

RESOLUTION No. 120
TOWN OF RICO

A RESOLUTION ENTERING INTO THE TOWN OF RICO MAINTENANCE AGREEMENT AND DESIGNATING SUMS OF MONEY FROM THE STREET FUND AND THE ENTERPRISE FUND IN AMOUNT AND FOR THE PURPOSE AS SET FORTH BELOW, FOR THE TOWN OF RICO, STATE OF COLORADO.

WHEREAS, the Board of Trustees desires to enter into the Town of Rico Maintenance Agreement for the Town of Rico;

WHEREAS, the Town of Rico Maintenance Agreement requires payments from certain funds; and,

WHEREAS, the Board of Trustees has determined that entering into the Town of Rico Maintenance Agreement will promote the health, safety and general welfare of the Rico community by securing the performance of certain and essential maintenance duties in the Town of Rico.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF RICO, COLORADO, THE FOLLOWING:

SECTION 1: EXECUTION OF THE TOWN OF RICO MAINTENANCE AGREEMENT

The Town of Rico hereby authorizes the Mayor and Town Clerk to execute the Town of Rico Maintenance Agreement and directs the Mayor and Town Clerk to take all necessary action to effectuate this Resolution.

SECTION 2: EXPENDITURES FROM THE STREET FUND

Each month, the sum of \$1,600 (one thousand six-hundred dollars) shall be expended from the Street Fund as part of the \$6,400 monthly payment due to Canyon Construction under the Town of Rico Maintenance Agreement.


SECTION 3: EXPENDITURES FROM THE ENTERPRISE FUND

Each month, the sum of \$4,800 (four thousand eight-hundred dollars) shall be expended from the Enterprise Fund as part of the \$6,400 monthly payment due to Canyon Construction under the Town of Rico Maintenance Agreement.

SECTION 4: CHANGES IN EXPENDITURES

The Board of Trustees of the Town of Rico may alter, change, or amend the amount of monies expended each month from the Street Fund and the Enterprise Fund for the purpose of paying the monthly payment due to Canyon Construction under the Town of Rico Maintenance Agreement by Resolution. Such changes should reflect the approximate proportionate work performed for the purpose of each fund.

RESOLUTION INTRODUCED, READ, AND ADOPTED on the 8th day of August, 1994.


BY: MAYOR OF THE TOWN OF RICO

8 1 8 1 9 4


ATTEST: TOWN CLERK

8 1 8 1 9 4

(Town Seal)

TOWN OF RICO

Maintenance Agreement

This Maintenance Agreement (hereinafter referred to as 'Agreement') is made between the Town of Rico, Colorado, a municipal corporation formed pursuant to the laws of Colorado (hereinafter referred to as 'Town'), and Canyon Construction (hereinafter referred to as 'Contractor').

WHEREAS, the Town desires to retain the services of Contractor to provide maintenance services for the Town as described below; and,

WHEREAS, Contractor desires to furnish the described maintenance services to the Town for compensation as described below,

NOW, THEREFORE, the parties agree the following terms and conditions:

1. GENERAL TERMS

- a. This Agreement shall begin and take effect on first day of August, 1994. This agreement shall expire on the last day of July, 1995.
- b. The terms of this Agreement shall supersede and govern any other prior written or verbal agreements and any future verbal agreements or written agreements not signed by both parties.
- c. This Agreement may only be modified or amended by a written agreement to amend signed by both parties and properly authorized by the Board of Trustees of the Town of Rico.

2. MAINTENANCE SERVICES

- a. Contractor agrees to perform the following maintenance and work duties:

General

(1) General clean-up of all Town owned property and public rights of way within the Town of Rico and related to the Town's water system. Clean-up includes, but is not limited to, the removal and proper disposal of fallen trees, debris, and garbage, and the proper storage of Town owned equipment.

Water System

(2) All work and duties required by the State of Colorado Department of Health with regard to maintenance, and compliance with State standards, of the Town water system. Copies of all test results, correspondence, and other information sent to, and received from, the State of Colorado Department of Health shall be kept in a designated file at Town Hall with the Town Clerk.

(3) Daily operations, maintenance, and necessary repairs of the Town's water system. Contractor shall keep accurate records of all work performed to the Town's water system and all defects observed. Contractor shall furnish all materials necessary for the operation and maintenance of the water system.

(4) Reading water meters and keeping accurate records of water meter readings. Water meters shall be read at least once every month.

(5) Locate, operate, maintain, and repair to working order all valves in the water system. Contractor shall be responsible for supplying all materials that are necessary to perform the duties in this Paragraph. Contractor shall keep accurate records showing the location of all valves, work performed on individual valves, and any known defects of individual valves.

(6) Connect water tap services, including the installation of water meters and all necessary costs and equipment to establish water services. Water tap connections shall be performed for the set cost of \$1,700 (one thousand, seven hundred dollars) each.

(7) Increase cover over 6 (six) inch water lines from head works to existing water storage tank to a depth sufficient to protect lines and operations from winter freezing.

Streets

(8) Maintain Dolores County roads as per any agreements with Dolores County to Dolores County standards.

(9) Furnish and lay gravel on 2000 (two thousand) linear feet of Town Streets in compliance with the standards as set forth in Rico Street Ordinance No. 275 as directed by the Town Board of Trustees.

(10) Furnish and install up to 200 (two hundred) linear feet of suitable sized culverts, measured by the length of the installed culvert, as directed by the Town Board of Trustees.

(11) Remove snow from Town streets, alleys, designated public rights-of-way, and around fire hydrants as directed by the Town Board of Trustees. Contractor shall be responsible for the prompt and sufficient removal of snow to provide emergency vehicle access to all areas of Town. Snow removal on all streets shall insure streets are cleared of snow to a sufficient width to accommodate both parking and traffic. Snow removal around fire hydrants shall insure adequate access for the Fire Protection District and visibility from adjacent public rights of way.

(12) Maintain Town snow removal equipment including furnishing and replacing all necessary parts.

(13) Provide fuel and oil for equipment.

(14) Contractor is not responsible for any capital improvements or purchases or major equipment repairs unless expressly provided elsewhere in this agreement.

Monthly Reports

(15) The Contractor shall prepare and submit a typed monthly report summarizing all work performed, all expenditures made, and other information related to the performance of this agreement or requested by the Town Board of Trustees. In the event that the Contractor requests direction from, or action by, the Town Board of Trustees, the Contractor shall describe the nature of the request and give relevant background information, including a reasonable list of alternatives and consequences, that is necessary for Board of Trustee members to make an informed decision. The monthly report shall be submitted to the Town Clerk by the close of Thursday prior to the regularly scheduled Town Board of Trustees meeting.

b. The Town will not provide any training for the Contractor, his employees, agents, or assigns.

c. Bob Anderson, as an individual, is not required to work exclusively for the Town.

d. The Town will not oversee the actual work or instruct the Contractor as to how the work will be performed.

e. The business operations of the Town shall not be combined in any way with the business operations of the Contractor.

3. COMPENSATION

a. Contractor agrees to perform the maintenance duties as listed in Section 2. for the fixed price of \$76,800.00 (seventy-six thousand and eight hundred dollars).

b. Payments to the Contractor shall be in equal amounts of \$6,400.00 (six thousand and four hundred dollars) on or before the sixth day of the month for services rendered during the previous month. Any payments made during the month pursuant to this Agreement shall be deducted from the monthly payment to the Contractor. Payments shall be made to payable to the trade or business name of the Contractor and not to the Contractor as an individual.

c. The Mayor of the Town of Rico shall have the authority to approve payments, other than the monthly payment and pursuant to this Agreement, up to \$200 (two hundred dollars) for individual payments, and up to \$1,000 (one thousand dollars) for total payments for any given month, without the approval and authorization of the Town Board of Trustees. The Contractor shall be responsible for submitting a

schedule of payments to the Town Board of Trustees in the monthly report described in Section 2.a.(15).

4. CONTRACTOR'S REPRESENTATIONS

- a. Contractor has familiarized himself with the nature and extent of the duties required under this agreement and all Federal, State, and Local laws which may affect the cost, progress or performance of this Agreement.
- b. Contractor has carefully studied all physical conditions in Town and existing facilities and equipment affecting cost, progress or performance of the work.
- c. Contractor agrees to remedy all defects appearing in the work, or developing in materials furnished or the workmanship performed, under this Agreement for a period of one (1) year after the date of acceptance of the work by the Town, and further agrees to indemnify and hold the Town harmless from any costs encountered in remedying such defects. Work shall be deemed accepted upon approval of the monthly report describing the work by the Town Board of Trustees.
- d. Contractor is an independent contractor and nothing herein contained shall constitute or designate the Contractor or any of his employees or agents as agents or employees of the Town. Contractor acknowledges the following disclosure statement as required by C.R.S. section 8-40-202(b)(IV):

DISCLOSURE OF INDEPENDENT CONTRACTOR STATUS

Contractor is an independent contractor.
Contractor is not entitled to worker's compensation benefits. Contractor is obligated to pay federal and state income tax on any monies earned pursuant to the contract relationship.

- e. Contractor is aware of the limits to the authority and power of the Mayor and individual Board of Trustees members of the Town and may not, nor will not, rely on the unauthorized directions of the Mayor or individual Board of Trustees members.

5. LIABILITY, INDEMNIFICATION AND INSURANCE

- a. **No Personal Liability.** In carrying out any of the provisions of this Agreement or in exercising any power or authority thereby, there shall be no personal liability of the Town, its Board of Trustees, staff, consultants, officials, attorneys, representatives, agents, or employees.

b. Indemnification. The Contractor agrees to indemnify and hold harmless the Town and its officers, attorneys, agents, employees, representatives, insurers, and self-insurance pool from and against all liability, claims, and demands on account of injury, loss, or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss, or damage, or any other loss of any kind whatsoever which arises out or is in any manner connected with this Agreement or the work, if such injury, loss, or damage is cause in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Contractor, and subcontractor of the Contractor, or any officer, employee, representative, or agent of the Contractor or of any subcontractor of the Contractor, or which arises out of any workers' compensation claim of any employee of the Contractor or any employee of any subcontractor of the Contractor. The Contractor agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims, or demands at the sole expense of the Contractor. The Contractor also agrees to bear all other costs and expenses related thereto, including court costs and attorneys' fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.

c. Insurance.

(1) General. The Contractor shall not commence work under this Agreement until it has obtained all insurance required herein and such insurance has been approved by Town. The Contractor shall not allow any subcontractor to commence work under this Agreement until all similar insurance requirements of the subcontractor has been obtained and approved. For the duration of this Agreement, the Contractor must maintain the insurance coverage required in this section.

(2) Insurance.

(A) The Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Contractor pursuant to the Agreement. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed by this Agreement by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

(B) Contractor shall procure and maintain, and shall cause each subcontractor of the Contractor to procure and maintain, the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to Town. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor herein. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

(i) Worker's compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under

this Agreement, and employers liability insurance, with minimum limits of Five Hundred Thousand Dollars (\$500,000) each accident, Five Hundred Thousand Dollars (\$500,000) disease policy limit, and Five Hundred Thousand Dollars (\$500,000) disease - each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements of this paragraph.

(ii) General liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) each occurrence and One Million Dollars (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad from property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall include contain a severability of interests provision.

(iii) Comprehensive automobile liability insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) each occurrence and One Million Dollars (\$1,000,000) aggregate with respect to each of Contractor's owned, hired, or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interest provision.

(C) The policy required by paragraph (b)(ii) above and by paragraph (b)(iii) above shall be endorsed to include the Town and its officers, agents, officials, and employees as additional insured. Every policy required above shall be primary insurance and any insurance carried by the Town, its officers, or its employees, or carried by or provided through any insurance pool of the Town shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement to the policy required by paragraph (b)(i) above shall contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under any policy required by the Town.

(D) The certificate of insurance provided to the Town shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the Town prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverage afforded under the policies shall not be cancelled, terminated, or materially changed until at least 30 days prior written notice has been given to the Town. The completed certificate of the insurance shall be submitted to the Town's Attorney.

(E) Failure on the part of the Contractor to procure or maintain policies providing the require coverage, conditions, and minimum limits shall constitute a material

breach of contract upon which the Town may immediately terminate this Agreement, or at its discretion, the Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith as a cost of this Agreement. All monies so paid by the Town shall be repaid by Contractor to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Contractor from the Town.

(F) The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

(G) The parties hereto understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, section 24-10-101 et seq., 10 C.R.S., as from time to time amended, or otherwise available to the Town, its officers, or employees.

6. ASSIGNMENT

a. No assignment by a party hereto of any rights under or interest of this Agreement will be binding on another party without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due, and moneys that are due, may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. This restriction on assignment includes, without limitation, assignment of the Contractor's right to payment to its surety or lender.

7. GOVERNING LAW, VENUE, and ATTORNEYS FEES

a. This Agreement shall be governed by the laws of the State of Colorado.

b. This Agreement shall be deemed entered into in Dolores County, State of Colorado, as the Town is located in Dolores County. In any litigation concerning this Agreement, venue shall be proper in the Courts of Dolores County.

c. In the event of litigation involving a breach of this agreement or any other dispute related to this Agreement, the losing party shall pay the prevailing party all litigation costs including reasonable attorney's fees.

8. BREACH OF AGREEMENT

Any malfeasance, misfeasance, or non-feasance of the performance of this Agreement shall constitute a breach of agreement. Costs incurred by the Town to restore services essential to the immediate health, safety, and welfare of the Town residents, including but not limited to water service and emergency vehicle access, shall be paid by the Contractor.

9. TERMINATION OF THIS AGREEMENT

a. The Contractor may unilaterally terminate this Agreement upon 60 (sixty) days written notice hand delivered to the Town Clerk or Town Board of Trustees at a regular meeting or sent by certified and registered mail to the Town of Rico, P.O. Box 56, Rico, CO 81332.

b. The Town of Rico may unilaterally terminate this Agreement upon 60 (sixty) days written notice sent by certified and registered mail to Canyon Construction, 26772 Highway 145, Dolores, CO 81323.

c. The Town Board of Trustees may terminate this Agreement sooner than provided for in paragraph b. of this section only for cause after holding a public hearing. Written notice of the public hearing to determine whether to terminate the Agreement shall be hand delivered to the Contractor or sent by certified and registered mail to 26772 Highway 145, Dolores, CO 81323 at least 10 (ten) days prior to the public hearing. Written notice shall state all reasons for terminating this Agreement.

10. NEGLIGENCE OF THE CONTRACTOR

The Contractor shall be responsible for any damage or injury to Town property caused by the negligent acts of the Contractor, his agents, or employees.

11. RECOMMENDATION TO SEEK LEGAL ADVICE

The Contractor hereby acknowledges that the Town has recommended that the Contractor seek the advice of legal counsel regarding this Agreement.

IN WITNESS HEREOF, THE PARTIES HEREBY EXECUTE THIS AGREEMENT. ALL PORTIONS OF THIS AGREEMENT HAVE BEEN SIGNED OR IDENTIFIED BY THE TOWN AND THE CONTRACTOR.

[Signature]
Contractor

8/19/94
Date

The foregoing Contractor's signature on this Agreement was acknowledged before me the 9th day of August, 1994, by

Bob Anderson.

WITNESS my hand and official seal

(seal)

My commission expires:

1/18/97

Mary B. Jahnke
Notary Public

[Signature]
Mayor of the Town of Rico

8/19/94
Date

[Signature]
Attest: Town Clerk of the Town of Rico

(Town Seal) 8/19/94
Date

[Signature]
Approved as to form: Attorney for the Town of Rico

8/19/94
Date

The foregoing signatures on this Agreement on behalf of the Town of Rico were acknowledged before me the 9th day of August, 1994, by

RW. SMALL AND LINDA YELLOWMAN

WITNESS my hand and official seal

(seal)

My commission expires:

1/18/97

Mary B. Jahnke
Notary Public