

TOT04PYR

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	TOT, LLC
SUBJECT/PROJECT:	PYRAMID PRINTING OFFICE WAREHOUSE STREET MEDIAN REIMBURSABLE IMPROVEMENTS
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2004
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

AGREEMENT

This AGREEMENT is made and entered into effective JUNE 30, 2004, by and between the **CITY OF GRAND JUNCTION** ("City") and **TOT, LLC** ("Developer"), a Colorado Limited Liability Corporation.

RECITALS

A. Developer has received approval to develop certain property commonly known as Pyramid Printing and is located at 2526 F Road, Grand Junction, CO, as it will be constructed.

B. City and the Developer have agreed that the City will reimburse the Developer for certain construction that is made in the course of the development of Pyramid Printing to median of F Road from the westerly limit of the subject property to the westerly limit of the proposed improvements excluding median landscaping, irrigation, and water service.

C. Developer has agreed to construct the street median fronting subject property, including landscaping and irrigation, striping, signage and other necessary infrastructure.

D. City and Developer desire to reduce to writing their agreement regarding the construction of the improvements to the median for the purpose of providing safety and capacity improvements along F Road between

NOW, THEREFORE, for and in consideration of the promises contained herein, the parties hereto mutually covenant and agree as follows:

1. Developer agrees to construct certain both surface and subsurface street improvements as directed by the City. That direction shall generally be in accordance with the plans entitled "Pyramid Printing" dated June 22, 2004 hereinafter referred to as the "Plans". The Developer agrees that it will build the improvements shown on the Plans in accordance with the vertical and horizontal controls, dimensions, designs and specifications and City standards. The Developer has had occasion to review the Plans, is familiar with current City specifications and agrees to perform all of the work in accordance with the pursuant to the same.

2. Developer further agrees to perform all necessary traffic control, temporary street surfacing, dewatering, incidental work and phasing of work as may be necessary to accomplish the work per the Plans and specifications.

3. Collectively the labor, equipment and materials described in paragraphs 1 & 2 shall be known for the purposes of this agreement as the Reimbursable Work.

5. City agrees to reimburse the Developer a total, lump sum, not to exceed amount, with all applicable markups and overhead costs, of \$10,465.00 for completion

of the Reimbursable Work. The City shall make payment of **\$10,465.00** within thirty (30) days of initial acceptance of the Reimbursable Work. If the City rejects some or all of the Reimbursable Work, it shall do the same in writing, addressed to the Developer, citing with reasonable particularity its objection(s). If the City does not reject some or all of the Reimbursable Work within fourteen (14) days of initial acceptance then the City shall, upon execution of a lien waiver(s) by the Developer make final payment within not more than 30 days.

6. The City reserves the right to inspect any and all work; to require certifications of the work and to otherwise take reasonable or necessary action(s) to ensure that the work is in conformance with City Standards. The City has the right to reject non-conforming work.

7. Final acceptance of the work shall not occur or be deemed to have occurred until:

- (a) the City accepts the work in writing or
- (b) 14 days elapses after initial acceptance is made.

8. City agrees that Developer shall not be required to provide a bond or other financial guarantee of the estimated cost of the Reimbursable Work. The Developer understands and agrees that completion of the Reimbursable Work is a condition precedent to the initial acceptance of the Pyramid Printing development project. The Developer shall be wholly responsible for and bear the risk of loss during its prosecution of the Reimbursable Work and the consequences of its failure to do the same.

9. The Developer shall procure and maintain and shall cause each sub-contractor, if any, to procure and maintain, the minimum insurance coverage's listed below. All coverage shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by the Developer pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured by the Developer to maintain such continuous coverage.

(a) Workers' Compensation insurance as required by the Labor Code of the State of Colorado and Employers Liability Insurance. Evidence of qualified self-insured status may be substituted.

(b) 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 include the City of Grand Junction, its officers and its employees, as additional insured, with primary coverage as respects the City of Grand Junction, its officers and its employees and shall contain a severability of interests provision.

(c) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000) per person in any one occurrence and **FIVE HUNDRED THOUSAND DOLLARS (\$500,000)** for two or more persons in any one occurrence, and auto property damage insurance of at least FIFTY THOUSAND DOLLARS (\$50,000) per occurrence, with respect to each of Developer's owned, hired or non-owned vehicles assigned to or used in performance of the Work. The policy shall include the City, its officers and its employees, as additional insured, with primary coverage as respects to the City, its officers and its employees, and shall contain a severability of interest provision. A certificate of insurance shall be completed by the Architect's insurance agent(s) as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City prior to commencement of any services under the contract.

(d) The parties hereto understand and agree that the City is relying on, and does not waive or intend to waiver by any provision of this contract, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, 25-10-101 *et. Seq.*, 10 C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

(e) The Developer agrees to indemnify and hold harmless the City, and its officers and its employees, from and against all liability, claims, demands and expenses, including court costs and attorney fees, or account of any injury, loss or damage, which arise out of or are in any manner connected with the work to be performed **by the Developer** under this Agreement, if such injury, loss, or damage is caused by, or is claimed to be caused by, the act, omission, or other fault of the Developer or any officer or employee of the Developer. These obligations shall not extend to any injury, loss, or damage, which is caused by the act, omission or other fault of the City. Developer and any persons employed by Developer for the performance of work hereunder shall be independent contractors and not employees of the City. Any provisions in this Agreement that may appear to give the City the right to direct Developer as to details of doing work or to exercise a measure of control over the work mean that Developer shall follow the direction of the City as to end results of the work, only. **As an independent contractor, Developer is not entitled to City workers' compensation benefits or unemployment insurance benefits. The Developer is obligated to pay all federal and state income tax on any moneys earned or paid pursuant to this contract.**

10. The Developer shall provide by contract with the material men, vendors, suppliers and installers and/or contractors that all warranties concerning or relating to the equipment, material and labor provided hereunder are transferable to the City. The Developer shall warrant the Reimbursable Work for a period of one year from the date of final acceptance and to the extent necessary or required shall transfer and assign any and all warranties to the City at no cost upon completion of the Reimbursable Work. All

warranties shall be for a minimum of one year from the date of final acceptance by the City.

11. This Agreement incorporates all prior discussions and agreements of the parties and may not be amended except in writing duly executed by the parties. The Reimbursable Work to be performed under this Agreement shall commence upon March 20, 2003 and shall be completed within 180 days of commencement of construction.

12. This Agreement represents the entire agreement between the parties and there are no oral collateral agreements or understandings. Only an instrument in writing signed by the parties may amend this Agreement.

13. This Agreement is binding upon and injures to the benefit of the parties hereto. Developer shall not assign or delegate this Agreement or any portion thereof or any monies due hereunder without the City's prior written consent.

14. Any dispute hereunder shall be resolved by submission to binding arbitration pursuant to C.R.S. §13-22-201, *et seq.*

15. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

16. The City shall receive originals of any documents, papers, and records of the Developer that are related to, prepared as a result of or required by this Agreement. Furthermore, for the purpose of making audit, examination, excerpts and transcriptions, the City shall have the right of inspection of the Developer's books, records and any and all instruments of service.

17. This Agreement be terminated by the City for its convenience and without cause of any nature by giving written notice at least seven (7) days in advance of the termination date. In the event of such termination, the Developer will be paid for the reasonable value of the services rendered to the date of termination, not to exceed the total amount set forth and upon such payment, all obligations of the City to the Developer under this Agreement will cease. Termination pursuant to this section shall not prevent either party from exercising any other legal remedies, which may be available to it. In no event, shall the City be liable to the developer for direct or consequential damages including, but limited to, lost or advantage.

18. Developer shall be solely responsible for compliance with all applicable City, state and federal laws, including the resolutions, rules and regulations of the City; for payment of all applicable taxes and obtaining and keeping in force all applicable licenses, permits and approvals.

19. Developer will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. Developer will take affirmative action to ensure that applicants are employed and that

employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.

20. Developer shall be in compliance with the applicable provisions of the American with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal, state, or local laws and regulations. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year above written.

“CITY”

CITY OF GRAND JUNCTION

By: *Lana C. Laubert*

Title: *Development Engineer*

“DEVELOPER”

TOT, LLC

By: *John Turner*

Printed Name: *John Turner*

Title: *Member*