

Construction Contract Staff Report

DATE: SEPTEMBER 12, 2024
TO: DOUGLAS COUNTY BOARD OF COUNTY COMMISSIONERS
THROUGH: DOUGLAS J. DEBORD, COUNTY MANAGER
FROM: TERENCE T. QUINN, AICP, DIRECTOR OF COMMUNITY DEVELOPMENT *TEQ*
CC: BRITTANY CASSELL, CURATOR
LAUREN PULVER, PLANNING SUPERVISOR
KATI CARTER, AICP, ASSISTANT DIRECTOR OF PLANNING RESOURCES
SUBJECT: CONSTRUCTION CONTRACT FOR SERVICES WITH EMPIRE CARPENTRY FOR \$350,000

BOARD OF COUNTY COMMISSIONER BUSINESS MEETING: SEPTEMBER 24, 2024 @ 1:30 PM

I. EXECUTIVE SUMMARY

This is a request to execute a contract between the Board of County Commissioners (Board) and Empire Carpentry (Empire) for \$350,000. The contract is for continued stabilization of the Evans Homestead. The project is funded from the 2024 Parks, Trails, Historic Resources, and Open Space (PTHROS) Sales Tax fund.

II. REQUEST

Approval of a public contract with Empire for preservation work.

III. BACKGROUND

Evans Gandy is a County owned structure that was in critical need of major stabilization and restoration when Phase 1 of preservation work began in 2022. The homestead was listed on the National Register of Historic Places in 2012.

In 2020, temporary emergency stabilization was performed inside the structure to keep it from collapsing. In April 2022, a request for proposals (RFP) was issued for this restoration project which included work on the foundation stabilization, first and second floor framing stabilization, reconstruction of an addition, attic floor framing stabilization and roof joist framing stabilization. Empire was selected for the project because they have expertise for the requirements of this project and have demonstrated success in

preservation work on other County assets. The cost of the previous phase with Empire was \$359,165.40.

Empire will perform the next phase of work to keep continuity in the project. This phase will focus on exterior restoration which will include siding, windows, doors, and reconstructing the historic porch.

The Evans Homestead plays an important role in the future development of Lincoln Mountain Open Space as a trail is planned to extend to this structure. As part of this, interpretive signage about the historic structure will be installed so that it could be highlighted for the public to enjoy.

IV. RECOMMENDED ACTION

Staff recommends approving the construction contract for services between Empire and the Board for \$350,000 as it complies with all County approval standards and policies.

ATTACHMENTS

Construction Contract.....	3-19
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CONSTRUCTION CONTRACT

2024 EVANS HOMESTEAD REHABILITATION PROJECT RFP #009-22

THIS CONTRACT made and entered into this _____ day of **September 2024**, by and between the **Board of County Commissioners of the County of Douglas, State of Colorado**, hereinafter referred to as the “County,” and **Empire Carpentry LLC**, a corporation organized and existing under and by virtue of the laws of the State of Colorado, hereinafter referred to as the “Contractor.”

WITNESSETH:

WHEREAS, the County advertised that sealed bids would be received for furnishing all labor, tools, supplies, equipment, materials and everything necessary and required for the restoration of the **Evans Homestead** of Douglas County, located at 12325 S. State Highway 83, Franktown, Colorado; and

WHEREAS, bids from said advertisement have been received by the County, and it has been recommended that a contract for said work be made and entered into with the above-named Contractor who was the lowest, responsive, responsible, qualified bidder therefore; and

WHEREAS, said Contractor is now willing and able to perform all of said work in accordance with the Contract Documents and its bid;

NOW, THEREFORE, for and in consideration of the compensation to be paid the Contractor, the mutual agreements hereinafter contained, and subject to the terms hereinafter stated, it is mutually agreed as follows:

ARTICLE I – CONTRACT DOCUMENTS: It is agreed by the parties hereto that the following list of instruments, drawings and documents which are attached hereto and bound herewith or incorporated herein by reference constitute and shall be referred to either as the Contract Documents or the Contract, and all of said instruments, drawings and documents taken

together as a whole constitute the Contract between the parties hereto, and they are as fully a part of and incorporated into this Agreement as if they were set out verbatim and in full herein:

Contract
Performance Bond
Payment Bond
Notices to Proceed
General Contract Conditions (Standard Specifications for Construction)
Invitation to Bid
Contractor Bid
Technical Specifications (if any)
Special Conditions (if any)
Addenda (if any)
Contract Drawings (if any)
Change Directives (if any)
Change Orders (if any)
Shop Drawings (if any)

ARTICLE II – SCOPE OF WORK: The Contractor agrees to and shall furnish all labor and tools, supplies, equipment, superintendence, materials and everything necessary for and required to do, perform and complete all of the work described, drawn, set forth, shown and included in said Contract Documents.

ARTICLE III – TERMS OF PERFORMANCE: The Contractor agrees to begin the performance of the work required under this Contract within ten (10) days after being notified to commence work by the County's Authorized Representative pursuant to a Notice to Proceed and agrees to substantially complete said work in its entirety by **August 31, 2025** exact number of days for completion to be determined upon Notice to Proceed. This period of performance is also referred to as the Contract Time. The Contractor is not authorized to commence work prior to its receipt of the Notice to Proceed.

ARTICLE IV – LIQUIDATED DAMAGES: There will be no liquidated damages for this Contract.

ARTICLE V – TERMS OF PAYMENT: The County agrees to pay the Contractor for the performance and completion of all of the work as required by the Contract Documents, and the Contractor agrees to accept as its full and only compensation therefore, subject to additions and

deletions pursuant to Change Order and other provisions of the Contract Documents, the total lump sum amount of **Three Hundred and Forty-Nine Thousand, Six Hundred and Eighty, and 18/100 dollars (\$349,680.18)** payable pursuant to the Contract Documents. Any work accomplished and put in place by the Contractor above and beyond the appropriated and allocated funds for each budget year will be done at the Contractor's risk.

ARTICLE VI – ANNUAL APPROPRIATIONS:

This appropriation is for the fiscal year ending December 31, 2024. The County is not under obligation to make any future apportionment or allocation to this Contract. Any work performed in excess of amounts appropriated shall be solely the risk of the Contractor. Notwithstanding any other term of this Contract, it is expressly understood and agreed that: (1) any County financial obligation, whether direct or contingent, for all or any part of the work under this Contract, shall extend only to monies duly and lawfully appropriated and budgeted by the County and encumbered for the purposes of this Contract; (2) County does not by this Contract irrevocably pledge present cash reserves for payments in this or future fiscal years; (3) this Contract is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of County; (4) the obligation of County for expenditure obligations, if any, arising during any subsequent fiscal year in which this Contract could be extended and be in effect shall only extend to utilization and payment of monies appropriated and budgeted and encumbered for the purpose of this Contract in the fiscal year in which obligations arise; and (5) no change order may be issued requiring compensation work which causes the aggregate amount payable under the Contract to exceed the amounts appropriated, budgeted and encumbered for the payment of this Contract in the fiscal year in which such obligations arise, unless the Contractor is given written assurance by the County that lawful appropriations to cover the cost of the additional work have been made or unless such work is covered under a remedy-granting provision in the Contract. Any work completed for this Contract shall be secured from harm until future moneys are appropriated so that additional work may

commence. In the event a future appropriation is made by the County, County will inform contractor in writing of any amounts appropriated for work proposed herein.

ARTICLE VII - GOVERNING LAW; VENUE: This Agreement shall be deemed to have been made in, and construed in, accordance with the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Douglas, State of Colorado. Contractor expressly waives the right to bring any action in or to remove any action to any other jurisdiction, whether state or federal. All of the work performed under this Agreement by the Contractor shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado. Contractor shall also comply with all applicable ordinances, regulations, and resolutions of the County and shall commit no trespass on any public or private property in the performance of any of the work embraced by this Agreement.

ARTICLE VIII – CONTRACT BINDING: It is agreed that this Contract shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, assigns and successors.

ARTICLE IX – SEVERABILITY: If any part, portion or provision of this Contract shall be found or declared null, void, or unenforceable for any reason whatsoever by any court of competent jurisdiction or any governmental agency having authority thereover, only such part, portion or provision shall be affected thereby and all other parts, portions and provisions of this Contract shall remain in full force and effect.

ARTICLE X – ASSIGNMENT: The Contractor shall not assign the whole or any part of its duties, rights and interest in this Contract without first obtaining the written consent of the County.

ARTICLE XI – JOINT VENTURE: If the Contractor is a Joint Venture, the partners to the Joint Venture shall be jointly and severally liable to the County for the performance of all duties and obligations of the Contractor which are set forth in the Contract.

ARTICLE XII - NO WAIVER OF GOVERNMENTAL IMMUNITY ACT: The parties hereto understand and agree that the County, its commissioners, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Contract, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the County.

ARTICLE XIII - NO THIRD PARTY BENEFICIARIES: The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement, shall be strictly reserved to the County and Contractor, and nothing contained in this Contract shall give or allow any such claim or right of action by any other or third person under such Contract.

ARTICLE XIV - INDEPENDENT CONTRACTOR: Contractor is an independent contractor. Notwithstanding any provision of this Contract, all personnel assigned by Contractor to perform work under this Contract shall be and remain at all times, employees of Contractor for all purposes. It is not intended nor shall it be construed that the Contractor, its employees or volunteers are agents, employees or officers of the County for any purpose whatsoever.

ARTICLE XV – OWNERSHIP OF DOCUMENTS: Drawings, specifications, guidelines and any other documents prepared by Contractor in connection with this Agreement shall be the property of the County.

ARTICLE XVI – INSURANCE: The Consultant shall be required to maintain the insurance requirements provided in Exhibit C, attached hereto and incorporated herein by reference.

ARTICLE XVII – POLITICAL CONTRIBUTIONS PROHIBITED: Pursuant to Section 15 of Article XXVIII of the Colorado Constitution, there is a presumption of impropriety between contributions to any campaign and sole source government contracts. Therefore, the Consultant agrees, that in the event Consultant is awarded sole source contracts by the State or any

of its political subdivisions exceeding One Hundred Thousand Dollars (\$100,000.00) cumulatively from any and all governmental entities within a calendar year, Consultant shall, for the duration of this Agreement and for two (2) years thereafter, cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on behalf of any political party or for the benefit of any candidate for any elected office of the State or any of its political subdivisions. Further, pursuant to Section 16 of Article XXVIII of the Colorado Constitution, in the event that the Consultant is awarded sole source contracts in excess of the amounts discussed herein, Consultant shall promptly prepare and deliver to the executive director of the Colorado Department of Personnel, a true and correct "Government Contract Summary," for this Agreement in a form acceptable to that office.

ARTICLE XVIII - COLORADO LABOR PREFERENCE: The provisions of Sections 8-17-101 and 102, C.R.S., are applicable to this Contract. Colorado labor must be employed to perform the work to the extent of not less than eighty percent of each type or class of labor in the several classifications of skilled and common labor employed on the Project. "Colorado labor" means any person who is a resident of the State of Colorado, at the time of employment, without discrimination as to race, color, creed, sex, age, or religion except when sex or age is a bona fide occupational qualification.

ARTICLE XIX - CONFLICT OF INTEREST: The Contractor agrees that no official, officer or employee of the County shall have any personal or beneficial interest whatsoever in the services or property described herein, and the Contractor further agrees not to hire, pay, or contract for services of any official, officer or employee of the County. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interest of any party with whom the Contractor has a contractual arrangement, in conflict with those of County.

ARTICLE XX – COUNTY EXECUTION OF CONTRACT: This Contract is expressly subject to, and shall not be or become effective or binding on the County, until execution by all signatories of the County.

IN WITNESS WHEREOF, the County and Contractor have executed this Contract as of the above date.

Empire Carpentry LLC

BY: _____

ATTEST: (if a corporation)

Printed Name: _____

Title: _____

Title: _____

DATE: _____

Signature of Notary Public Required:

STATE OF COLORADO)
)ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 202____, by _____.

Witness my hand and official seal

Notary Public

My commission expires: _____

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO,**

BY: _____
George Teal, Chair

ATTEST:

Clerk to the Board

APPROVED AS TO CONTENT:

Douglas J. DeBord, County Manager

Date: _____

APPROVED AS TO FORM:

**Terence T. Quinn, Director
Department of Community Development**

Date: _____

APPROVED AS TO FISCAL CONTENT:

Andrew Copland, Director of Finance

Date: _____

APPROVED AS TO LEGAL FORM:

Chris Pratt, Managing County Attorney

Date: _____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned **Empire Carpentry LLC**, a corporation organized under the laws of the State of Colorado, hereinafter referred to as the "Contractor" and _____ [a corporation organized under the laws of the State of _____ [Bond company state], and authorized to transact business in the State of Colorado, hereinafter referred to as Surety, are held and firmly bound unto the COUNTY OF DOUGLAS, a political subdivision of the State of Colorado, hereinafter referred to as the "COUNTY", in the penal sum of **Three Hundred and Forty-Nine Thousand, Six Hundred and Eighty, and 18/100 dollars (\$349,680.18)** lawful money of the United States of America, for the payment of which sum the Contractor and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

WHEREAS, the above Contractor has on the ____ day of _____, _____, entered into a written contract with the County for furnishing all labor, materials, equipment, tools, superintendence, and other facilities and accessories for the construction of Contract No. _____, in accordance with the all Contract Documents therefor which are incorporated herein by reference and made a part hereof, and are herein referred to as the Contract.

NOW, THEREFORE, the condition of this performance bond is such that if the Contractor:

1. Promptly and faithfully observes, abides by and performs each and every covenant, condition and part of said Contract, including, but not limited to, its warranty provisions, in the time and manner prescribed in the Contract, and
2. Pays the County all losses, damages (liquidated or actual, including, but not limited to, damages caused by delays in the performance of the Contract), expenses, costs and attorneys' fees, that the County sustains resulting from any breach or default by the Contractor under the Contract, then this bond is void; otherwise, it shall remain in full force and effect.

IN ADDITION, if said Contractor fails to duly pay for any labor, materials, team hire, sustenance, provisions, provender, or any other supplies used or consumed by said Contractor or its subcontractors in its performance of the work contracted to be done or fails to pay any person who supplies rental machinery, tools, or equipment, all amounts due as the result of the use of such machinery, tools, or equipment in the prosecution of the work, the Surety shall pay the same in an amount not exceeding the amount of this obligation, together with interest as provided by law.

PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that any and all changes in the Contract or compliance or noncompliance with the formalities in the Contract for making such changes shall not affect the Surety's obligations under this bond and the Surety hereby waives notice of any such changes.

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IN WITNESS WHEREOF, said Contractor and said Surety have executed these presents as of this ____ day of _____, _____.

CONTRACTOR

By: _____
President

SURETY

By: _____
Attorney-in-Fact

(Accompany this bond with Attorney-in-Fact's authority from the Surety to execute bond, certified to include the date of the bond.)

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned **Empire Carpentry LLC**, a corporation organized under the laws of the State of Colorado hereinafter referred to as the "Contractor" and

[Bonding company name], a corporation organized under the laws of the State of _____ [Bonding company state], and authorized to transact business in the State of Colorado, hereinafter referred to as Surety, are held and firmly bound unto the COUNTY OF DOUGLAS, a political subdivision of the State of Colorado, hereinafter referred to as the "COUNTY", in the penal sum of **Three Hundred and Forty-Nine Thousand, Six Hundred and Eighty, and 18/100 dollars (\$349,680.18)** lawful money of the United States of America, for the payment of which sum the Contractor and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above Contractor has on the ____ day of _____, _____, entered into a written contract with the County for furnishing all labor, materials, tools, superintendence, and other facilities and accessories for the construction of Contract No. _____, in accordance with all Contract Documents therefor which are incorporated herein by reference and made a part hereof, and are herein referred to as the Contract.

NOW, THEREFORE, the condition of this payment bond obligation is such that if the Contractor shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing it or its subcontractors with labor and materials, rental machinery, tools, or equipment, used or performed in the prosecution of work provided for in the above Contract and shall indemnify and save harmless the County to the extent of any and all payments in connection with the carrying out of such Contract which the County may be required to make under the law, then this obligation shall be null and void, otherwise, it shall remain in full force and effect;

PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that any and all changes in the Contract, or compliance or noncompliance with the formalities in the Contract for making such changes shall not affect the Surety's obligations under this bond and the Surety hereby waives notice of any such changes.

[END OF PAGE]

IN WITNESS WHEREOF, said Contractor and said Surety have executed these presents as of this ____ day of _____, _____.

CONTRACTOR

By: _____
President

SURETY

By: _____
Attorney-in-Fact

(Accompany this bond with Attorney-in-Fact's authority from the Surety to execute bond, certified to include the date of the bond.)

EXHIBIT A

Scope of Services

A.	Exterior Finishes	\$129,495.00
	Siding & Trims, Repair / Replace, Install New Vapor Barrier & Flashings, Frame New Porch	\$93,575.00
	Demo Existing Chimney / Repair Roof Framing at Chimney Opening	\$9,920.00
	New Porch Excavation / Concrete, Stone Veneer	\$11,100.00
	Roofing - Porch Roof, Chimney Patch, Chimney Flashing	\$4,700.00
	Hauling, Install Dry Zone,	\$7,300.00
	Redo Lightning Protection	\$2,900.00
B.	Exterior Doors	\$17,500.00
	Provide and install Replica exterior doors, Hardware and Trims	\$17,500.00
		\$0.00
C.	Chimneys	\$19,900.00
	Concrete Pad for Chimney	\$3,200.00
	1 Structural Steel Chimney Support System Installed	\$3,400.00
	Construct 2 Brick Masonry Chimneys to Historic Height	\$11,300.00
	Haul off Debris	\$2,000.00
D.	Windows	\$49,950.00
	Restore / Replicate Wood Windows, Frames, Sills, Stools, Hardware, & Trims to Match Historic	\$49,950.00
E.	Painting	\$29,930.00
	Exterior Paint 2 Colors, Includes Siding, Trims, Windows, Storm Windows, Exterior Doors (both sides)	\$29,930.00
	Interior Walls and Trims	
	Are Not Included	
I.	NOTES:	\$0.00
	Permits to be provided by Owner	

	Construction Subtotal	\$246,775.00
	General Conditions (EC only)	\$37,016.25
	Permits	\$0.00
	Bonding	\$12,338.75
	Overhead & Profit (EC only)	\$24,677.50
	Construction Total	\$320,807.50
Contingency (9%)		\$28,872.68
	Project Total	\$349,680.18

EXHIBIT B

Fee Schedule

Evans Homestead

Cost Proposal

Preservation Activities:	\$ 246,775.00
General Conditions	\$ 37,016.25
Permitting	\$ 0000
Bonding	\$ 2,338.75
Overhead and Profit	\$ 24,677.50
ESTIMATED TOTAL:	\$ 349,680.18

EXHIBIT C

INSURANCE REQUIREMENTS

1. The Contractor agrees to procure and maintain with insurers with an A- or better rating as determined by Best's Key Rating Guide, at its own expense, the following policies of insurance:

(a) Workers' Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this contract, and Employers' Liability insurance with the following limits:

Workers' Compensation:	Statutory
Employers' Liability:	\$1,000,000

(b) Commercial General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy will be applicable to all premises and operations. The policy will include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy will include coverage for explosion, collapse and underground hazards. The policy will contain a severability of interests provision.

(c) Commercial 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 with respect to each of Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy will contain a severability of interests provision.

2. The required Commercial General Liability and Commercial Automobile Liability policies will be endorsed to include Douglas County as a Certificate Holder and name Douglas County, its officers and employees as additional insureds. The required Workers' Compensation policy will be endorsed to include Douglas County as a Certificate Holder. Douglas County reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

3. The certificates of insurance will be provided to Douglas County by the Contractor's insurance agent or carrier as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. The completed certificates of insurance and any notices, within 20 days of cancellation, termination, or material change will be sent to:

Megan Datwyler
Douglas County
Risk Management
100 Third Street
Castle Rock, Colorado 80104

4. The Contractor will not be relieved of any liability, claims, demands, or other obligations assumed by its failure to procure or maintain insurance, or its failure to procure or maintain insurance in sufficient amounts, durations, or types.

5. Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions and minimum limits will constitute a material breach of contract upon which Douglas County may immediately terminate this contract.

6. The parties hereto understand and agree that Douglas County is relying on, and does not waive or intend to waive 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, Sections 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to Douglas County, its officers, or its employees.

Approved by: _____

Megan Datwyler
Risk Manager