Expires: 6/1/2023



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 9/5/17  
Department Date

 9-5-17  
Purchasing Agent Date

 9.5.17  
Legal Department Date

 9/5/17  
Risk Management Date

CITY OF BOISE

APPROVED BY:

\_\_\_\_\_  
David H. Bieler, Mayor Date

ATTEST:

CONTRACT AMOUNT:  
NTE \$111,875.00

\_\_\_\_\_  
City Clerk Date