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FILE 043/008
FOLDER #2

State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Norman H. Bangerter
Governor
Dee C. Hansen
Executive Director
Dianne R. Nielson, Ph.D.
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

September 27, 1990

Hand Delivered

Clark Martinez
High Mountain Builders
RR 1 - Box 299A
Heber City, Utah 84032

Dear Mr. Martinez:

RE: **Notice to Proceed, Boyer Mine Phase I, ACT/043/008, Folder #3, Summit County, Utah**

Please find enclosed, one original copy of the Contract for Boyer Mine Phase I Reclamation Construction.

You are hereby authorized to proceed with construction activity in accordance with the requirements of the Contract. Division inspector for the Boyer Mine Phase I Reclamation Project will be Dave Darby. Please notify Dave at your earliest convenience of your anticipated work schedule so he may be present at commencement of construction activities.

Should you have any further questions or need assistance from the Division, feel free to contact Dave Darby or myself.

Sincerely,

J. Randall Harden
Sr. Reclamation Engineer

Enclosure - Contract

cc: J. Helfrich
D. Haddock

Document 043008.001

CONTRACT

Boyer Mine Phase I
Reclamation Construction
Summit County, Utah
ACT/043/008

THIS AGREEMENT, made and entered into this 25 th day of September, 1990 by and between the DIVISION OF OIL, GAS & MINING, hereinafter called the OWNER, and High Mountain Builders, a corporation authorized to transact business in the State of Utah as Co-Partnership , hereinafter called the CONTRACTOR, whose address is:

High Mountain Builders, RR 1, BOX 299A, Heber City, Utah 84032 1 - (801) 649 - 8554.

WITNESSETH: WHEREAS, the OWNER intends the WORK to include reclamation construction of the BOYER MINE, PHASE I.

WHEREAS, the CONTRACTOR agrees to perform the WORK for the sum herein stated.

NOW THEREFORE, the OWNER and the CONTRACTOR for the considerations hereinafter provided agree as follows:

ARTICLE 1. SCOPE OF WORK.

The SCOPE OF WORK, hereinafter the WORK, to be performed is that contained in the Drawings and Technical Specifications prepared by: the Division of Oil, Gas & Mining and entitled TECHNICAL SPECIFICATIONS: Boyer Mine Phase I; the General Specifications prepared by the Division of Oil, Gas and Mining entitled GENERAL CONDITIONS FOR RECLAMATION PROJECTS, dated June, 1988; and the Supplementary Conditions listed in the Technical Specifications cited above.

The CONTRACTOR agrees to furnish all labor, materials and equipment to complete the WORK as described the Drawings, Specifications, and addendums to the specifications which are hereby made a part of this CONTRACT by reference. It is understood and agreed by the parties hereto that all WORK will be performed as required in the Drawings and Specifications and will be subject to inspection and approval prior to final acceptance by the OWNER. The relationship of the CONTRACTOR to the OWNER hereunder is that of an independent CONTRACTOR.

ARTICLE 2. TIME OF COMPLETION.

The WORK under this CONTRACT shall be commenced upon notice to proceed and shall be completed within 25 calendar days after date marked on registered receipt of said Notice to Proceed and no later than November 1, 1990. WORK delays caused by weather may, at the discretion of the OWNER, extend the completion date. CONTRACTOR also agrees to the liquidated damages provisions of Article 14.

ARTICLE 3. CONTRACT SUM.

The OWNER agrees to pay, and the CONTRACTOR agrees to accept in full performance of this contract, the sum of Five Thousand Fifty Two Dollars and Fifty Cents ($5,052.50), which is hereinafter the BID PRICE (plus any alternatives) and which sum also includes the cost of a Performance Bond and Payment Bond for 100% of the Bid Price, said Bonds having been posted by the CONTRACTOR pursuant to State law, when applicable.

ARTICLE 4 PAYMENT.

OWNER will promptly pay for services performed by the CONTRACTOR. Vouchers for reimbursement of expenditures under this Agreement must be filed promptly with OWNER's Representative by the tenth day of the month following the month in which WORK has been performed. OWNER will withhold from payment an amount not to exceed 10% of the total CONTRACT cost, except for Mobilization, which will have 40% withheld, until all WORK has been performed by the CONTRACTOR and is approved and accepted by OWNER.

ARTICLE 5. INDEBTEDNESS.

Before final payment is made, the CONTRACTOR must submit evidence including lien waivers, satisfactory to the OWNER that all payrolls, materials bills, subcontracts and outstanding indebtedness in connection with the WORK have been paid or that arrangements have been made for their payment. Payment will be made without unnecessary delay after receipt of such evidence as mentioned above and Final Acceptance of the WORK by the OWNER.

ARTICLE 6. ADDITIONAL WORK.

It is understood and agreed by the parties hereto that no money will be paid to the CONTRACTOR for any additional WORK, labor or materials, furnished unless a new CONTRACT in the form of a Change Order or a modification hereof for such additional materials or labor has been executed by OWNER and CONTRACTOR. The OWNER specifically reserves the right to modify or amend this CONTRACT and the total sum due hereunder either by enlarging or restricting the WORK through a change order.

ARTICLE 7. ACCEPTANCE.

The WORK will be inspected for acceptance by the OWNER promptly upon receipt of notice from the CONTRACTOR that the WORK is complete and ready for inspection.

ARTICLE 8. DISPUTES PERTAINING TO PAYMENT FOR WORK.

Any disputes which may arise respecting the value of any WORK done, or any WORK omitted, or of any ADDITIONAL WORK which CONTRACTOR may be required to perform, or respecting any other elements involved in this CONTRACT, will be decided by the Director of the Division of Oil, Gas & Mining, acting as the OWNER.

ARTICLE 9. TERMINATION OF CONTRACT

a. If the CONTRACTOR is adjudged bankrupt or if the CONTRACTOR makes a general assignment for the benefit of CONTRACTOR'S creditors or if a receiver is appointed on account of CONTRACTOR'S insolvency, or if CONTRACTOR or any of his/her Subcontractors violates any of the provisions of this CONTRACT, or if the CONTRACTOR does not perform the WORK according to the Specifications, the OWNER may serve written notice upon CONTRACTOR of its intention to terminate the CONTRACT; and unless within ten (10) days after the serving of the notice, the violation ceases, the OWNER then may take over the WORK and at the expense of the CONTRACTOR, complete it by contract or by any other method it may deem advisable. The CONTRACTOR will be liable to the OWNER for any excess cost incurred by the OWNER and the OWNER may, without liability for so doing, take possession of and utilize in completing the WORK, such materials, appliances, paint, and any other property belonging to the CONTRACTOR as may be on the site of the WORK.

b. OWNER may terminate this Agreement upon thirty days written notice to CONTRACTOR in the event the U.S. Department of the Interior fails to grant to OWNER sufficient funds to meet its obligations under this Agreement. In such event, CONTRACTOR will be entitled to receive just and equitable compensation for any satisfactory WORK completed up to the time of termination.

ARTICLE 10. OWNER'S RIGHT TO WITHHOLD CERTAIN AMOUNT AND MAKE APPLICATION THEREOF.

The OWNER may withhold from payment to the CONTRACTOR an amount or amounts as, in the OWNER'S judgment, may be necessary to pay just claims against the CONTRACTOR or any Subcontractor for labor and services rendered and materials furnished in and about the WORK. The OWNER in its discretion may apply the withheld amounts on the payment of such claims. In so doing the OWNER will be deemed the agent of the CONTRACTOR and payments so made by the OWNER will be considered as a payment made under the CONTRACT by the OWNER to the CONTRACTOR and the OWNER will not be liable to the CONTRACTOR for any such payments made in good faith. Such payments may be made without prior determination of the claim or claims.

ARTICLE 11. INDEPENDENT CONTRACTOR.

The CONTRACTOR will be considered an independent CONTRACTOR, and, as such, has no authorization, expressed or implied, to bind the State of Utah or the OWNER to any agreement, settlement, liability or understanding whatsoever, nor to perform any acts as agent for the State of Utah, except as herein expressly set forth. The compensation provided for herein will be the total compensation payable hereunder by the State of Utah or the OWNER.

ARTICLE 12. LIABILITY AND INDEMNIFICATION.

It is agreed that the CONTRACTOR will at all times protect and indemnify and save harmless, the State of Utah and all institutions, agencies, departments, authorities and instrumentalities of the State of Utah and any member of their governing bodies or of their boards or commissions or any of their elected or appointed officers or any of their employees or authorized volunteers, or the private landowners who have consented to reclamation construction, as described in the general conditions of the project specifications which are included herein by reference, from any and all claims, damages of every kind and nature made, rendered or incurred by or in behalf of any person or corporation whatsoever, including the parties hereto and their employees that may arise, occur or grow out of any acts, actions, work or other activity done by the CONTRACTOR in the performance and execution of this CONTRACT.

ARTICLE 13. SUBCONTRACTOR.

No part of this CONTRACT may be sublet by the CONTRACTOR without the prior written approval of the OWNER.

ARTICLE 14. LIQUIDATED DAMAGES.

In the event the CONTRACTOR fails to complete the WORK within the time agreed upon in CONTRACTOR's schedule as set forth in Article 2, or within such additional time as may have been allowed by the OWNER, there will be deducted from any moneys due or that may become due the CONTRACTOR the sum of $500.00 per day, for each and every calendar day beyond the agreed or extended completion day, that the WORK remains uncompleted. Such sum is fixed and agreed upon by the OWNER and the CONTRACTOR as liquidated damages due the OWNER by reason of the inconvenience and added costs of administration, engineering and supervision resulting from the CONTRACTOR's default, and not as a penalty.

The CONTRACTOR and the OWNER for themselves, their heirs, successors, executors, and administrators, hereby agree to the full performance of the covenants herein contained.

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Permitting the CONTRACTOR to continue and finish the WORK or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, in no way operates as a waiver on the part of the OWNER of any of OWNER'S rights under the CONTRACT.

The CONTRACTOR was selected for this contract in accordance with the State of Utah, Division of Facilities Construction and Management's Regulations for the Procurement of Construction and Professional Services.

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

FOR THE CONTRACTOR:

Contractor

Title: Partner High Mountain Builders

ATTEST:

Secretary of Corporation or Witness

Title: Sr. Rec. Engr. DOGM.

TAXPAYER ID #: 87-0459123

FOR THE STATE OF UTAH:

APPROVED FOR AVAILABILITY OF FUNDS:
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS & MINING

Lowell P. Braxton, Associate Director

Dianne R. Nielson, Director

Carl Roberts, Budget/Accounting

APPROVED AS TO FORM:
ATTORNEY GENERAL'S OFFICE

Assistant Attorney General

APPROVED FOR EXPENDITURE:
DIVISION OF FINANCE

(for) Director of Finance

DIVISION OF PURCHASING: Delegation of Purchase Authority **#DGR025**