

## STANDARD COUNTY CONTRACT FOR GOODS

This STANDARD COUNTY CONTRACT FOR GOODS is entered into by GARFIELD COUNTY, COLORADO (the "County"), a political subdivision of the state, through its BOARD OF COUNTY COMMISSIONERS ("BOCC" or "Buyer") and J&S Contractors Supply ("Vendor"), whose principle place of business is 4040 Grape Street, Denver CO 80216, in accordance with the Garfield County Procurement Code (the "Contract").

### RECITALS

- A. Vendor has been selected to provide the goods defined in this Contract to or on behalf of the BOCC in accordance with the October 1, 2012 Garfield County Procurement Code, Article 3.1, 3.2, 3.5 or 3.6, as applicable.
- B. The BOCC wishes to retain Vendor as an independent contractor to provide, and Vendor wishes to provide to the BOCC, the goods defined in this Contract on the terms stated in this Contract.
- C. The BOCC is authorized to acquire and contract for these services by Colorado Revised Statutes §30-11-101, *et seq.*

NOW, THEREFORE, in consideration of the following mutual covenants and agreements, the BOCC and the Vendor agree:

### AGREEMENT

1. Purpose. The purpose of this Contract is to define the terms and conditions by which Vendor will provide as needed Blades & Bits to Garfield County as more specifically defined by items #2, #3, #4, #13 (the "Solicitation"), which is incorporated herein for all purposes. For convenience, the Scope of Work from the Solicitation is attached as **Attachment A** (the "Scope of Work").

2. Term and Renewal. The initial term of this Contract is from 4/8/2017 to 12/31/2018. At the expiration of the initial term, the Contract may be extended for up to two additional one-year terms upon the express written consent of the parties.

3. County Representative. The BOCC shall be represented by Wyatt Keesbery, Director Road And Bridge (the "County Representative"), who is designated and authorized to act on behalf of the BOCC for all purposes relating to the budget, performance, payment, and successful completion of this Contract.

4. Compensation. Payments pursuant to this Contract shall be made as earned, in whole or in part, in an aggregate amount not to exceed \$25,000.00 to be allocated among all as needed providers on an as needed basis within the sole discretion of Garfield County. Authority exists in the laws and funds have been budgeted, appropriated and otherwise made available, and a sufficient balance remains available for payment. Financial obligations of the BOCC payable after the current fiscal year are contingent upon funds for that purpose being budgeted, appropriated, and otherwise made available. Any amount appropriated but not earned by December 31 of any year in which this Contract is in effect shall automatically expire on December 31 of that year.

- a. Invoicing Procedures. Payment(s) will be made to the Vendor upon receipt and approval of an invoice by the County Representative, who shall be the sole judge of the acceptability of the goods. Vendor and the County Representative shall agree upon a mutually acceptable invoicing schedule. The BOCC reserves the right to require additional information to support payments to the Vendor. Payments will be made to the Vendor within forty-five (45) of receipt of invoice or other mutually agreed upon period.

b. Mailing Address. All invoices and notices related to this Contract shall be sent to the County Representative at the following address: 0298 County Road 333A, Rifle, CO 81650.

5. Scope of Contract. This Contract shall include all terms and conditions specified in the Solicitation and in Vendor's successful bid, proposal, or offer in response thereto upon which this Contract was awarded, which is incorporated herein for all purposes (the "Bid"). If there is any inconsistency between this Contract, the Solicitation or the Bid, the following order of priority shall control: (a) this Contract; then (b) the Solicitation; then (c) the Bid, regardless of any statement to the contrary therein.

6. Delivery. Unless otherwise specified in the Solicitation or this Contract, delivery shall be FOB destination. The BOCC is relying on the promised delivery date, installation or service performance of 5 business days after receipt of order. If the Vendor fails to deliver as specified, the BOCC, in its sole discretion, may cancel its order or any part thereof without prejudice to its other rights, return all or part of the shipments so made, and charge Vendor with any loss or expense sustained as a result of the failure to deliver or perform as promised. Time is of the essence in the performance of this Contract.

7. Quality and Performance. All products delivered pursuant to this Contract shall be newly manufactured and the current model, unless otherwise specified in the Scope of Work. The County Representative shall be the sole judge in determining brand name equals with regard to quality, price, or performance. All services shall be performed strictly in accordance with the Scope of Work as incorporated into this Contract.

8. Safety Information. All chemicals, equipment, and materials proposed or used in the performance of this Contract shall conform to the requirements of the Occupational Safety and Health Act of 1970, as amended. Vendor shall furnish all material safety data sheets for any regulated chemicals, equipment, or hazardous material at the time of delivery.

9. Warranties. All manufacturer warranties and all applicable provisions and remedies of the Colorado Uniform Commercial Code relating to express and implied warranties are incorporated into the terms of this Contract, as are any warranties contained in this Contract and any attachments hereto.

10. Changes. Vendor shall furnish products or services strictly in accordance with the specifications and price(s) set forth for each item and in compliance with the Solicitation that induced the Vendor's Bid. This Contract shall not be modified, superseded, or otherwise altered, except in writing and signed by the Vendor and the BOCC. Each shipment received or service performed shall comply with the terms of this Contract, notwithstanding invoice terms or actions of the Vendor to the contrary, unless this Contract has been modified, superseded, or otherwise altered in accordance with this paragraph. No change or alteration to this Contract that requires payment in excess of the amount stated in ¶4 shall be effective unless there is a concurrent additional appropriation.

11. Ethics. Vendor shall not engage in unethical conduct in its performance of this Contract and shall comply with and abide by any applicable laws, regulations, or rules relevant to or governing its performance.

12. Inspection, Acceptance, Remedies, and Breach. Final acceptance of any delivery is contingent upon completion of all applicable inspection procedures. If products or services fail to meet any inspection requirements, the BOCC may exercise all rights, including those provided in the Colorado Uniformed Commercial Code. The BOCC shall have the right to inspect products and judge performance of all services provided under this Contract at all reasonable times and places. Services as used in this section shall include all services performed and tangible material produced and delivered in the performance of services. If any service performance does not conform to this Contract, the BOCC may require the Vendor to perform the service again and conform to the Contract requirements, without any additional compensation. For defects in the quality or quantity of service that cannot be corrected by re-performance, BOCC may (a) require Vendor to take necessary action to ensure future performance conforms to the Contract requirements, and (b) equitably reduce the payment due to the Vendor to reflect the reduced value of the service performed, or (c) in the alternative, the BOCC may elect to terminate this Contract under the provisions of ¶21.

13. Records, Reports, and Information. At such times and in such forms as the BOCC may require, the Vendor shall furnish statements, records, reports, data and information pertaining to matters covered by this Contract. The Vendor shall maintain its records in accordance with any requirements prescribed by the BOCC. Except as otherwise authorized by the BOCC, Vendor shall maintain such records for a period of seven (7) years after receipt of final payment under this Contract.

14. Audits and Inspections. At any time during normal business hours and as often as the BOCC may deem necessary, the Vendor shall make its records with respect to matters covered by this Contract available for examination. The Vendor shall permit the BOCC to audit, examine, and make excerpts from such records and audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to this Contract. The BOCC may call for a certified, independent audit to be performed, at the Vendor's expense, by a mutually agreed upon auditor.

15. Independent Contractor. Vendor is an independent contractor and is free to perform services for other clients. Neither Vendor nor any agent or employee of Vendor shall be deemed an agent or employee of the County for any purpose. AS AN INDEPENDENT CONTRACTOR, VENDOR IS NOT ENTITLED TO UNEMPLOYMENT INSURANCE OR WORKERS COMPENSATION BENEFITS THROUGH THE COUNTY AND IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONIES EARNED PURSUANT TO THIS CONTRACTUAL RELATIONSHIP. Vendor shall have no authority, express or implied, to bind the BOCC to any contract, liability, or understanding except as expressly stated herein.

16. Sole Proprietor. If Vendor is a sole proprietor, Vendor agrees to swear or affirm under penalty of perjury under the laws of the State of Colorado that Vendor is a United States citizen, a Permanency Resident of the United States, or is lawfully present in the United States pursuant to federal law and agrees to provide proof of lawful presence in the United States with valid identification as defined by Colorado Revised Statutes § 24-76.5-103(4)(a) prior to starting work for the BOCC. Vendor further acknowledges that making a false, fictitious, or fraudulent sworn statement is punishable as perjury in the second degree under C.R.S. § 18-8-503.

17. No Conflict of Interest. Vendor represents that it is not aware of any transaction, activity, or conduct that would affect the judgment, actions or work of the Vendor by placing the Vendor's own interests, or the interests of any party with whom the Vendor has a contractual arrangement, in conflict with those of the County and agrees that no official, officer or employee of the County has any personal or beneficial interest whatsoever in the services provided by this Contract. Vendor also agrees not to hire, pay or contract for the services of any official, officer or employee of the County during the term of this Contract.

18. No Assignment. Vendor shall not assign any rights, delegate any duties, or subcontract any part of the performance required by this Contract without the express written consent of the BOCC. This Contract shall inure to the benefit and be binding upon Vendor and the BOCC and their respective successors and assigns and shall not create any third party rights or liabilities.

19. Indemnification. (a) If any product sold or delivered under this Contract is covered by a patent, copyright, trademark, or application, Vendor shall indemnify, hold harmless, and defend the BOCC from any and all loss, liability, cost, expenses, and legal fees incurred on account of any claims, legal actions, or judgments arising out of the manufacture, sale or use of the subject article in violation or infringement of any such rights; (b) The BOCC shall, in all instances except claims arising from the sole negligent or willful acts or omissions of the BOCC, be indemnified by the Vendor from and against any and all claims. The Vendor shall be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration for the award of this Contract, Vendor agrees to waive all rights of subrogation against the BOCC, its officials, agents, and employees for losses arising from the work performed by Vendor for the BOCC.

20. No Waiver of Governmental Immunity. The parties acknowledge that the County, its commissioners, officials, directors, agents and employees are relying upon and do not waive the immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

21. Termination.

- a. Termination Prior to Shipment. If Vendor has not accepted this Contract in writing, the BOCC may cancel this Contract by written or oral notice to Vendor prior to any shipment of goods.
- b. Termination Prior to Performance. If the Vendor is providing services as part of its obligations under this Contract, the BOCC may cancel this Contract by written or oral notice to the Vendor prior to commencement of any work.
- c. Termination for Cause. (i) If Vendor refuses or fails to timely and properly perform any of its obligations under this Contract with such diligence as will ensure its completion within the promised timeframe, the BOCC may notify Vendor, in writing, of non-performance and, if not corrected within the time specified in the notice, terminate Vendor's right to proceed with performance or such part thereof as to which there has been delay or a failure. Vendor shall continue performance of this Contract to the extent not terminated and be liable for excess costs incurred by the BOCC to procure similar goods or services from another source. Payment for completed services performed and accepted shall be at the price set forth in this Contract. The BOCC shall not be responsible for payment for any services terminated under this provision. (ii) The BOCC may withhold amounts due to Vendor as the BOCC deems necessary to reimburse the BOCC for excess costs and damages incurred in completing or procuring similar goods and services. (iii) If, after rejection, revocation, or other termination of Vendor's right to perform, the BOCC determines that Vendor was not in default or the delay was excusable, the rights and obligations of the BOCC and Vendor shall be the same as if the notice of termination had been issued pursuant to ¶21(d) below.
- d. Termination in Public Interest. The BOCC, through the County Representative, is entering into this Contract for the purpose of carrying out the public policy of the BOCC. If this Contract ceases to further such public policy, the BOCC, in its sole discretion, may terminate this Contract in whole or in part and such termination shall not be deemed to be a breach of BOCC's obligations hereunder. This section shall not apply to a termination for Vendor's breach, which shall be governed by sections set forth above. The BOCC shall give written notice of termination to Vendor specifying the part of the Contract terminated and when termination becomes effective. Upon receipt of notice of termination, Vendor shall not incur further obligations except as necessary to mitigate costs of performance. For services or specially manufactured goods, the BOCC shall pay (i) reasonable settlement expenses; (ii) the Contract price or rate for supplies and services delivered and accepted; (iii) reasonable costs of performance on unanticipated supplies and services; and (iv) reasonable costs incurred in preparation for delivery of the undelivered goods. For existing goods, the BOCC shall pay (v) reasonable settlement expenses; (vi) the Contract price for goods delivered and accepted; and (vii) reasonable costs incurred in preparation for delivery of the undelivered goods.

22. Notices. Notices to be provided under this Contract shall be given in writing either by hand delivery or by certified mail, return receipt requested United States mail, to the following:

To the County:            Wyatt Keesbery, Director Road & Bridge  
   0298 County Road 333A  
   Rifle, CO 81650

AND                            Chief Procurement Officer  
   810 Pitkin Avenue  
   Glenwood Springs, CO 81601  
   970-384-5018

To the Vendor:                    Kenneth R. Fedel  
   J&S Contractors Supply  
   4040 Grape Street, Denver CO 80216

23.    Fund Availability and Annual Appropriation. Financial obligations of the BOCC, payable after the current fiscal year, are contingent not only upon a mutual agreement to renew this Contract as stated in ¶2 but also the budgeting, appropriation and other acts as necessary to make funds available for such renewal. If this Contract is funded in whole or in part with state funds, it is subject to and contingent upon the continuing availability of state funds for the purposes hereof. If this Contract is funded in whole or part with federal funds, it is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. The BOCC represents that it has properly budgeted and appropriated sufficient funds for the performance anticipated during the initial term of this Contract. To the extent this Contract requires performance or actions by the BOCC subsequent to the initial term, such performance or actions are specifically contingent on appropriation of funds to support those activities. If the subject of this Contract is for the design or construction of a public works project, as contemplated by C.R.S. § 4-91-103.6, as amended, this section shall constitute notice of phased construction with initial appropriation for the current fiscal and calendar year. The BOCC may consider subsequent appropriations necessary for performance by the Vendor in any following calendar and fiscal years if the BOCC desires such performance.

24.    Compliance with Laws and Regulations. Vendor agrees that all work performed under this Contract shall comply with all applicable laws, rules and regulations.

25.    Contract Integration and Interpretation. This Contract represents the entire agreement between the parties and supersedes all prior negotiations and representations, whether written or oral. This Contract and any attachments referenced constitute the entire agreement between the parties and no additions, amendments or modifications are valid unless in writing and signed by both parties. The headings contained in this Contract are for reference and convenience only.

26.    Modifications. This Contract may not be modified, amended or otherwise altered, unless mutually agreed upon in a writing executed by both parties. No change or alteration to this Contract that requires payment in excess of the County Representative's authority stated in ¶3 shall be effective.

27.    Choice of Law. This Contract shall be governed by the law of the State of Colorado. Venue for all actions relating to the Contract shall lie in the District Court for Garfield County, State of Colorado.

28.    Counterparts and Scanned Signatures. This Contract may be executed in counterparts, each of which shall be deemed an original. Scanned signatures of authorized signatories shall be effective for all purposes.

29.    Severability. If any provision of this Contract is determined by a court of competent jurisdiction to be unconstitutional or otherwise null and void, the remaining provisions of the Contract shall remain in full force and effect.



**IFB-GC-RB-05-18 - Blades & Bits  
Attachment A - Scope of Work**

			J&S Contractors Supply	
Item No.	Unit of Measure	Description	Unit Price (\$)	Comments
2	EACH	Kennametal 48" #1011875 Bolt Pattern 3"X3"X6"X6" ...	\$ 829.00	
3	EACH	Kennametal 36" #1011872 Bolt Pattern 3"X3"X6"X6" ...	\$ 622.00	
4	EACH	Kennametal 9" Carbide Blade End Protector RT and LH for 5/8 Plow Bolt	\$ 29.00	
13	EACH	Curb Guard Universal Bolt Pattern 3"x 6"x 12" Countersunk Square Punch 5/8" Plow Bolt.	\$ 50.00	
			J&S Contractors Supply	