



INVITATION FOR BID (IFB)

SECTIONS B1 THROUGH B33 EXPLAIN IN DETAIL THE BID REQUIREMENTS

BID # B16-023NS

Note: GRANT FUNDED PROJECT

**COTTONWOOD CREEK
CUTOFF WALL/GRADE CONTROL
STRUCTURE – FLD004**

FOR
CITY OF COLORADO SPRINGS

CITY ENGINEERING

PRE-BID CONFERENCE

2:00 P.M., WEDNESDAY FEBRUARY 17, 2016

OFFERS DUE:

2:00 P.M., WEDNESDAY MARCH 09, 2016

POINT OF CONTACT:

Nicole Spindler
Senior Contracts Specialist
nspindler@springsgov.com

CITY OF COLORADO SPRINGS

Table of Contents

SCHEDULE A 5
BID FORM 5
SCHEDULE B 8
INSTRUCTIONS TO BIDDERS 8
GENERAL INFORMATION 8
 B.1 BID ISSUE DATE 8
 B.2 PROCUREMENT RULES AND REGULATIONS 8
 B.3 PREPARATION OF BID OFFER 8
 B.4 EXPLANATIONS TO PROSPECTIVE OFFERORS 9
 B.5 QUESTIONS AND OTHER REQUESTS FOR INFORMATION 9
 B.6 PRE-BID CONFERENCE 9
 B.7 AMENDMENTS TO THE SOLICITATION 9
 B.8 BID BOND REQUIREMENTS 9
 B.9 ESTIMATED QUANTITIES 10
 B.10 SALES TAX 10
 B.11 IDENTIFICATION OF BID 11
 B.12 SUBMISSION OF BIDS 11
 B.13 NUMBER OF COPIES 11
 B.14 LATE BIDS/LATE MODIFICATIONS OF BIDS 11
 B.15 MISTAKES IN BIDS - CONFIRMATION OF BID 12
 B.16 MINOR INFORMALITIES/IRREGULARITIES IN BIDS 12
 B.17 REJECTION OF BIDS 12
 B.18 BASIS OF AWARD 12
 B.19 PERIOD OF ACCEPTANCE 13
 B.20 BID RESULTS 13
 B.21 CONTRACT AWARD 13
 B.22 TYPE OF CONTRACT 13
 B.23 ADDITIONAL BOND REQUIREMENTS 13
 B.24 F.O.B. DESTINATION 14
 B.25 TERMS, CONDITIONS AND SPECIAL PROVISIONS 14
 B.26 FISCAL OBLIGATIONS OF CITY 14
 B.27 EQUAL EMPLOYMENT OPPORTUNITY 14
 B.28 EMPLOYMENT OF ILLEGAL ALIENS 15
 B.29 GRANT FUNDED PROJECT 15
 B.30 SMALL BUSINESS REQUIREMENTS 15
 B.31 PERIOD OF PERFORMANCE 16
 B.32 NOTICE TO PROCEED 16
 B.33 BID DOCUMENTS 16
SCHEDULE C 17
TERMS & CONDITIONS 17
 C.1. CONFIDENTIAL MATTERS 17
 C.2. LAW 17
 C.3. INDEMNIFICATION 17
 C.4. FISCAL OBLIGATIONS OF CITY 17
SCHEDULE D 18
Article I. GENERAL PROVISIONS 18
 Section 100 DEFINITIONS AND TERMS 18
 Section 101 PROSPECTIVE BIDDERS 20
 101.00 PROCUREMENT RULES AND REGULATIONS 20
 101.01 ADVERTISEMENT FOR BIDS 20
 101.02 INVITATION FOR BIDS - CONTENT 20
 101.03 INTERPRETATION OF QUANTITIES IN PROPOSAL FORM 20
 101.04 INTERPRETATION OF PLANS AND SPECIFICATIONS 20
 101.05 EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS, AND SITE OF WORK 21
 101.06 COMBINATION OR CONDITIONAL PROPOSALS 21
 101.07 ANTI-COLLUSION AFFIDAVIT 21
 101.08 MATERIAL GUARANTY 21
 101.09 EQUAL OPPORTUNITY 21
 Section 102 CONTRACT DOCUMENT INTERPRETATION 22
 102.00 INTENT OF CONTRACT DOCUMENTS 22
 102.01 SPECIAL PROVISIONS, SPECIAL SPECIFICATIONS 22
 102.02 ORDER OF PRECEDENCE 22
 102.03 STANDARD MANUFACTURER 22
 102.04 "OR EQUAL" CLAUSE 23
 102.05 TIME OF ESSENCE 23
 102.06 PARTIAL WAIVER OR WAIVER BY ACQUIESCENCE 23
 Section 103 COMPLIANCE WITH LAWS 23
 103.00 LAWS AND REGULATIONS 23
 103.01 PUBLIC IMPROVEMENT ASSESSMENT 23

CITY OF COLORADO SPRINGS

| | | |
|-------------|---|----|
| 103.02 | ALL LEGAL PROVISIONS INCLUDED | 23 |
| 103.03 | SEVERABILITY | 23 |
| 103.04 | FOREIGN ENTITY | 24 |
| 103.05 | LICENSES AND PERMITS | 24 |
| 103.06 | EMPLOYMENT OF ILLEGAL ALIENS | 24 |
| Section 104 | AWARD AND EXECUTION OF CONTRACT | 24 |
| 104.00 | AWARD | 24 |
| 104.01 | CONTRACT EXECUTED | 25 |
| 104.02 | VERBAL AGREEMENTS | 25 |
| 104.03 | CONTRACT SECURITY | 25 |
| 104.04 | BOND FORMS | 25 |
| 104.05 | INDEPENDENT CONTRACTOR | 25 |
| Section 105 | THE CONTRACT: FOLLOWING EXECUTION | 26 |
| 105.00 | MATERIALS | 26 |
| 105.01 | SCHEDULE | 26 |
| 105.02 | SCHEDULE OF VALUES | 30 |
| 105.03 | SURVEYS | 30 |
| 105.04 | TAXATION | 30 |
| 105.05 | ASSIGNMENT OF CONTRACT | 30 |
| 105.06 | SUBCONTRACTS | 30 |
| 105.07 | OTHER CONTRACTS | 31 |
| Section 106 | CONSTRUCTION SITE | 31 |
| 106.00 | LANDS TO BE USED FOR WORK | 31 |
| 106.01 | STORAGE OF MATERIALS | 32 |
| 106.02 | LOADING OF STRUCTURES | 32 |
| 106.03 | SANITARY PROVISIONS | 32 |
| 106.04 | ACCIDENT PREVENTION | 32 |
| 106.05 | PROTECTION OF THE PUBLIC WORKS AND PROPERTY | 32 |
| 106.06 | PUBLIC ROADS | 33 |
| 106.07 | PROTECTION OF EXISTING CURBS, GUTTERS AND DRIVEWAYS | 33 |
| 106.08 | PROTECTING AND REMOVING PLANTINGS | 33 |
| 106.09 | PUBLIC CONVENIENCE AND SAFETY | 34 |
| 106.10 | COORDINATION WITH PROPERTY OWNERS | 34 |
| 106.11 | FAILURE TO MAINTAIN SAFE SITE | 35 |
| 106.12 | EROSION AND DRAINAGE CONTROL | 35 |
| 106.13 | POLLUTION | 35 |
| 106.14 | TEMPORARY CONSTRUCTION | 35 |
| 106.15 | TEMPORARY WATER SUPPLY | 35 |
| 106.16 | TEMPORARY ELECTRIC LIGHT AND POWER | 36 |
| 106.17 | TEMPORARY HEAT | 36 |
| 106.18 | TEMPORARY ENCLOSURES | 36 |
| 106.19 | CLEAN-UP | 36 |
| Section 107 | INSURANCE AND INDEMNITY | 36 |
| 107.00 | CONTRACTOR'S INSURANCE | 36 |
| 107.01 | BUILDER'S RISK INSURANCE | 38 |
| 107.02 | INDEMNIFICATION | 39 |
| 107.03 | THIRD PARTY LIABILITY | 39 |
| 107.04 | RISK INSURANCE | 39 |
| Section 108 | ROYALTIES, PATENT INFRINGEMENTS, SPECIAL LICENSES AND PERMITS | 39 |
| 108.00 | ROYALTIES AND PATENTS | 39 |
| 108.01 | PERMITS, LICENSES AND REGULATIONS | 39 |
| Section 109 | WORK PROVISIONS AND RULES | 40 |
| 109.00 | COMMENCEMENT AND COMPLETION OF WORK | 40 |
| 109.01 | FAILURE TO COMPLETE WORK ON TIME, LIQUIDATED DAMAGES | 40 |
| 109.02 | WORK IN BAD WEATHER | 41 |
| 109.03 | EXCUSABLE DELAYS | 41 |
| 109.04 | COMPENSATION FOR COMPENSABLE DELAYS | 41 |
| 109.05 | EMERGENCY WORK | 42 |
| 109.06 | VALUE ENGINEERING CHANGE PROPOSALS BY THE CONTRACTOR | 42 |
| 109.07 | AUTHORITY OF THE ENGINEER | 44 |
| 109.08 | DUTIES OF THE INSPECTOR | 45 |
| 109.09 | CONSTRUCTION OBSERVATION AND INSPECTION | 45 |
| 109.10 | CONTRACTOR COOPERATION | 46 |
| 109.11 | CONTRACTOR'S RESPONSIBILITY FOR WORK | 46 |
| 109.12 | PROTECTION OF UTILITIES | 46 |
| 109.13 | LABOR | 49 |
| 109.14 | EMPLOYMENT OF LABOR | 49 |
| 109.15 | EQUAL EMPLOYMENT OPPORTUNITY | 49 |
| 109.16 | FEDERAL FUNDS | 49 |
| 109.17 | SUPERINTENDENCE | 50 |

CITY OF COLORADO SPRINGS

| | | |
|---|---|-----|
| 109.18 | PREPARATION | 51 |
| 109.19 | STAKING WORK | 51 |
| 109.20 | DEVIATION ALLOWED | 51 |
| 109.21 | RIGHT-OF-WAY | 51 |
| 109.22 | SHOP DRAWINGS AND SUBMITTALS | 51 |
| 109.23 | RECORD DRAWINGS | 52 |
| 109.24 | MATERIALS | 52 |
| 109.25 | MATERIAL INSPECTION AT PLANT | 52 |
| 109.26 | HANDLING MATERIALS | 52 |
| 109.27 | CITY FURNISHED MATERIALS | 53 |
| 109.28 | BUY AMERICA REQUIREMENTS | 53 |
| 109.29 | TESTING OF MATERIALS | 53 |
| 109.30 | DIFFERING SITE CONDITIONS | 54 |
| 109.31 | CHANGED CONDITIONS | 54 |
| 109.32 | CHANGES IN THE WORK | 55 |
| 109.33 | PROTESTS | 55 |
| 109.34 | REMOVAL AND SUSPENSION FOR DEFECTIVE WORK | 56 |
| 109.35 | CLEANING UP AND FINAL INSPECTION | 56 |
| 109.36 | CUTTING AND PATCHING | 57 |
| 109.37 | FINAL TESTS | 57 |
| 109.38 | CORRECTION OF WORK AFTER FINAL PAYMENT | 57 |
| 109.39 | PERSONAL LIABILITY OF PUBLIC EMPLOYEES | 57 |
| 109.40 | NO WAIVER OF LEGAL RIGHTS | 57 |
| 109.41 | ACCEPTANCE | 58 |
| Section 110 | PAYMENTS AND ACCEPTANCE OF WORK | 58 |
| 110.00 | PAYMENTS AND RETAINAGE | 58 |
| 110.01 | CORRECTION OF WORK BEFORE FINAL PAYMENT | 60 |
| 110.02 | PAYMENTS WITHHELD PRIOR TO FINAL ACCEPTANCE OF WORK | 60 |
| 110.03 | ACCEPTANCE OF FINAL PAYMENT | 61 |
| Section 111 | TERMINATION OF CONTRACT | 61 |
| 111.00 | THE CITY'S RIGHT TO TERMINATE CONTRACT | 61 |
| 111.01 | COMPLETION OF CONTRACTS IN DEFAULT | 62 |
| 111.02 | REMOVAL OF EQUIPMENT | 62 |
| SCHEDULE E | ..... | 64 |
| SCHEDULE F | ..... | 73 |
| | PROJECT SPECIFIC SPECIAL PROVISIONS and measurement and payment | 73 |
| SCHEDULE G | ..... | 84 |
| | TECHNICAL SPECIFICATIONS | 84 |
| SCHEDULE H | ..... | 85 |
| EXHIBITS | ..... | 85 |
| EXHIBIT 1 - CITY OF COLORADO SPRINGS BID BOND | ..... | 86 |
| EXHIBIT 2 - PERFORMANCE BOND | ..... | 87 |
| EXHIBIT 3 - CITY OF COLORADO SPRINGS LABOR & MATERIAL PAYMENT BOND | ..... | 88 |
| EXHIBIT 4 - CITY OF COLORADO SPRINGS MAINTENANCE BOND | ..... | 90 |
| EXHIBIT 5 - SAMPLE CONTRACT | ..... | 91 |
| EXHIBIT 6 - MINIMUM INSURANCE REQUIREMENTS | ..... | 95 |
| EXHIBIT 8 REPRESENTATIONS AND CERTIFICATIONS | ..... | 97 |
| 1. INSURANCE REQUIREMENTS | ..... | 97 |
| 2. ETHICS VIOLATIONS | ..... | 97 |
| 3. ILLEGAL ALIENS | ..... | 97 |
| 4. COOPERATION WITH OTHER CONTRACTORS | ..... | 98 |
| 5. INTERNET USE | ..... | 99 |
| 6. LITIGATION | ..... | 99 |
| 7. CONTRACTOR'S REGISTRATION INFORMATION | ..... | 99 |
| 8. CONTRACTOR PERSONNEL | ..... | 100 |
| 9. CONTRACTOR'S CERTIFICATION | ..... | 100 |
| 10. CONTRACTOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS: | ..... | 101 |
| 11. ACCEPTANCE OF CITY CONTRACTS SPECIALIST'S SOLE AUTHORITY FOR CHANGES | ..... | 102 |
| exhibit 9 federal forms | ..... | 103 |
| CERTIFICATION REGARDING DEBARMENT, SUSPENSION | ..... | 103 |
| (CHECK ONE) | ..... | 103 |
| RESTRICTIONS ON LOBBYING CERTIFICATION | ..... | 104 |
| NON-COLLUSION AFFIDAVIT | ..... | 105 |
| APPENDIX 1 | ..... | 108 |
| INDEX OF DRAWINGS | ..... | 108 |

CITY OF COLORADO SPRINGS

SCHEDULE A

BID FORM

The undersigned declares that it has carefully examined the bid information and complete Solicitation, (The term solicitation means the complete invitation for bid) in submitting a bid for “**COTTONWOOD CREEK CUTOFF WALL/GRADE CONTROL STRUCTURE – FLD004**”.

The Offeror’s signature will be considered the offerors acknowledgment of understanding and ability to comply with all items in this solicitation. If an offeror makes any changes or corrections to the bid documents (such as white out, or writing over a figure, etc.) such changes or corrections must be initialed and dated by the person signing the offer prior to its submittal.

TOTAL BID will be evaluated and awarded as follows: The City of Colorado Springs intends to award a construction contract to the lowest responsible and responsive bidder as specified in Schedule B, B.18 Basis of Award.

**OFFER
BID SCHEDULE**

| Item No. | Description | EST Qty | Unit | Unit Price | Extended |
|-----------------|---|----------------|-------------|-------------------|-----------------|
| 1 | MOBILIZATION | 1 | LS | | |
| 2 | WATER CONTROL & DEWATERING | 1 | LS | | |
| 3 | CONCRETE WALL DEMOLITION AND HAUL OFFSITE | 64 | LF | | |
| 4 | EXCAVATION – FILL ON SITE | 228 | CY | | |
| 5 | EXCAVATION - EXPORT | 711 | CY | | |
| 6 | MUCK REMOVAL AND REPLACEMENT | 100 | CY | | |
| 7 | 48" GROUTED BOULDERS | 784 | SY | | |
| 8 | CLEARING AND GRUBBING | 357 | SY | | |
| 9 | TYPE VH RIPRAP | 55 | CY | | |
| 10 | CDOT TYPE II BEDDING | 17 | CY | | |
| 11 | SHEET PILE | 636 | SF | | |
| 12 | CONSTRUCTION SURVEYING | 1 | LS | | |
| 13 | AS-BUILT SURVEY | 1 | LS | | |
| 14 | TEMPORARY EROSION AND SEDIMENT CONTROL | 1 | LS | | |
| 15 | WETLAND PLANTINGS | 126 | SY | | |
| | TOTAL BID | | | | |

Supplemental Bid Notes:

If awarded the contract, the undersigned hereby agrees to sign said Contract, "Notice of Award" and to complete the work **within (100) calendar days.**

As time is an essential element of the Contract, all work shall be completed within the Contract period. For each calendar day that any work shall remain incomplete after the end of the Contract period, the amounts designated in Section 109.01 of the General Provisions will be assessed, not as a penalty but as a predetermined and agreed liquidated damage.

The undersigned furthermore agrees, if awarded a contract for the work included in this proposal to begin and to complete and to deliver the work contemplated in accordance with the conditions set forth in the Contract Documents.

The undersigned has examined the location of the proposed work, and he/she is familiar with the drawings and the specifications and all Contract Documents related thereto, and the local conditions at the place where the work is to be done.

Bidders must qualify for licenses required before commencing work.

Davis Bacon Wage Rates do not apply to this solicitation.

BID FORM SIGNATURE PAGE

By signing in this space, the contractor hereby certifies that this company is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from bidding/proposing on any federal, state, county or municipal Invitations for Bids or Requests for Proposals.

Signature _____
Date

Title

THE Contractor hereby Certifies that at the time of this certification, the Contractor does not knowingly employ or contract with an illegal alien and that the contractor has participated or attempted to participate in the basic pilot program in order to verify that the Contractor does not employ any illegal aliens. "Basic pilot program" means the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security.

If awarded the contract, the undersigned hereby agrees to sign said Contract, and furnish the necessary bonds within ten (10) days of receipt of the "Notice of Award", of said contract, and to begin work within ten (10) days from the date of receipt of the "Notice to Proceed" and to complete the work within **(100)** Calendar Days.

The undersigned acknowledges and understands the terms, conditions, Specifications and all Requirements contained and/or referenced and is legally authorized by the bidder to make the above bid statements or representations.

(Name of Company) _____
(Signature)

(Address) _____
Date

(City, State and Zip) _____
(Telephone Number)

(Name typed/Printed) (Title) (email)

FEDERAL TAX ID # _____
This Company Is: Corporation___ Individual___ Partnership___ LLC___

Offeror hereby acknowledges receipt of the following amendments, if applicable (Offeror agrees that it is bound by all Amendments identified herein)

AMENDMENT #1_____ DATED:_____

AMENDMENT #2_____ DATED:_____

AMENDMENT #3_____ DATED:_____

SCHEDULE B

INSTRUCTIONS TO BIDDERS

GENERAL INFORMATION

City Contracting no longer maintains a bidders' list. All projects subject to formal competition are posted on Rocky Mountain E Purchasing (www.rockymountainbidsystem.com) or in the lobby of our office at 30 S. Nevada Ave., Ste. 201, Colorado Springs, CO 80903.

The City of Colorado Springs Contracting now utilizes **Rocky Mountain E Purchasing** which can be accessed [here](#). This system will provide you with convenient access to all bid information for the City of Colorado Springs as well as 106 other local agencies throughout Colorado. To receive email alerts of open bids in your field please register with Rocky Mountain E Purchasing System and complete your online registration. All vendors are encouraged to register in order to access RFP's, IFB's, addenda, and awards.

B.1 BID ISSUE DATE

Invitation for Bid (IFB) Number **B16-023 NS** is being issued and posted on the web-site on **February 8, 2016**. All bid documents; drawings, specifications, and any associated addenda can be accessed Rocky Mountain E Purchasing or www.rockymountainbidsystem.com.

B.2 PROCUREMENT RULES AND REGULATIONS

All formal Invitation for Bids (IFB) advertised by the City of Colorado Springs are solicited in accordance with the City's Procurement Rules and Regulations. The City's Procurement Rules and Regulations can be reviewed and/or downloaded from the web-site. Any discrepancies or conflicting statements, decisions regarding bidding irregularities, clauses or specifications will be rectified utilizing the City's Procurement Rules and Regulations. It is the bidder's responsibility to advise the Contracting Specialist listed in these bidding documents of any potential discrepancies, conflicting statements, clauses or specifications prior to the bid opening date and time.

B.3 PREPARATION OF BID OFFER

- B.3.1 Bidders are expected to examine the drawings, specifications, bid documents, proposed contract forms, terms and conditions, and all other instructions and solicitation documents. Bidders are expected to visit the job-site to determine all requirements and conditions that will affect the work. Failure to do so will not relieve a bidder from their responsibility to know what is contained in this invitation for bid, or site conditions affecting the work.
- B.3.2 The bidder certifies that it has checked all of its figures, and understands that the City will not be responsible for any errors or omissions on the part of the bidders in preparing its bid.
- B.3.3 All items, (unless the invitation specifically states otherwise) including any additive or deductive alternates on the bid schedule, **must** be completely filled out or the bid will be determined non-responsive and ineligible for consideration for award.
- B.3.4 The bidder declares that the person or persons signing this bid is/are authorized to sign on behalf of the firm listed and to fully bind the bidder to all the requirements of the solicitation.
- B.3.5 The bidder certifies that no person or firm other than the bidder or as otherwise indicated has any interest whatsoever in this bid/offer or the Contract that may be entered into as a result of this bid/offer and that in all respects the offer is legal and firm, submitted in good faith without collusion or fraud.
- B.3.6 By submitting a bid the bidder certifies that it has complied and will comply with all requirements of local, state, and federal laws, and that no legal requirements have been or will be violated in making or accepting this bid. Bidders are expected to review the City's Procurement Rules and Regulations which will be used when

CITY OF COLORADO SPRINGS

determining a bidder responsive and responsible and awarding contracts in the best interest of the City.

- B.3.7 If there is a discrepancy between the unit price and the total price, the unit price shall be used to determine the applicable total price. Bidders are responsible for including profit and overhead associated with the project when determining their unit prices.

B.4 EXPLANATIONS TO PROSPECTIVE OFFERORS

Any prospective bidder desiring an explanation or interpretation of the solicitation documents, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the time for submission of offers. Oral explanations or instructions given before the opening of bids will not be binding. Any information provided to a prospective bidder during the bid preparation stage will be promptly furnished to all other prospective bidders as an amendment to the solicitation if that information is necessary in submitting bid offers or if the lack of it would be prejudicial to other prospective bidders.

B.5 QUESTIONS AND OTHER REQUESTS FOR INFORMATION

All questions shall be submitted in writing to the following specified individual. The preferred method of submitting written questions is via e-mail. All questions must be received no later than 10:00 AM, March 1, 2016.

All questions shall be directed to:

Nicole Spindler nspindler@springsgov.com

B.6 PRE-BID CONFERENCE

A pre-bid conference is scheduled for 2:00 P.M., Wednesday, February 17, 2016, at the City Contracting Office, 30 South Nevada, Room 401 Large, Colorado Springs, CO. 80903. ***Please note that all visitors to City facilities are required to provide a picture ID in order to gain access to the building.***

- B.6.1 This pre-bid conference is not mandatory; however, contractors, suppliers, and vendors are strongly encouraged to attend in order to voice their comments, concerns and/or questions.

B.7 AMENDMENTS TO THE SOLICITATION

Amendments are also referred to as addendum or addenda; and these terms shall be considered synonymous. The City of Colorado Springs will post all addenda on the web-site. It is the bidder's responsibility to check the web-site for posted addenda or contact the Contracting Specialist listed in B.5 to confirm the number of Amendments which have been issued.

- B.7.1 If this solicitation is amended, then all specifications, terms and conditions, which are not amended, remain unchanged.
- B.7.2 Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid offers, or (3) by letter or facsimile.
- B.7.3 Acknowledged amendments must be received prior to bid opening. Bidders are encouraged to include signed addenda or initialed acknowledgment with returned bids.

B.8 BID BOND REQUIREMENTS

A bid bond in the amount of five (5) percent of the bid amount is required to be submitted with your bid when (1) the total amount of your accumulative bid is more than \$100,000 or (2) is required elsewhere in this solicitation. This Bond must meet the following conditions and shall be submitted using the form in the Exhibits Section of this solicitation.

B.8.1 Bid (offer) Bond

- a) The Bidder is required to furnish with their bid a bid bond in the form of a certified check, cashier's check or surety bid bond acceptable to the Contracting Specialist in the sum equal to at least 5% of the total amount of the bid payable without condition to the City of Colorado Springs if; (1) the total amount of your accumulative bid is more than \$100,000 or (2) is required elsewhere in this solicitation.
- b) The Bid Bond shall guarantee that the bid will not be withdrawn or modified for a period of sixty calendar days after the time set for the receipt of bid offers, and if accepted within those sixty calendar days, that the person, firm or corporation submitting same shall within ten (10) calendar days after being notified of the acceptance of its bid offer, enter into a Contract and furnish the required bonds and all insurance certificates called for under this invitation for bid.
- c) The Bid Bonds of unsuccessful bidders will not be returned to the respective bidders unless a self-addressed stamped envelope is provided along with a written request for bid bond return. However, if a certified check or a cashier's check is submitted in lieu of the Bid Bond, it will be returned as soon as possible after the lowest responsive and responsible bidder is determined and a contract is executed.
- d) In the event the bidder whose bid offer is accepted fails to enter into the contract and/or furnish the proper bonds, its certified check, cashier's check or surety bid bond will be forfeited in full to the City.

B.9 ESTIMATED QUANTITIES

If the bid schedule herein contains estimated quantities this provision is applicable. The quantities listed for each of the items in the bid schedule are only estimated quantities. Contractors are required to bid a firm unit cost for each item specified. The actual quantities ordered may fluctuate up or down. The unit prices proposed by each bidder will remain firm and will not be re-negotiated if the estimated quantities are not met or are exceeded. This clause will take precedence over any/all other estimated quantity clauses that conflict with this clause.

For bidding purposes, if there is a conflict between the extended total of an item and the unit price, the unit price shall prevail and be considered as the amount of the bid. All unit prices shall include all necessary overhead and profit. Items not listed in the bid schedule such as overhead, profit, mobilization, de-mobilization, bonding, etc shall be distributed throughout the bidder's unit prices for the items listed in the bid schedule.

B.10 SALES TAX

The contractor shall apply with the Colorado Department of Revenue for a tax-exempt certificate for this project. The certificate does not apply to City of Colorado Springs Sales and Use Tax (3.12%) which shall be applicable and included in your bid or proposal in all cases. The tax exempt project number and the exemption certificate only applies to County, PPRTA (Pikes Peak Rural Transportation Authority), and State taxes when purchasing construction and building materials **to be incorporated in this project**.

Furthermore, the exemption **does not** include or apply to the purchase or rental of equipment, supplies or materials that **do not become a part of the completed project or structure**. In these instances, the purchase or rental is subject to full taxation of 8.25% (City-3.12%, County-1.23%, PPRTA-1%, and State-2.9%).

The Contractor and all subcontractors shall include in their bid City of Colorado Springs Sales and Use Tax (3.12%) on the work covered by the Contract, and other taxes as applicable.

Note: For all equipment, materials and supplies incorporated into the work purchased from vendors or suppliers not licensed to collect City Sales Tax (i.e. out of state suppliers, etc), City

CITY OF COLORADO SPRINGS

Use Tax (3.12%) is due and payable to the City. The contractor shall execute and deliver, and shall cause the Contractor's subcontractors to execute and deliver to the City Sales Tax Office, ST 16 forms listing all said equipment, materials and supplies and the corresponding use tax due, along with payment for said taxes unless already included in the bid price. Any outstanding taxes due may be withheld from the final payment due the contractor and may result in suspension from bidding on City projects.

Forms and instructions can be downloaded at Coloradosprings.gov, search "Sales Tax Applications and Forms") Questions can be directed to the City Sales Tax Division at (719) 385-5903.

Our Registration Numbers are as follows:
City of Colorado Springs
Federal I.D.: 84-6000574
Federal Excise: A-138557
State Sales Tax: 98-03479

B.11 IDENTIFICATION OF BID

Bids must be returned in a sealed envelope; solicitation number and date for submission of offers must be clearly marked on the outside in the lower left hand corner: Any offer that is submitted without being properly marked may be opened for identification prior to the deadline for receipt of offers and then resealed.

B.12 SUBMISSION OF BIDS

B.12.1 Bids are to be submitted in a sealed envelope to City Contracting Office, 30 S. Nevada Ave., Suite 201, Colorado Springs CO. 80903.

B.12.2 Date/Time: Bids shall be received on or before: **2:00 P.M., March 9, 2016.**

B.12.3 BID SUBMITTAL DOCUMENTS:

CITY PROJECTS

The following listed documents must be submitted with your bid in order for your bid submittal to be considered responsive. Use this list as a checklist to make sure all required documents are submitted.

- Schedule A., Bid Form
- Exhibit 1 Bid Bond
- Exhibit 6 Minimum Insurance Requirements
- Exhibit 8 Representations and Certifications
- Acknowledged Addendums if issued

*******LATE BIDS WILL NOT BE ACCEPTED*******

B.13 NUMBER OF COPIES

Bidder shall submit in its sealed and marked envelope, one (1) copy of its bid, signed in ink, and, if applicable, one (1) original copy of the Bid Bond as defined in B.12 and B.22.

B.14 LATE BIDS/LATE MODIFICATIONS OF BIDS

B.14.1 Bids received in the office designated in B.12 above, after the exact time set for opening are considered "late bids", and will not be accepted by the Bid Opening Official. Bidders are solely responsible for insuring their bids arrive on time and to the place of bids specified in the Invitation for Bid.

B.14.2 The City of Colorado Springs will not consider a late bid or late modification of bid unless:

- (1) There is conclusive evidence that the bid was submitted to the office designated in B.12 above, on time and was mishandled by the City of Colorado Springs (i.e. lost or misplaced) City Contracting personnel responsible for handling/receiving bids. Mishandling by other units or offices of the City of Colorado Springs does not constitute City Contracting personnel.

(2) Or – it was the only bid received.

B.15 MISTAKES IN BIDS - CONFIRMATION OF BID

When it appears from a review of the bid that a mistake has been made, the bidder may be requested to confirm their bid. Situations in which the confirmation may be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. All mistakes in bids will be handled in accordance with the City of Colorado Springs Procurement Rules and Regulations.

B.16 MINOR INFORMALITIES/IRREGULARITIES IN BIDS

B.16.1 A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to other bidders. The defect or variation is considered immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the services being acquired.

B.16.2 If the City Procurement Services determines that the bid submitted contains a minor informality or irregularity, then the Manager shall give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid, or waive the deficiency, whichever is to the advantage of the City. In no event will the bidder be allowed to change the bid amount. Examples of minor informalities or irregularities include but are not limited to the following;

B.16.2.1 Bidder fails to sign the Bid, but only if the unsigned bid is accompanied by other material evidence, which indicates the bidder's intention to be bound by the unsigned bid. (such as Bid bond, or signed cover letter which references the bid # and amount of bid).

B.16.2.2 Bidder fails to acknowledge an Amendment - this may be considered a minor informality only if the Amendment, which was not acknowledged, involves only a matter of form or has either no effect or merely a negligible effect on price, quantity, quality, or delivery of the item or services bid upon.

B.17 REJECTION OF BIDS

Any bid that fails to conform to the essential requirements of the Invitation for Bids will be rejected.

B.17.1 Any bid that does not conform to the applicable specifications shall be rejected unless the invitation authorizes the submission of alternate bids and the items or services offered as alternates meet the requirements specified in the Invitation for Bids.

B.17.2 A bid shall be rejected when the bidder imposes conditions that would modify requirements of the invitation or limit the bidder's liability to the City, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids shall be rejected in which the bidder:

B.17.2.1 Protects against future changes in conditions, such as increased costs, if total possible costs to the City cannot be determined.

B.17.2.2 Fails to state a price and indicates that price shall be "price in effect at time delivery".

B.17.2.3 States a price but qualifies it as being subject to "price in effect at time of delivery".

B.17.2.4 Takes exceptions to the Invitation for Bids terms and conditions.

B.17.2.5 Inserts the bidder's terms and conditions.

B.17.2.6 Limits the rights of the City under any contract/invitation for bid clause.

B.18 BASIS OF AWARD

The City of Colorado Springs intends to award a contract resulting from this solicitation to the lowest, responsive, responsible bidder, whose offer conforming to the solicitation, will be most

advantageous to and in the best interest of the City of Colorado Springs, cost or price and other factors considered.

B.18.1 In addition to other factors, bid/offers will be evaluated on the basis of advantages and disadvantages to the City that might result from offers received.

B.18.2 The City reserves the right to reject any or all proposals and to waive informalities and/or irregularities in the bid offer.

B.18.3 Total bid will be evaluated and awarded as follows: It is the City's intent to award this bid based on the **TOTAL BID FOR ALL ITEMS, split awards will not be made.**

B.19 PERIOD OF ACCEPTANCE

The bidder agrees that its bid offer shall remain open for acceptance by the City for a period of sixty (60) calendar days from the date specified in the solicitation for receipt of bids. Additionally the City reserves the right to extend any resultant contract or previously approved contract extension for up to six months while products or services are being rebid.

B.20 BID RESULTS

The City of Colorado Springs does not mail bid results or tabulations. However, bid tabulations are posted and can be downloaded from the web-site. To request a bid tabulation, email contracting@springsgov.com.

B.21 CONTRACT AWARD

The signature of the bidder indicates that within ten (10) calendar days from acceptance of its bid offer it will execute a contract with the City of Colorado Springs and if indicated in this solicitation, furnish a project specific Certificate of Insurance naming the City of Colorado Springs as Additional Insured, furnish Performance, Labor and Materials, Payment and Maintenance Bonds and any other documents required by the Specifications or Contract Documents.

B.22 TYPE OF CONTRACT

It is the intent of this Invitation for Bids (IFB) to award a firm fixed price Contract based on the prices offered by the lowest responsive and responsible bidder. Contract prices shall remain firm and fixed throughout the contract performance period.

B.23 ADDITIONAL BOND REQUIREMENTS

B.24.1 Performance, Labor and Materials Payment, and Maintenance Bonds

The Contractor shall furnish to the City of Colorado Springs one copy of each; Performance Bond, Labor and Materials Payment Bond, and a Maintenance Bond in the amount of 100% of the total contract within ten (10) calendar days after notification of award of a contract. The cost of all bonds shall be included in Contractor's bid offer.

Bonds shall:

- a) Be for the full amount of the contract price.
- b) Guarantee the Contractor's faithful performance of the work under this contract, and the prompt and full payment for all labor and materials involved therein.
- c) Guarantee protection to the City of Colorado Springs against liens of any kind.
- d) Be, when a surety bond is furnished, from a surety company operating lawfully in the state of Colorado and shall be accompanied with an acceptable "Power-of-Attorney" form attached to each bond copy.
- e) Be issued from a surety company that is acceptable to the City of Colorado Springs.
- f) Be submitted using the forms in the Exhibit section of this solicitation.

B.24 F.O.B. DESTINATION

Unless otherwise specified in the invitation for bid, all goods, materials, supplies, equipment or services covered by this solicitation shall be delivered F.O.B. destination, all freight charges prepaid and allowed, within the city limits of the City of Colorado Springs, Colorado, at the location indicated in the awarded contract or purchase order.

B.25 TERMS, CONDITIONS AND SPECIAL PROVISIONS

Bidders are advised to pay special attention to Schedules C, Terms and Conditions, and Schedule D, Special Provisions. These schedules may contain requirements that will have an impact on all potential bidders, such as Liquidated Damages, Indemnification, DBE participation, type of contract, and delivery schedule.

B.26 FISCAL OBLIGATIONS OF CITY

This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

B.27 EQUAL EMPLOYMENT OPPORTUNITY

B.27.1 In connection with this procurement, the contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status or disability. The contractor will take affirmative action to ensure that all applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, age, marital status or disability. 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.

- a) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin.
- b) The Contractor will comply with all equal employment opportunity provisions, rules, regulations and executive orders issued by the City of Colorado Springs, State of Colorado and the Secretary of Labor.
- c) The Contractor will furnish all information and reports required by any equal employment opportunity provisions, rules, regulations and executive orders and will permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with such Rules, Regulations, and Orders.
- d) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such Rules, Regulations, or Orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further City contracts.

B.28 EMPLOYMENT OF ILLEGAL ALIENS

- a. The Contractor represents, warrants, and agrees that it (i) has verified that it does not employ any illegal aliens, or (ii) has attempted to verify through participation in the Department of Homeland Security's Basic Pilot Program that the contractor does not employ any illegal aliens. If the contractor has not been accepted into the Basic Pilot Program prior to entering into this Agreement, the Contractor shall apply to participate in the Basic Pilot Program (unless it has been discontinued) every three months after entering this Agreement until the Contractor either is accepted or this Agreement has been completed, whichever is earlier.
- b. Notwithstanding subparagraph (a) of this section of the Agreement, the Contractor shall not use or rely upon the Basic Pilot Program procedure for the purpose of pre-employment screening of job applicants during the performance of the obligations contained in this Agreement.
- c. If at any time prior to or during the performance of the Contractor's obligations contained in this Agreement, the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement for the Contractor knowingly employs or contracts with an illegal alien, the Contractor is required to (i) notify in writing both the subcontractor and the City within three (3) days after obtaining such knowledge that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien, and (ii) terminate the subcontract with the subcontractor if, within the three (3) days following receipt of such notice, the subcontractor does not stop employing or contracting with the illegal alien. The Contractor shall not terminate the contract with the subcontractor if, during the three (3) day period after actual knowledge of employment or contract with the illegal alien, the subcontractor provides information to the Contractor to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. For purposes of this subparagraph only, and without waiving or changing any other Notice Provisions in this Agreement, all notices to the City regarding this subparagraph shall be addressed to the City Contracting Manager, 30 South Nevada Ave., Suite 201, Colorado Springs, CO 80903, with a copy to the Office of the City Attorney, P O Box 1575, Colorado Springs, Colorado 80901-1575.

The Contractor will comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment.

B.29 GRANT FUNDED PROJECT

Uniform Grant Guidance Procurement Language, 2 CFR 200, is applicable to this solicitation and included in Schedule E.

B.30 SMALL BUSINESS REQUIREMENTS

The City of Colorado Springs encourages all qualified offerors to submit proposals or bids in response to this solicitation. For evaluated proposals, offerors who are registered with the Small Business Administration as a Small Disadvantaged Business (SDB), a Woman-Owned Small Business (WOSB), or a HUBZone Small Business will receive one additional evaluation point. For evaluation of bids, SDBs, WOSBs, and HUBZone businesses will be given a 1% preference in price. That is, 1% will be reduced from the price of an SDB, WOSB, or HUBZone business in the evaluation of the bids for the purpose of determining lowest bidder.

Subcontracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The Contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) *Affirmative steps must include:*

(1) Placing qualified small and minority businesses and women's business enterprises on subcontract solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources for subcontracting;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

B.31 PERIOD OF PERFORMANCE

The contractor shall complete all work within **100 Calendar Days** after the Notice-to-Proceed as per the Specifications and Drawings. The contractor will start work promptly after receipt of the Notice-to-Proceed and continue to work diligently until all work is completed and accepted by the City.

B.32 NOTICE TO PROCEED

Work may not start under any awarded contract until a written notice to proceed is issued by the City of Colorado Springs. The City of Colorado Springs may issue the Notice-to-Proceed anytime after the contract is signed and, if required, insurance and bonds have been provided in accordance with B.24.

B.33 BID DOCUMENTS

CITY PROJECTS

B.33.1 The following listed documents **must** be submitted with your bid in order for your bid submittal to be considered responsive. Use this list as a checklist to make sure all required documents are submitted.

Schedule A, Bid Form

Exhibit 1 - Bid Bond

Exhibit 6 - Minimum Insurance Requirements

Exhibit 8- Representations and Certifications

Exhibit 9 – Federal Forms

Addendums if issued

SCHEDULE C

TERMS & CONDITIONS

C.1. CONFIDENTIAL MATTERS

All data and information gathered by the Contractor and its subcontractors, and all reports, recommendations, drawings, documents, and data shall be treated by the Contractor and its subcontractors as confidential. The Contractor and its subcontractors must agree not to communicate and disclose the aforesaid matters to a third party or use them in advertising, publicity, or propoganda and/or in another job or jobs, unless prior written consent is obtained from the City.

C.2. LAW

This contract is subject to and shall be interpreted under the law of the State of Colorado, and the charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, a home rule city. Court venue and jurisdiction shall exclusively be in the Colorado District Court of El Paso County Colorado. The contractor shall insure that the contractor and the contractor's employees, agents and officers are familiar with, and comply with, applicable Federal, State and Local laws and Regulations as now written or hereafter amended.

C.3. INDEMNIFICATION

The Contractor agrees to indemnify and hold harmless the City, its employees, directors or agents, from and against all claims, damages, losses, and expenses, including attorney's fees arising from deaths or accidents or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom, resulting to employees of the Contractor, or its subcontractors, in the work contemplated and done under the Contract, and to indemnify and hold harmless City, its employees, directors, or agents, from and against all claims, damages, losses, and expenses, including attorney's fees, decrees or judgments whatsoever arising from any and all injuries, including death or damages or destruction of property resulting to any third person or persons, corporation, partnerships or associations caused by any act, omission, failure, or neglect of the Contractor, its subcontractors, or agents, servants and employees, or other persons under its supervision or direction in the performance of any work under the terms of the Contract. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable for or by the Contractor or any subcontractor, manufacturer, or supplier under the Workmen's Compensation Act, disability benefit acts, or other employee benefit acts.

C.4. FISCAL OBLIGATIONS OF CITY

This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

SCHEDULE D

ARTICLE I. GENERAL PROVISIONS

All bids submitted as a result of City of Colorado Springs Invitations for Bids (IFB) and/or Request for Proposals (RFP) shall be in accordance with the latest version of the City's Procurement Rules, Regulations and Information. The latest version is posted on the City's web-site at www.coloradosprings.gov/contracting , and can be reviewed or downloaded.

SECTION 100 DEFINITIONS AND TERMS

Also see Procurement Rules 1-103 Terms Defined

Titles used in these specifications having a masculine gender, such as “workmen” and the pronouns “he” or “his”, are for the sake of brevity and are intended to refer to persons of either sex.

The titles or headings of the sections and subsections herein are intended for convenience of reference and shall not have any bearing on their interpretation.

When the Contract indicates that something “shall” be done, the action is required and is not discretionary.

Calendar Day Each and every day shown on the calendar, beginning and ending at midnight.

Change Order A written order issued to the Contractor by the City covering contingencies, extra work, increases or decreases in contract quantities, and additions or alterations to the plans or specifications, within the scope of the Contract, and establishing the basis of payment and time adjustments for the work affected by the changes. The Change Order is the only method authorized for changing the Contract.

City City of Colorado Springs, Colorado.

Contract Documents Contract Documents include the Advertisement for Bids, Instructions to Bidders, Bid Form or Bid Proposal, Addenda, the signed Agreement, surety bonds, insurance documents, the General and Special Provisions, the Plans, the Specifications, including all modifications thereof incorporated in any of the documents before execution of the agreement.

Contract The executed written agreement between the City and the Contractor setting forth the obligations of the parties to the performance of the work and the basis of payment. The Contract includes the Contract Documents, Notice to Proceed, and executed Change Orders, all of which constitute one instrument.

Contractor The person, persons, firm, or corporation to whom a contract is awarded by the City and who is subject to the terms of said contract. Contractor shall include the agents, employees, workmen, subcontractors and any assignees of said contract.

CITY OF COLORADO SPRINGS

| | |
|-------------------------------|---|
| Due Date and Time | The scheduled date and time for the receipt of bids, and opening thereof. |
| Engineer | The City Engineer of Colorado Springs or, their designated representative. |
| Notice | <p>Any written notice served pursuant to the terms of the contract. Notice shall be deemed to have been duly served if delivered in person or by registered mail to:</p> <p>Pre-award The Contracting Specialist listed in the Invitation for Bid, City of Colorado Springs, Procurement and Contracts, 30 South Nevada Ave., Room 201, Colorado Springs, CO 80903.</p> <p>Post award The Project Manager listed in the Invitation for Bid, City of Colorado Springs, City Engineering, 30 South Nevada Ave., Room 403, Colorado Springs, CO 80903.</p> <p>Notice to the Contractor will be to the Chief representative of the Contractor at the site of the project in person; or by registered mail to the place stated in the papers prepared by the Contractor to accompany their proposal as the address of their permanent place of business; or as to the Surety on the performance bond by registered mail to the Surety at the home office of such surety.</p> |
| Plans | The drawings, or reproductions, provided by the City which show the location, character, dimensions, and details of the work to be done. |
| Project Engineer/Manager | The individual representing the City responsible for managing and oversight of the Contract. |
| Project | The entire improvement proposed by the City to be constructed in whole or in part pursuant to the Contract. |
| Proposal Form or Bid Proposal | The contract document prepared by the City upon which the bidder shall submit their bid. |
| Subcontractor | A person, firm, or corporation, other than the Contractor, supplying labor or materials, or both, or equipment furnished at the site of the project under an Agreement with the Contractor. |
| Surety | The person, firm, or corporation that has executed as surety the Contractor's Bid, Performance, Payment and Maintenance Bonds. |

SECTION 101 PROSPECTIVE BIDDERS

101.00 PROCUREMENT RULES AND REGULATIONS

All formal Invitation for Bids (IFB) and/or Request for Proposals (RFP) advertised by the City of Colorado Springs are solicited in accordance with the City's Procurement Rules and Regulations. The City's Procurement Rules and Regulations can be reviewed and/or downloaded from the City Contracts web-site www.coloradosprings.gov/contracting.

The bidder shall follow the prequalification and bidding procedures contained in the City's Procurement Rules and Regulations.

101.01 ADVERTISEMENT FOR BIDS

All bids estimated to exceed \$199,999.00 will be formally advertised under normal conditions. Formal bids will be advertised and posted on www.rockymountainbidsystem.com.

101.02 INVITATION FOR BIDS - CONTENT

The Invitation for Bids shall include the following: (a) Instructions and information to bidders concerning the bid submission requirements, including the time and closing date, the address of the office to which bids are to be delivered; (b) The project description, basis of award, delivery or performance schedule and inspection and acceptance requirements; (c) The contract terms and conditions, including warranty and bonding or security requirements as applicable.

Project specific requirements, terms and conditions, etc. for each solicitation will reflect the contractual requirements for that particular Invitation for Bid or Request for Proposal. These types of requirements will be specified in Instructions to Bidders, Terms and Conditions, General Provisions, and Specifications.

101.03 INTERPRETATION OF QUANTITIES IN PROPOSAL FORM

Except as otherwise provided in this subsection and the method of measurement for individual items, the quantities appearing in the proposal form are estimates prepared for the comparison of proposals. Payment to the Contractor will be made in accordance with the following procedures:

- (a) Measurement required. When the Contract requires measurement of work performed or material furnished, payment will be made for actual quantities measured and accepted.
- (b) Measurement Not Required. When the Contract does not require quantities of work performed or materials furnished to be measured, payment will be made for the quantities appearing in the Contract.

The estimated quantities of work to be performed and materials to be furnished may be increased, decreased or omitted.

101.04 INTERPRETATION OF PLANS AND SPECIFICATIONS

Any change to proposal forms, plans, or specifications prior to the opening of proposals will be issued by the City to all holders of proposal forms. Certain individuals are named in the project specifications that have authority to provide information, clarification or interpretation to bidders prior to opening of proposals. Information obtained from persons other than those named individuals is invalid and shall not be used for bidding purposes.

101.05 EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS, AND SITE OF WORK.

The bidder is expected to examine the site of the proposed work, the proposal, plans, specifications, supplemental specifications, special provisions, and contract forms, before submitting a proposal. The submission of a proposal will be considered conclusive evidence that the bidder has made this examination and is aware of the conditions to be encountered in performing the work according to the Contract.

Boring logs and other records of subsurface investigations, if they exist, are available for inspection by bidders. These logs and records are made available so that all bidders have access to identical subsurface information that is available to the City, and is not intended as a substitute for personal investigation, interpretation and judgment of the bidders.

The City does not warrant the adequacy of boring logs and other records of subsurface investigations, and such information is not considered to be a part of the Contract. When a log of test borings is included in the subsurface investigation record, the data shown in the individual log of each test boring apply only to that particular boring and are not intended to be conclusive as to the character of any material between or around test borings. If bidders use this information in preparing a proposal, it is used at their own risk, and bidders are responsible for all conclusions, deductions, and inferences drawn from such information.

Bidders may conduct subsurface investigations at the project site at bidder's expense; the City will afford them this opportunity prior to public opening of proposals.

If a bidder discovers an apparent error or omission in the proposal form, estimated quantities, plan, or specifications, the bidder shall immediately notify the Contracting Specialist to enable the City to make any necessary revisions. The City may consider it to be detrimental to the City for a bidder to submit an obviously unbalanced unit bid price.

101.06 COMBINATION OR CONDITIONAL PROPOSALS

If proposal forms are issued for projects in combination and separately, the bidder may submit proposals either on the combination or on separate units of the combination. The City reserves the right to make awards on combination or separate proposals to the advantage of the City. Combination proposals will be considered, only when specified.

101.07 ANTI-COLLUSION AFFIDAVIT

The bidder/offeror by signing their proposal (bid) submitted to the City is certifying that the bidder has not participated in any collusion or taken any action in restraint of free competitive bidding. This statement may also be in the form of an affidavit provided by the City and signed by the bidder. The original of the signed anti-collusion affidavit shall be submitted with the proposal. The proposal will be rejected if it does not contain the completed anti-collusion affidavit.

101.08 MATERIAL GUARANTY

The successful bidder may be required to furnish a complete statement of the origin, composition, and manufacture of materials used in the construction of the work together with samples, which will be tested for conformance with Contract requirements.

101.09 EQUAL OPPORTUNITY

The City Contracts Office shall be responsible for ensuring the procurement of products, commodities, and services are in a manner that affords all responsible businesses a fair and equal opportunity to compete.

SECTION 102 CONTRACT DOCUMENT INTERPRETATION

102.00 INTENT OF CONTRACT DOCUMENTS

The sections of the contract documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intent of the Contract Documents is to include the cost of all labor and materials, water, fuel, tools, plant, equipment, light, transportation, and all other expenses as may be necessary for the proper execution of the work. If the Contract Documents should be contradictory in any part, the order of precedence shall be as described in subsection 102.03.

Any work shown on the Plans and not covered in the Specifications, or included in the Specifications and not shown on the Plans, shall be executed by the Contractor as though shown both on the Plans and included in the Specifications.

If the Contractor, in the course of the work, finds any discrepancy between the Plans and the physical layout, or any errors or omissions in Plans or layout, he shall immediately so inform the Engineer and the Engineer shall promptly verify them. Any work done after such discovery without written consent of the Engineer authorizing the same shall be done at the Contractor's risk.

Any incidental and/or appurtenant items not specifically called for in the Plans and Specifications, but which are necessary to complete the work in accordance with the requirements of good practice, as determined by the Engineer, shall be included as a part of the Contractor's bid price and furnished at no additional cost to the Owner.

In interpreting the Contract Documents, words describing materials or work which have a well known technical or trade meaning, unless otherwise specifically defined in the contract documents, shall be constructed in accordance with such well known meaning recognized by architects, engineers, and the trade.

102.01 SPECIAL PROVISIONS, SPECIAL SPECIFICATIONS

Special Provisions or Special Specifications may be written to expand upon, modify or cancel these general provisions or the standard specifications.

102.02 ORDER OF PRECEDENCE

Any inconsistency in this solicitation or Contract shall be resolved by giving precedence in the following order:

- (a) Terms and Conditions
- (b) Proposal Requirements
- (c) Contract Form
- (d) Provisions
 - 1. Special Provisions
 - 2. General Provisions
- (e) Plans
 - 1. Detailed Plans
 - 2. Standard DrawingsCalculated dimensions will govern over scaled dimensions.
- (f) Special Specifications
- (g) Standard Specifications

102.03 STANDARD MANUFACTURER

Wherever the terms "standard", "recognized" or "reputable" manufacturers are used, they shall be construed as meaning manufacturers who have been engaged in the business of fabricating materials, equipment, or supplies of the nature called for by the Specifications for a reasonable period of time prior to the date set for opening of bids, and who can demonstrate

to the satisfaction of the City that said manufacturer has successfully installed equipment, materials, or supplies of the type proposed to be furnished in at least three instances and that the performance of such materials, equipment, or supplies for a period of over twelve months prior to the date fixed for opening bids shall, prima facie, be deemed to have been engaged in such business for a reasonable length of time.

102.04 "OR EQUAL" CLAUSE

Whenever in any section of the contract documents, any article, material, or equipment is defined by describing a proprietary product, or by using the name of manufacturer or vendor, the term "or equal" if not inserted, shall not be construed in such a manner as to exclude manufacturers' products of comparable quality, design, and efficiency, subject to review and approval by the Engineer. The Engineer may require that proposed equals be submitted for review and approval.

102.05 TIME OF ESSENCE

In as much as the Contract concerns a needed improvement, the provisions of the Contract relating to the time of performance and completion of work are of the essence of this Contract. The Contractor shall begin work on the day specified in the Notice to Proceed and shall prosecute the work diligently so as to assure completion of the work within the number of calendar days or date specified, or the date to which the time for completion may have been extended.

102.06 PARTIAL WAIVER OR WAIVER BY ACQUIESCENCE

Partial waiver or waiver by acquiescence of any of the general or special provisions of this contract shall not constitute waiver of any of the other provisions contained in the Contract Documents.

SECTION 103 COMPLIANCE WITH LAWS

103.00 LAWS AND REGULATIONS

This contract is subject to and shall be interpreted under the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado Home Rule City. Court Jurisdiction shall exclusively be in the District Court for El Paso County. The Contractor shall insure that the Contractor and the Contractor's employees, agents, and officers are familiar with, and comply with, applicable Federal, State, and Local laws and regulations as now written or hereafter amended.

103.01 PUBLIC IMPROVEMENT ASSESSMENT

If the cost of the improvement to be constructed under the contract is to be assessed upon the owners of land benefited by such improvement, upon complaint of any such landowner that the improvement is not being constructed in accordance with the contract, the City Council may consider the complaint and make such order in the premises as shall be just to ensure compliance with the contract.

103.02 ALL LEGAL PROVISIONS INCLUDED

It is the intention and agreement of the parties to this contract that all legal provisions of law required to be inserted, shall be and are inserted. However, if by mistake or otherwise, some such provision is not inserted, or is not inserted in proper form, then upon application of either party, the contract shall be amended so as to strictly comply with the law and without prejudice to the rights of either party.

103.03 SEVERABILITY

If any provisions of this contract shall be held unconstitutional, illegal, or void, such finding shall not affect any other provisions of this contract.

103.04 FOREIGN ENTITY

All bidders/offerors shall comply with State Statute 7-90-801, Authority to transact business or conduct activities required, and 7-90-802 Consequences of transacting business or conducting activities without authority.

103.05 LICENSES AND PERMITS

It shall be the responsibility of the successful bidder to obtain, at his expense, all necessary licenses and permits to do the project, in accordance with applicable Federal, State and local laws, regulations and ordinances. Typical permits and fees include, but are not limited to, Excavation/Boring Permits, Concrete Construction Permits, Fugitive Dust Permits, Regional Building Permits, Pavement Degradation fees, as well as Traffic Control and Barricade Plans to be approved by the City Traffic Division for all work within public rights-of-way and easements i.e. (curb and gutter, sidewalks, pedestrian ramps and cross pans).

103.06 EMPLOYMENT OF ILLEGAL ALIENS

Illegal Aliens - Public Contracts for Services - Compliance with Title 8, Article 17.5, Colorado Revised Statutes:

The Contractor acknowledges, understands, agrees, and certifies that: In the performance of any work or the provision of any services by the Contractor under this Contract, the Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract; or Enter into a contract with any subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or under the subcontract to this contract. In The Contractor certifies in accord with Section 8-17.5-102(1) C.R.S. that, on the date the Contractor signs this contract, the Contractor does not knowingly employ or contract with an illegal alien who will perform work under this contract and that the Contractor shall participate in the e-verify program or Colorado Department of Labor and Employment program in order to confirm the employment eligibility of all employees who are newly hired for employment or to perform work under this contract. The contractor is expressly prohibited from using basic pilot program procedures to undertake pre-employment screening of job applicants while this Contract and any services under this Contract is being performed. If the contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall notify the subcontractor and the City within three days that the contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien, and terminate the subcontract with the subcontractor if within three days of receiving the notice the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during the three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor shall comply with any request by the City, federal government, or the Colorado Department of Labor and Employment made in the course of an investigation that the department, pursuant to the authority established in Section 8-17.5-102 C.R.S., or a City or federal investigation. If the contractor violates or fails to comply with any provision of C.R.S. 8-17-101 et seq, the City may terminate this Contract for breach of contract. If this contract is so terminated, the Contractor shall be liable for any actual and consequential damages to the City.

SECTION 104 AWARD AND EXECUTION OF CONTRACT

104.00 AWARD

The contract shall be awarded to the lowest responsive and responsible bidder in the best interests of the City as specified in the Instructions to Bidders of the Invitation for Bids or Request for Proposals.

104.01 CONTRACT EXECUTED

A single original contract to include the Contractor's Performance, Labor and Material Payment and Maintenance Bonds will be executed and maintained in the official contract file located in the City Contracts office. The original copy of the contract maintained in the City Contracting file shall take precedence for purposes of interpretation or determining what the contract says. After all required signatures are obtained; photocopy counterparts (copies) will be made and distributed to:

- (a) Contractor
- (b) Project Manager/Engineer
- (c) City Finance Department
- (d) Inspector

Each Bond shall have an original Power of Attorney attached. The successful bidder shall provide compensation insurance and public liability and property damage insurance as outlined in the contract. The costs of executing the bonds, contract and insurance, including all notaries fees and expense, are to be paid by the Contractor to whom the contract is awarded.

104.02 VERBAL AGREEMENTS

No verbal agreements or conversations with any agent or employee of the City either before or after execution of the Contract shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract.

104.03 CONTRACT SECURITY

The Contractor shall furnish good and sufficient Performance, Labor and Material Payment and Maintenance Bonds on the form attached hereto in an amount not less than the full amount of the contract price as security for the faithful performance of the contract, for the payment of all persons performing labor and furnishing material in connection with the work, and for all guarantees of materials and workmanship required in the Contract. If at any time during the continuance of the contract a surety on the Contractor's bond or bonds becomes irresponsible, the City shall have the right to require additional and sufficient sureties which the Contractor shall furnish within ten (10) days after written notice to do so. Any additional surety bonds shall cover the entire original contract amount and any increases thereto.

104.04 BOND FORMS

Bonds shall be furnished on forms prepared by the City. Copies of the City's Bond Forms will be included in the Exhibits Section of the Invitation for Bids.

104.05 INDEPENDENT CONTRACTOR

In the performance of the Contractor's obligations under this contract, it is understood, acknowledged and agreed between the parties that the Contractor is at all times acting and performing as an Independent Contractor, and the City shall neither have nor exercise any control or direction over the manner and means by which the Contractor performs the Contractor's obligations under this contract, except as otherwise stated within the contract terms. The Contractor understands and agrees that the contractor and the contractor's employees, agents, servants, or other personnel are not City employees. The Contractor shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefit to the Contractor or any of the Contractor's employees, agents, servants or other personnel performing services or work under this contract, whether it be of a direct or indirect nature. Further in that regard, it is expressly understood and agreed that for such purposes neither the Contractor nor the Contractor's employees, agents, servants or other personnel shall be entitled to any City payroll, insurance, unemployment, worker's compensation, retirement or any other benefits whatsoever.

SECTION 105 THE CONTRACT: FOLLOWING EXECUTION**105.00 MATERIALS**

Unless otherwise stipulated in the contract, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light power, transportation, and other facilities necessary for the execution and completion of the work. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

105.01 SCHEDULE

The Contractor shall be responsible for planning, scheduling, and reporting the progress of the work to ensure timely completion of the work as called for in the Contract Documents. The Contractor shall prepare a Project Schedule that shall be used for coordination, for evaluation of progress, and for the evaluation of changes to the Contract. The Schedule shall include all activities, including those of subcontractors, Contractor's engineers and surveyors, and suppliers. Seasonal and weather constraints, utility coordination, railroad restrictions, right of way restrictions, traffic constraints, environmental constraints, other project interfaces, expected job learning curves and other constraints shall be considered when preparing the Project Schedule, including any phasing or sequencing of the work specified in the Contract Documents. Days scheduled as no work days shall be indicated. The Schedule shall consist of a Methods Statement as defined in part A. below and a progress schedule consisting of (1) a Critical Path Method (CPM) schedule as defined in part B. below, or (2) a Bar Chart schedule as defined in part C. below. A CPM Schedule shall be required if the contract exceeds \$250,000 or if the construction period exceeds 150 calendar days, unless the Contract Documents stipulate otherwise. The CPM Schedule shall utilize Primavera's Suretrak Project Manager software or be capable of being read and manipulated by Suretrak Project Manager software. The Schedule shall show all work completed within the contract time.

The Contractor shall submit two copies of all required schedule information as described below. Schedules, schedule updates, diagrams and reports using CPM shall also be submitted electronically in the appropriate software format. All schedules, diagrams, and reports shall include a title, project number, date of preparation, and the name of the Contractor.

The Bar Chart or Critical Path Method 90-day schedule shall be submitted at least 10 working days prior to the start of the work. The Project Engineer's review of the Schedule will not exceed 5 working days. Work shall not begin until the Schedule is accepted in writing, unless otherwise approved by the Project Engineer.

- (a) Methods Statement. A Methods Statement shall be prepared for the prominent features listed in the Contract Documents, and for any feature not listed in the Contract Documents that the Contractor considers a controlling factor for timely completion. The Methods Statement shall be a detailed narrative describing each feature and all work necessary to complete the feature. The Methods Statement shall be submitted with the Contractor's schedule. The following format is required:
1. Feature: Name of the feature;
 2. Responsibility: Contractor, subcontractor, supplier, utility, etc. responsible for the feature;
 3. Procedures: Procedures to be used to complete the work. The procedure to be used shall include general information regarding methods such as forming, excavation, pouring, heating and curing, backfill and embankment, trenching, protecting the work, etc. When separate or different procedures are to be employed by the Contractor due to seasonal or project phasing requirements, such differing procedures shall be described in the procedure statement;
 4. Production Rates: The planned quantity of work per day for each feature;

CITY OF COLORADO SPRINGS

5. Labor Force: The labor force planned to do the work;
6. Equipment: The number, types, and capacities of equipment planned to do the work;
7. Work Times: The planned time for the work to include:
 - (a) number of work days per week
 - (b) number of shifts per day
 - (c) number of hours per shift

At the Project Engineer's request, the Contractor shall update the Methods Statement, or any part thereof, and submit it with the Job Progress Narrative Report or Schedule Update, whichever is earlier.

- (b) Critical Path Method. CPM is a scheduling method which shows the interdependencies between work activities. The critical path is that path through the schedule which, if delayed, will cause a delay to project completion.

The progress schedule shall include as a minimum the prominent features of this project as listed in the Contract Documents. The progress schedule shall include all activities for all work on the project, including subcontracted work, delivery dates for critical material, submittal and review periods, milestone requirements and no work periods. Where the project has specific phases, each phase shall be described separately for each applicable prominent feature.

Construction activity duration shall not exceed 15 calendar days unless approved by the Project Engineer. Series of activities that have aggregate durations of five calendar days or less may be grouped in a single activity. For example, "form, reinforce, and pour pier" could be defined as a single activity rather than three. Single activities or a series of grouped activities of at least 1 calendar day duration may also need to be included in the Project Schedule as determined by the Project Engineer (e.g. same activities but noted separately by location).

Time Scaled Logic Diagram: This diagram shall show the logical progression of all activities required to complete the work defined in the Contract Documents. Activity information shall include activity ID, description, duration, early start and finish dates, late start and finish dates, total float, and responsibility.

1. 90-Day Schedule. The 90-day Schedule shall provide all necessary detail for procurement, construction and submittal activities required during the first 90 days of contract time. This submittal shall include a Time Scaled Logic Diagram.
2. Project Schedule. The Project Schedule submittal shall consist of a Time Scaled Logic Diagram and Schedule Report. It shall be prepared in full and submitted to the Project Engineer within 45 calendar days after the Project Engineer's acceptance of the 90-day Schedule. The Project Engineer's review of the Project Schedule will not exceed one week. Revisions required as a result of the Project Engineer's review shall be submitted within one week. Work shall not continue beyond the initial 90 days until the Project Schedule is accepted in writing, unless otherwise approved by the Project Engineer.

The Project Schedule shall cover the time from the Day of Notice to Proceed to the predicted completion date.

The Schedule Report shall tabulate for each activity the activity ID, description, duration, earliest start and finish date, latest start and finish date, total float time, and responsibility. Other reports and scheduling documentation may be requested by the Project Engineer

CITY OF COLORADO SPRINGS

3. Schedule Updates. The Contractor shall update the 90-day Schedule or the Project Schedule to reflect actual construction progress of all work activities on the project. Updates shall show the previous 30 days progress and a 60-day projection for all work started, completed, or in progress during this three month window.

The Project Schedule shall be updated as of the cutoff date for the monthly progress pay estimate and submitted to the Project Engineer before the payment of the progress pay estimate is approved.

Each of the diagrams, charts, and reports shall comply with the requirements for the Project Schedule above, except that they shall also include the actual completion dates and percentages of completion for the appropriate activities.

- (c) Bar Chart. The Bar Chart shall be time scaled and shall show the following:
 1. The prominent features, as listed in the Contract Documents.
 2. Any feature not listed in the Contract Documents that the Contractor considers a controlling factor for timely completion.
 3. The number of days required to complete each feature and its relationship in time to other features.
 4. Sufficient space for each feature to permit two additional plots parallel to the original time span plot.
 5. The anticipated delivery dates for equipment or materials in any feature that could affect timely completion of the project.
 6. Critical completion dates for any activity within any feature that could affect timely completion of the project.
 7. Connecting lines between features that show the intended progression of activities.

The Project Schedule shall cover the time from the Day of Notice to Proceed to the predicted completion date. The Project Schedule shall be updated as of the cutoff date for the monthly progress pay estimate and submitted to the Project Engineer before the payment of the progress pay estimate is approved. The Contractor shall provide a copy of the original bar chart showing, for each feature, the days actually worked and the anticipated days required to complete.

- (d) Project Coordination. The Contractor shall be responsible to coordinate and schedule their work to include utility work anticipated. Various City and private utility agencies may be working to install and/or inspect their utilities within the project area. Reasonable delays should be expected for utility lowering, relocations and placement. These delays shall not be reason for granting any monetary change or performance time alteration to the contract. As a minimum, the Contractor's Project Schedule shall reflect coordination with the following:
 1. City of Colorado Springs City Engineering Division
 2. City of Colorado Springs Traffic Engineering Division
 3. Colorado Springs Utilities (water, wastewater, gas, electric)
 4. City of Colorado Springs Parks, Recreation and Cultural Services Department
 5. Private Utility and Telecommunication Companies
- (e) Contractor Early Finish or Voluntary Acceleration. Early finish or voluntary acceleration of the schedule by the Contractor is acceptable provided:
 1. At the time the Contractor submits the Project Schedule indicating an early finish or voluntary acceleration, the City is notified in writing of actions on the City's part necessary to accommodate the change(s).
 2. The City agrees to such change(s) in writing.

CITY OF COLORADO SPRINGS

3. The City is compensated by the Contractor for any inconvenience or expense associated with the change(s).
4. There is no increased Contract cost.

A Job Progress Narrative Report shall be submitted bi-weekly as a minimum and with all Schedule updates. It shall detail the description of job progress, problem areas, current and anticipated delaying factors and their anticipated effects, impacts to job milestones or project completion, any corrective action proposed or taken, and any minor revisions to the Schedule. If the Job Progress Narrative Report indicates problem areas and impacts to job milestones or project completion, a revised Schedule Update shall also be submitted as specified below.

Revision of the Schedule may be required, as determined by the Project Engineer, for: a major revision in the schedule logic or methods of construction; the addition, deletion, or revision of activities required by contract modification; delays in milestones or the completion of the project; or for prosecution of work that revises the phasing or staging which is represented on the plans or on the progress schedule. If in the opinion of the Project Engineer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve project progress, including those steps that may be required by the Project Engineer, without additional costs to the City. In those circumstances where the Contractor is behind schedule, the City may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit such changes and revisions to the schedule to the Project Engineer for approval that will demonstrate how the approved rate of required progress will be regained. Failure of the Contractor to comply with the requirements of the Project Engineer under this subsection shall be grounds for a determination by the City that the Contractor is not prosecuting the work with sufficient diligence to ensure timely completion of the contract as required.

If it is determined that a revision to the Schedule is required, it shall be provided to the Project Engineer for review within 15 calendar days of written notification. The Project Engineer's review of the revised schedule will not exceed 5 working days. Revisions required as a result of the Project Engineer's review shall be submitted within 5 working days. When accepted by the Project Engineer in writing, the revised schedule shall become the Project Schedule.

The Contractor shall participate in the Project Engineer's review and evaluation of the submittals. Meetings will be held to review progress and planning when requested by the Project Engineer or Contractor. The Project Engineer may request additional project scheduling information and documentation as deemed necessary, including reports and other information that may be reasonably generated using CPM software if required by the contract.

The Contractor shall prosecute the work according to the Schedule. The Contractor shall be responsible for assuring that its subcontractors, suppliers, and engineers/surveyors, at any tier, also prosecute the work according to the Schedule. The City shall be entitled to rely on the Contractor's Schedule for planning and coordination.

Acceptance of the Contractor's Schedule by the Project Engineer is not to be construed as relieving the Contractor of obligation to complete the contract work within the contract time allowed for the portion of the work or the entire Contract, or granting, rejecting or in any other way acting on the Contractor's request for extension of contract time, or claims for additional compensation.

All costs relating to preparation, submittal, and acceptance of the Schedule, reports and revisions, and all requirements of this subsection will not be paid for separately, but shall be included in the work.

Failure of the Contractor to comply with the requirements of this subsection shall be grounds for a determination by the Project Engineer that no further progress payments are to be made until the Contractor is in full compliance.

105.02 SCHEDULE OF VALUES

Promptly following the execution of the contract documents for all lump sum contracts, the Contractor shall prepare and transmit to the Engineer two copies of an itemized breakdown showing the unit quantities of each major construction item and the corresponding unit prices. Such unit prices shall contain all costs including profit and overhead of each item complete in place. The total cost of all the items shall equal the contract price for the project. This breakdown, when approved by the Engineer, will be used primarily in determining payment due the Contractor on periodical estimates. If, in the opinion of the Engineer, any unit price submitted by the Contractor is unbalanced, a detailed breakdown of the items contained in the unit will be required.

For contracts bid on a unit price basis, payment shall be made based on the actual number of units installed or performed that are complete, however, payment shall not exceed the total contract amount unless previously approved by Change Order.

105.03 SURVEYS

Unless otherwise specified in the Contract documents, the City will furnish all site surveys, easements, pipeline licenses, etc., necessary to authorize construction of any permanent works required in the Contract, where such work is to be done on property other than the City's.

The project limits of construction shall be within the public right-of-way and/or easements. The Contractor shall not trespass on premises outside of the limits of construction for this project, unless permission to do so is granted by the property owner in writing. Copies of any such grant shall be furnished to the City prior to the performance of any work outside the limits of construction.

105.04 TAXATION

The Contractor's payment or exemption of State of Colorado, El Paso County and City Sales and Use Taxes shall be as specified in the as specified in the Instructions to Bidders of the Invitation for Bids or Request for Proposals.

105.05 ASSIGNMENT OF CONTRACT

No assignment or transfer by the Contractor of this contract or any part thereof or of the funds to be received thereunder by the Contractor will be recognized unless such assignment has had the prior written approval of the City and the surety has been given due notice of such assignment. Such written approval by the City shall not relieve the Contractor of the obligations incurred by them under the terms of this contract. In addition to the usual recitals in assignment contracts, the following language must be set forth:

It is agreed that the funds to be paid to the assignee under this assignment are subject to a prior lien for services rendered or materials supplied for the performance of the work called for in said contract in favor of all persons, firms, or corporations rendering such services or supplying such materials.

105.06 SUBCONTRACTS

The Contractor will be permitted to sublet a portion of the Contract, however, the Contractor's organization shall perform work amounting to 30 percent or more of the original total cost of bid items. Any items designated in the contract as "specialty items" may be performed by subcontract. The cost of "specialty items" so performed by subcontract may be deducted from the original total cost of bid items before computing the amount of work required to be performed by the Contractor's own organization.

The calculation of the percentage of subcontracted work shall be based on the prime contract unit prices rather than subcontract unit prices. Proportional value for a subcontracted partial contract item will be verified by the Engineer. For the purpose of calculating the value of subcontracted work, the cost of procuring materials and manufactured products can be included in either the prime contractor subcontract. However, when a firm both sells material to a prime contractor and performs the work of incorporating the materials into the project, these two phases shall be considered in combination and as constituting a single subcontract.

The Contractor shall as soon as practical after signing the contract, notify the Project Engineer/Manager in writing, giving the names and qualifications of all subcontractors proposed for work within fifteen (15) business days of notice of award. The City shall have the right to reject subcontractors who are debarred or suspended from doing business with the City of Colorado Springs. The Contractor shall notify the Engineer of each subcontract he awards, giving:

- (a) Name, address, and telephone number of the subcontractor
- (b) Branch of work covered
- (c) Total price of subcontract
- (d) Date of subcontract

It shall be the responsibility of the Prime Contractor to file with the Engineer copies of applicable permits and licenses required to do the subcontracted work. Subcontracts, or transfer of Contract shall not release the Contractor of liability under the Contract and bonds.

105.07 OTHER CONTRACTS

The City may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with City employees and shall carefully adapt their scheduling and performance of the work to accommodate the additional work, heeding any direction that may be directed by the Project Engineer/Manager. The Contractor shall not commit or permit any act, which will interfere with the performance of work by any other contractor.

SECTION 106 CONSTRUCTION SITE

106.00 LANDS TO BE USED FOR WORK

The Contractor shall confine the work activities to the area shown in the construction drawings. The Engineer will furnish the contractor with copies of all executed ROW and easement documents for the project. The established work zone shall be marked and secured with orange safety fence. Any additional work area required within adjoining private properties must be acquired by the Contractor by written permission from the property owner. The Contractor shall restore any damage or disruption to other properties utilized in the performance of this project to an equal or better than pre-construction condition at no cost to the City. The Contractor shall hold the City harmless from any claims to damage or disruption of private property.

Contractor shall provide at their expense and without liability to the City any additional land and access thereto that may be required for temporary construction facilities or for storage of materials. All such costs will be considered incidental to the work and included in the bid by the Contractor. Contractor personnel shall not unnecessarily enter upon private property without the express written consent of the landowner. The Contractor shall provide the Engineer with a copy of the written permission. The City will be held harmless of Contractor negligence in matters of trespassing.

106.01 STORAGE OF MATERIALS

The Contractor shall confine their equipment, apparatus, the storage of materials and operations of Contractor's workmen to limits indicated by law, ordinances, permits, or directions of the City and shall not encumber the project site with materials or equipment not necessary for the project.

106.02 LOADING OF STRUCTURES

The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger the structure's safety. The Contractor shall enforce the Engineer's instructions regarding signs, advertisements, fires, and smoke.

106.03 SANITARY PROVISIONS

The Contractor shall provide and maintain on the construction site at all times suitable sanitary facilities for use of those employed on this contract without committing any public nuisance. All toilet facilities shall be subject to the approval of the El Paso County Health Department. All portable toilet facilities for this project shall be kept on City or State right-of-way as directed by the Engineer.

106.04 ACCIDENT PREVENTION

Precaution shall be exercised at all times for the protection of persons, including employees, and property. The safety provisions of all Federal, State and Municipal laws and any other codes relating to the public safety, shall be strictly observed, and the contractor shall, at all times, whether or not so specifically directed by the Engineer, take the necessary precautions to ensure the protection of the public.

Piling, sheeting and shoring shall be utilized where required to prevent any excessive widening or sloughing of the trench which may be detrimental to human safety, traffic flow, the pipe being placed, trees, or to any existing structure.

Excavated materials shall be placed a safe distance from the sides of the trench. Heavy equipment shall not be used or placed near the sides of the trench unless the trench is adequately braced. If the Engineer or any City Safety Officer or their designated representatives become aware of failure to comply with applicable safety regulations, the Engineer or City Safety Officer or their designated representatives may inform the contractor who shall take immediate steps to remedy the noncompliance. The Engineer or City Safety Officer or their designated representatives shall give written notification to the contractor directing them to correct the unsafe acts or conditions. If the contractor fails to comply with such a notification, the Engineer or City Safety Officer or their designated representatives may issue a "stop work" order in accordance with Section 108.06 of the General Provisions of this contract, and work shall only be resumed after adequate corrective actions have been taken to comply with the safety deficiencies the Contractor has been notified of. Stoppage of work because of noncompliance with prescribed accident precaution measures shall not be subject to claim for changed condition or changes in work, nor for extension of completion time.

106.05 PROTECTION OF THE PUBLIC WORKS AND PROPERTY

The Contractor shall provide and maintain all necessary watchmen, barricades, lights, and warning signs and take all necessary precautions for the protection of the public. The contractor shall continuously maintain adequate protection of all work from damage, and shall take all reasonable precautions to protect the City's property from injury or loss arising in connection with the contract. The Contractor shall make good any damage, injury, or loss to their work and to the property of the City resulting from lack of reasonable protective precautions except such as may be due to errors in the contract documents, or caused by agents or employees of the City. The Contractor shall check all cautionary signs at least once a day during this contract.

The Contractor shall continuously maintain adequate protection of all their work from damage and shall protect the City's and adjacent property from injury arising in connection with this contract.

The Contractor will be responsible for any and all damage to property, public or private, that may be caused by their operations in the performance of this contract, and the Contractor shall defend any suit that may be brought against themselves or the City on account of damage inflicted by their operations, and shall pay any judgments awarded to cover such damage.

The Contractor shall be responsible for the restoration of all existing surface or subsurface improvements damaged as a result of construction at no additional cost to the City.

106.06 PUBLIC ROADS

The Contractor in executing the work on this project shall not unnecessarily impede or interfere with traffic on public highways or streets. Detours, including surfacing, guard rails, temporary bridges and culverts, as may be shown on the drawings, or ordered by the Engineer to accommodate the general public, residents adjacent to the improvements, and the United States mail shall be provided and maintained by the Contractor in a good workmanlike manner. Any call out of City Barricade Crews shall be charged to and paid for by the Contractor.

All work done within the public right-of-way and/or easements requires an approved Traffic Control Plan by the City Traffic Engineering Division.

The Contractor shall provide and maintain in place all barricades, warning signs, lights and other safety devices required to protect the work, divert traffic, and warn pedestrians of open excavation, unfilled trenches, and other areas or conditions which might be hazardous or dangerous during the daylight or dark. Detour routings must first be submitted to the Traffic Engineer for review and approval and shall be signed for the entire route of the detour as required to return the traffic to their street or origination. Detours shall be maintained throughout the period of construction in such a manner as to provide the least amount of disruption to normal traffic flow

All signing and barricading shall conform to the latest editions of the following:

- (a) Manual of Uniform Traffic Control Devices for Street and Highways (MUTCD)
- (b) City of Colorado Springs Traffic Signage and Markings Manual
- (c) City of Colorado Springs Construction Traffic Control Manual

The Traffic Engineer may require flag persons or off-duty police officers for traffic direction. Any call out of the City Barricade crews shall be charged to the Contractor.

106.07 PROTECTION OF EXISTING CURBS, GUTTERS AND DRIVEWAYS

The Contractor shall exercise care in protecting existing curbs, gutters and driveways. Curbs, gutters and driveways damaged by the Contractor's operations shall be removed and replaced by the Contractor at Contractor's expense.

106.08 PROTECTING AND REMOVING PLANTINGS

The Contractor shall protect all existing trees, shrubs and other plantings from above ground and root structure damage during the construction activities. Plantings which are considered to be slightly damaged shall be properly pruned and sealed according to accepted nursery practices. Unnecessary damage to plants or trees will subject the Contractor to cash penalties as determined by the Engineer. Where plantings are in conflict with new work, as determined by the City Forester (plantings in the public right-of-way) or by the inspector or owner (plantings on private property), the Contractor shall at his expense remove the

planting. The Contractor shall coordinate with the City Forester prior to working in the vicinity of plantings in the public right of way.

In all cases, the proper planting season shall be observed to assure proper establishment and growth of the plantings.

Tree branches shall be trimmed back to the trunk, all around, to a minimum height of 8' above the adjacent walkway. Work shall be done only by a licensed Tree Service.

106.09 PUBLIC CONVENIENCE AND SAFETY

The contractor shall conduct the work to minimize obstruction to traffic and inconvenience to property owners within the project area. The Contractor shall be responsible for notifying the Property Owners at least 48 hours in advance of any construction that may affect access, parking and/or existing structures, including fences, adjacent to that property. Suitable access and parking will be maintained at all times. Relocating of fences and structures shall be coordinated with owners and shall include miscellaneous items including, but not limited to, temporary fence, sod replacement, sprinkler system modifications, railroad tie walls, etc. If no bid items are included in the contract, these items will be considered incidental to the work and are to be included in the unit prices.

The Contractor shall coordinate the relocation of fencing, landscaping, sprinklers, control boxes, utility services, street signs and mail boxes and the salvaging of any materials suitable for re-use with the City Inspector and, if on private property, with the respective property owners.

The Contractor shall notify and coordinate the closing and construction of the driveways, curb, gutter and sidewalks with the Project Engineer and the adjoining property owners in advance of work in writing. Any restrictions on street parking or traffic movement shall be coordinated with the City Traffic Engineer. The Contractor shall make every effort to minimize the inconvenience to property owners and to the traveling and pedestrian public.

106.10 COORDINATION WITH PROPERTY OWNERS

The Contractor shall be responsible for notifying the Property Owners at least 48 hours in advance of any construction that may affect access, parking and/or existing structures, including fences adjacent to that property. Suitable access and parking will be maintained at all times. Relocating of fences and structures shall be coordinated with owners and shall include miscellaneous items including, but not limited to, temporary fence, sod replacement, sprinkler system modifications, railroad tie walls, etc. These items are considered to be incidental to the work and are to be included in the unit prices.

The Contractor shall coordinate the relocation of fencing, landscaping, sprinklers, control boxes, utility services, street signs and mail boxes and the salvaging of any materials suitable for re-use with the City Inspector and, if on private property, with the respective property owners.

The Contractor shall notify and coordinate the closing and construction of the driveways, curb, gutter and sidewalks with the Project Engineer and the adjoining property owners in advance of work in writing. Access may be limited to half the existing driveway width for limited periods during concrete driveway and street construction. An additional verbal notice shall be provided to each business 30 minutes prior to the actual access drive closure.

Any restrictions on street parking or traffic movement shall be coordinated with the City Traffic Engineer. The Contractor shall make every effort to minimize the inconvenience to the traveling and pedestrian public.

106.11 FAILURE TO MAINTAIN SAFE SITE

In case of injury to persons or property by reason of failure to erect and to maintain necessary barricades, safeguards, and signals, or by reason of any act of negligence of the Contractor, or Contractor's subcontractors, agents, or employees, during the performance of this contract, the City may withhold payments due the Contractor so long as shall be reasonably necessary to indemnify the City on account of any such injuries, but the City's payment or failure to pay any sum shall not be considered as a waiver of its right under the indemnity provision of this contract.

106.12 EROSION AND DRAINAGE CONTROL

Contractor shall provide for the drainage of stormwater and such water as may be applied or discharged on the site in performance of the work per the latest revision of the City of Colorado Springs Drainage Criteria Manual, Volume II. Drainage facilities shall be adequate to prevent damage to the work, the site and adjacent property.

The Contractor shall prevent the pollution of drains and watercourses by sanitary waste, sediment, debris or other substances resulting from this work. He shall be required to clean up and isolate such materials on a continuing basis to prevent risk of washing into such drainage ways.

Should the affected areas of the project exceed 1 acre a Stormwater Discharge Permit shall be required. Affected area includes excavations, material stockpiles and areas where equipment and vehicles disturb the ground. An exact definition should be obtained from the CDPHE.

106.13 POLLUTION

The Contractor shall at all times ensure compliance with applicable Federal, State, and Municipal air, water, and noise pollution laws and ordinances. The Contractor shall at all times have the proper sprinkling equipment available and shall apply water in the amount determined by each site condition or as directed by the Engineer. The Contractor shall obtain all necessary permits at Contractor's expense, which may include, but not be limited to, El Paso County or a State Air Emission permit, State of Colorado Construction Activity permit, State of Colorado Dewatering permit and Section 404 Corp of Engineers permit, unless otherwise specified in the Invitation for Bids.

106.14 TEMPORARY CONSTRUCTION

All temporary facilities, including the Contractor's field office which they may maintain at the site, and additional offices erected by subcontractors, shall be neatly constructed and arranged on the site in an orderly manner. The Contractor shall prepare and submit to the Engineer, for approval prior to starting work, a construction plan layout, showing arrangement of storage areas, temporary buildings, equipment, and work areas. The Contractor shall provide suitable weather-tight storage sheds of capacity required to contain all materials which might be damaged by storage in the open. The Contractor shall at all times keep copies of all contract documents readily accessible at their office at the site.

106.15 TEMPORARY WATER SUPPLY

The Contractor shall provide at Contractor's own expense temporary water connections and water supply necessary for the prosecution of the work and permit all contractors on the work to use this supply at a reasonable prorated charge, or by sub-metering. The Contractor shall pay for all water consumed in the work, and shall arrange with municipal authorities for temporary connections and payment of service charges. (Use most current Code of the City of Colorado Springs). Upon completion of the contract work, all temporary waterlines shall be removed.

106.16 TEMPORARY ELECTRIC LIGHT AND POWER

The Contractor shall arrange with the City Utility Departments for temporary electric light and power necessary for the prosecution of the work. The Contractor shall pay for all electric current consumed, and shall permit all contractors on the work to use this supply at a reasonable prorated charge, or by sub-metering.

106.17 TEMPORARY HEAT

The Contractor shall provide adequate, temporary heat required during construction. Until the building or work area is enclosed, heavy tarpaulin shall be used to enclose any space requiring heating or protection from weather during construction operations. After the heating plant is in operating condition and the building is enclosed, heat may be provided from the permanent heating plant if such is approved by the Engineer. In such case, the Contractor shall arrange to operate the plant, connect permanent or temporary radiation or unit heaters, and so maintain the plant during operation that it will be turned over to the City undamaged at the completion of the work. The Contractor shall provide all fuel required. In no case shall salamander heating be used in finished or plastered surfaces; instead, gas-steam radiators, unit heaters, or other suitable and approved means shall be used if the permanent heating plant is not available.

106.18 TEMPORARY ENCLOSURES

The Contractor shall provide and maintain temporary enclosures for the work as may be required to permit continuation of interior work during inclement weather, if wall and roof construction has progressed sufficiently to make interior work possible.

106.19 CLEAN-UP

The Contractor shall at all times keep the work area including storage and staging areas, free from accumulations of waste materials. The Contractor is also responsible for any costs associated with cleanup of debris from the work site or storage areas that may inadvertently be scattered outside the area by weather or vandalism. Upon completion of the work, the Contractor shall leave the work area in a clean neat and orderly condition satisfactory to the Project Engineer/Manager.

SECTION 107 INSURANCE AND INDEMNITY

107.00 CONTRACTOR'S INSURANCE

For the duration of the Contract, Contractor shall, at his own expense, procure and maintain insurance and shall require all subcontractors of all tiers to provide and maintain insurance of the type and in the limits as set forth below, on all operations, in companies authorized to do business in the State of Colorado and rated by A.M. Best's Rating as A:VIII or better, or in companies acceptable to City of Colorado Springs, as follows:

(a) Workers' Compensation and Employer's Liability Insurance.

Workers' Compensation insurance shall be provided as required by an applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than \$500,000 each accident for bodily injury by accident, \$500,000 policy limit for bodily injury by disease, and \$500,000 each employee for bodily injury by disease. The contractor shall require each subcontractor similarly to maintain Workers' Compensation and Employer Liability insurance.

(b) General Liability Insurance.

Commercial General Liability insurance covering all operations by or on behalf of Contractor providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- (2) premises and operations liability;
- (3) products liability

CITY OF COLORADO SPRINGS

- (4) completed operations liability shall be provided for two years following substantial completion of the work;
- (5) contractual liability insuring the obligations assumed by Contractor in this agreement;
- (6) property in the care, custody and control of the contractor;
- (7) X.C.U. Coverage – If the contract requires any work procedures involving blasting, excavating, tunneling, or other underground work, the liability coverage shall include coverage commonly referred to as X.C.U. for explosion, collapse and underground hazards.
- (8) personal injury liability; and
- (9) railroad liability within 50' of railroad, if working within the vicinity of any railroad, bridge, trestle, track, roadbed, tunnel, underpass or crossing.

Except with respect to bodily injury and property damage included within the products and completed operations, the aggregate limits, where applicable, shall apply separately to Contractor's work under this Contract.

The limits of liability shall not be less than:

- \$1,000,000 each occurrence (combined single limit for bodily injury and property damage)
- \$1,000,000 for Personal Injury Liability
- \$2,000,000 Aggregate for Products-Completed Operation
- \$2,000,000 General Aggregate

(c) Automobile Liability Insurance.

The Contractor shall carry Automobile Liability Insurance (Bodily Injury and Property Damage Liability) including coverage for all owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 Combined Single Limit for each accident. Contractor's Automobile Liability insurance policy shall include coverage for Automobile Contractual Liability.

(d) Professional Liability.

If the agreement requires any work for professional services, contractor, must carry Professional Liability insurance including errors and omission coverage in an amount not less than \$1,000,000 per occurrence or claims made and aggregate.

(e) Pollution Liability.

In the event the Services involve any excavation, subsurface, underground, or dewatering work, contractor must carry at all times during the term of this Agreement, and for twenty-four (24) months following termination of this Agreement, a Pollution Liability policy with limits not less than \$1,000,000 per occurrence (or claims made) and not less than \$1,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage. This coverage must include any losses arising from transit exposures and also include all costs associated with clean-up, containment, and disposal of any hazardous liquids or materials.

(f) Umbrella/Excess Liability.

- (1) In the event the value of this Agreement is \$50,000 or more, contractor shall maintain umbrella/excess liability insurance in an amount of not less than \$1,000,000 with respect to coverage required under the Commercial General Liability, Automobile Liability and Employer's Liability. This coverage must be Umbrella coverage, offering coverage "at least as broad as all underlying coverages."
- (2) In the event the value of this Agreement exceeds \$50,000, contractor shall maintain umbrella/excess liability insurance in an amount of not less than \$5,000,000 with respect to coverage required under the Commercial General

Liability, Automobile Liability and Employer's Liability. This coverage must be Umbrella coverage, offering coverage "at least as broad as all underlying coverages." Subcontractors shall be required to maintain umbrella/excess liability insurance limits of at least \$1,000,000.

(g) Deductible or Self-Insured Retention.

Any deductible or self-insured retention must be declared to the City. Any and all deductibles or self-insurance retentions in the foregoing insurance policies shall be assumed by and be for the account of, and at the sole risk of the contractor and its subcontractors.

Contractor shall verify its subcontractors' compliance with the requirements of sections (a) through (g), and cause their certificates of insurance to be provided to contractor, and upon request, to be made available to utilities.

On all policies except for Workers' Compensation and Employer's Liability, and Professional Liability, the certificates shall also contain a specific endorsement adding the City as additional insured's, as well as specifically stating that all coverage furnished by contractor is primary, and that any insurance held by the City is excess and non-contributory. Certificates of insurance shall be furnished by contractor to the City before any Services are commenced hereunder by contractor. The certificates of insurance shall provide that there will be no cancellation, reduction or modification of coverage without thirty (30) days' prior written notice to the City except for 10 days notice with respect to non-payment of premium. If Contractor does not comply with this section, the City may, in addition to any other remedies it may have, terminate this Agreement, subject to any provision of this Agreement. Alternatively, the City may, at its option, provide insurance coverage to protect the City and charge contractor for the cost of that insurance. The required insurance shall be subject to the approval of the City, but any acceptance of insurance certificates by the City shall not limit or relieve the contractor of the duties and responsibilities assumed by it under this Agreement.

The insurance coverage required within this entire subsection shall not minimize, limit, nor eliminate the Contractor's responsibility for any uninsured or uncovered claims, losses, or expenses occurring during or after completion of construction of this project.

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by the City, or their insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liability and obligations otherwise assumed by Contractor pursuant to this agreement, including but not limited to the provisions concerning indemnification.

The City reserves the right to withhold payments to Contractor in the event of material noncompliance with the insurance requirements outlined above.

107.01 BUILDER'S RISK INSURANCE.

The City does not maintain Builder's Risk Insurance. Contractor required to obtain coverage in sufficient amount to protect the contractor and the City.

The insurance coverage required within this entire subsection shall not minimize, limit, nor eliminate the Contractor's responsibility for any uninsured or uncovered claims, losses, or expenses occurring during or after completion of construction of this project.

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by the City, or their insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liability and obligations otherwise assumed by Contractor pursuant to this agreement, including but not limited to the provisions concerning indemnification.

The City reserves the right to withhold payments to Contractor in the event of material noncompliance with the insurance requirements outlined above.

107.02 INDEMNIFICATION

Contractor agrees that the Contractor shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, cause or causes of action, or any liability whatsoever resulting from, or arising out of, or in connection with the Contractor's obligations or actions under this Contract due to the Contractor's errors, omissions or negligence.

107.03 THIRD PARTY LIABILITY

It is specifically agreed between the parties executing this contract that this contract is not intended by any of the provisions to create in the public or any member thereof any third party beneficiary rights whatsoever, or to authorize anyone not a party to this contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this contract.

107.04 RISK INSURANCE

Unless otherwise set forth in the Contract Documents, the City shall not maintain risk insurance on the project.

SECTION 108 ROYALTIES, PATENT INFRINGEMENTS, SPECIAL LICENSES AND PERMITS

108.00 ROYALTIES AND PATENTS

The Contractor shall pay all applicable royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and save the City harmless from loss on account thereof except that the City shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified, unless the City has notified the Contractor prior to the signing of the contract that the particular process, design, or product is patented or is believed to be patented.

108.01 PERMITS, LICENSES AND REGULATIONS

Permits and licenses necessary for the prosecution of the work shall be secured and paid for by the Contractor. The Contractor shall be responsible for all water and wastewater tap fees and water and wastewater connection fees as set forth in the Code of the City of Colorado Springs, as amended. Projects that involve Building Permits and sprinkler systems will require water or wastewater connection fees or both.

Licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the City, unless otherwise specified. The Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the Plans and Specifications are at variance therewith, he shall promptly notify the Engineer in writing, and any necessary changes shall be adjusted as provided in the contract for changes in the work.

Prior to the start of construction, the Contractor shall procure all permits and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work. Copies of the fully executed permits shall be furnished to the Engineer. It is the responsibility of the Contractor to be aware of the terms and conditions of all permits, and it is the Contractor's responsibility that the terms and conditions are satisfied, including but not limited to the requirements of subsections 103.05 and 106.12.

SECTION 109 WORK PROVISIONS AND RULES

109.00 COMMENCEMENT AND COMPLETION OF WORK

- (a) Preconstruction Conference. After issuance of Notice of Award, or as otherwise established by the City, a preconstruction conference shall be held for review of the construction schedule, Contractors written list of subcontractors and suppliers, written list of all required permits, project contracts, utility support plan, water control plan, Traffic Control Supervisor name and telephone number, gradations, test results, certifications, review procedures for handling shop drawings and other submittals, processing applications for payment, and other pertinent items.
- (b) At the Preconstruction Conference, the Contractor shall furnish the engineer a written list of all permits required for the proper completion of the Contract. The list shall clearly identify the type of permit or permits that must be obtained before work on any particular phase or phases of work can be started.
- (c) The Contractor shall commence work within ten (10) calendar days after the date specified on the Notice to Proceed and complete the contract within the number of calendar days or by the date specified in the proposal form. Unless otherwise noted in the Contract, the number of days identified in the Proposal Form are calendar days.
- (d) The dates fixed for commencement and completion of the work may be extended by the Engineer. All requests for extension of time by the Contractor shall be made in writing to the Engineer and shall set forth the reasons for such requests. The Engineer shall fix the period of extension, if any. The Engineer's decision shall be binding upon the parties hereto. Requests for extension of time received twenty (20) or more days after the occurrence of the delay will not be honored. No requests for extension of time shall be honored if submitted after the completion date.
- (e) If satisfactory execution and completion of the contract shall require work or materials in greater amounts or quantities other than those set forth in the contract, then the contract time shall be adjusted at the time of the execution of the Change Order. No allowance will be made for delays or suspension of the prosecution of the work due to the fault of the Contractor.

109.01 FAILURE TO COMPLETE WORK ON TIME, LIQUIDATED DAMAGES

If the Contractor fails to fully perform and complete the work in conformity to the provisions and conditions of the contract within the specified time limit set forth in the contract, including any extensions granted hereto, the Contractor shall pay to the City for each calendar day of delay until such time the contract is complete, liquidated damages at the applicable daily rate below. The amounts shown are considered to be liquidated damages to reimburse the City for the additional cost of construction engineering and contract administration services and in no case are considered a penalty.

| Original Contract Amount | Amount of Liquidated Damages Per Day |
|--------------------------|--------------------------------------|
| Less than \$50,000 | \$300.00 |
| \$50,000 to \$100,000 | \$500.00 |
| \$100,000 to \$500,000 | \$700.00 |
| \$500,000 to \$1,000,000 | \$900.00 |
| Over \$1,000,000 | \$1500.00 |

109.02 WORK IN BAD WEATHER

No construction work shall be done during stormy, freezing, or inclement weather, except such as can be done satisfactorily, and in a manner to secure first class construction throughout, and then only subject to permission of the Engineer.

The granting of a time extension for inclement weather does not imply or guarantee that additional compensations for incidental and appurtenant work caused by such weather will be approved or authorized by the Engineer. The Contractor is instructed to include as part of the Contractor's total bid price the costs for such weather delays as can be reasonably anticipated. The Engineer will be the sole judge as to the reasonableness of delays for inclement weather.

109.03 EXCUSABLE DELAYS

The Contractor's right to proceed will not be terminated nor the Contractor charged with damages for delay in completing the work that arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include:

- (a) Acts of God or of the public enemy,
- (b) Acts of the Government in either its sovereign or contractual capacity,
- (c) Acts of another Contractor in the performance of a contract with the Government,
- (d) Fires,
- (e) Floods,
- (f) Epidemics,
- (g) Quarantine restrictions,
- (h) Strikes,
- (i) Freight Embargos,
- (j) Unusually severe weather, or
- (k) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the Subcontractors or Suppliers.

109.04 COMPENSATION FOR COMPENSABLE DELAYS

If the Engineer determines that a delay is compensable in accordance with the Contract, monetary compensation will be determined in accordance with this subsection.

- (a) These categories represent the only costs that are recoverable by the Contractor. All other costs or categories of costs are not recoverable:
 - 1. Actual wages and benefits, including FICA, paid for additional non-salaried labor;
 - 2. Costs for additional bond, insurance and tax;
 - 3. Increased costs for materials;
 - 4. Equipment costs calculated in accordance with the current edition of the Rental Rate Blue Book of Rental Rates for Construction Equipment for Contractor owned equipment and based on invoice costs for rented equipment;
 - 5. Costs of extended job site overhead;
 - 6. Subcontractor's claims (the same level of detail as specified herein is required for all subcontractors' claims)
 - 7. An additional 10 percent will be added to the total of items (1), (2), (3), (4), (5), and (6) as compensation for items for which no specific allowance is provided, including profit and home office overhead.
- (b) In adjustment for costs as allowed above, the City will have no liability for the following items of damages or expense:
 - 1. Profit in excess of that provided in (a) above;
 - 2. Loss of profit;
 - 3. Additional cost of labor inefficiencies in excess of that provided in (a) above;
 - 4. Home office overhead in excess of that provided in (a) above;

5. Consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities, and insolvency;
6. Indirect costs or expenses of any nature in excess of that provided in (a) above;
7. Attorneys fees, claim preparation fees, and expert fees.

All costs claimed must be documented and accompanied by a written certification from the Contractor.

109.05 EMERGENCY WORK

In an emergency affecting the safety of life or of the work or of adjoining property, the Contractor is, without special instructions or authorization from the Engineer, hereby permitted to act at Contractor's discretion to prevent such threatening loss or injury. Contractor shall also act, without appeal, if so authorized or instructed by the Engineer. Any compensation claimed by the Contractor on account of emergency work shall be determined by agreement or in accordance with the Changes in Work Provision of this contract.

109.06 VALUE ENGINEERING CHANGE PROPOSALS BY THE CONTRACTOR

The Contractor is encouraged to develop and offer proposals for improved construction techniques, alternative materials and other innovations. Proposals must provide a project comparable to the City's original design either at lower cost, with improved quality, or both. Bid prices shall not be based on the anticipated approval of a Value Engineering Change Proposal (VECP). Proposals shall be submitted only by the successful bidder after contract award. If a VECP is rejected, the work shall be completed in accordance with the Contract at contract bid prices. The Contractor shall have no claim against the City for compensable or noncompensable delay to the Contract based on the failure to respond to the proposal.

The Contractor may submit either a full VECP or a preliminary Conceptual VECP, followed by a full proposal. The Engineer will provide timely review of all proposals and advise the Contractor whether the Proposal is complete or incomplete. When the proposal is complete, the Engineer will advise the Contractor of either the approval of the proposal or the reasons for rejection of the proposal.

Cost savings generated to the Contract as a result of VECPs offered by the Contractor and accepted by the Engineer shall be shared equally between the Contractor and the City.

If the Engineer determines that the time for response indicated in the submittal under item (c)5 below is insufficient for review, the Contractor will be promptly notified. Based on the additional time needed by the Engineer for review and the effect on the Contractor's schedule caused by the added time, the Engineer will evaluate the need for a non-compensable time adjustment to the Contract.

(a) VECPs that will be considered are those that would produce savings to the City or provide improved project quality without impairing essential functions and characteristics of the facility. Essential functions include but are not limited to: service life, economy of operation, ease of maintenance, desired appearance, safety, and impacts to the traveling public or to the environment during and after construction.

(b) *Submittal of Conceptual Proposal.* For VECPs that require a significant amount of design or other development resources, the Contractor may submit an abbreviated Conceptual Proposal for preliminary evaluation. The Engineer will evaluate the information provided and advise the Contractor if any conditions or parameters of the Conceptual Proposal are found to be grounds for rejection. Preliminary review of a conceptual proposal reduces the Contractor's risk of subsequent rejection but does not commit the City to eventual approval of the full VECP. The following information shall be submitted for each Conceptual Proposal.

1. A statement that the proposal is submitted as a Conceptual VECP.

2. A general description of the difference between the existing Contract and the proposed change, and the advantages and disadvantages of each, including effects on cost, service life, economy of operation, ease of maintenance, desired appearance, safety, and impacts to the traveling public or to the environment during and after construction.
 3. A set of conceptual plans and a description of proposed changes to the Contract specifications.
 4. An estimate of the anticipated cost savings or increase.
 5. A statement specifying:
 - a. when a response to the conceptual proposal from the City is
 - b. required to avoid delays to the existing contract prosecution,
 - c. the amount of time necessary to develop the full Proposal,
 - d. the date by which a Contract Modification Order must be executed
 - e. to obtain maximum benefit from the Proposal, and
 - f. the Proposal's impact on time for completing the Contract.
- (c) *Submittal of Full Value Engineering Change Proposal.* The following materials and information shall be submitted with each proposal.
1. A statement that the proposal is submitted as a VECP.
 2. A description of the difference between the existing Contract and the proposed change, and the advantages and disadvantages of each, including effects on service life, economy of operation, ease of maintenance, desired appearance, safety, and impacts to the traveling public or to the environment during and after construction.
 3. A complete set of plans and specifications showing the proposed revisions relative to the original Contract. This portion of the submittal shall include design notes and construction details. The proposed plans and specifications shall be signed and sealed by the Contractor's engineer.
 4. A complete analysis indicating the final estimated costs and quantities to be replaced by the Proposal compared to the new costs and quantities generated by the Proposal. All costs and proposed unit prices shall be documented by the Contractor.
 5. A statement specifying the date by which a Contract Modification Order must be executed to obtain the maximum cost reduction during the remainder of the Contract.
 6. A statement detailing the effect the Proposal will have on the time for completing the Contract.
 7. A description of any previous use or testing of the proposed changes and the conditions and results. If the Proposal was previously submitted on another City project, the proposal shall indicate the date, Contract number, and the action taken by the City.
 8. An estimate of any effects the VECP will have on other costs to the City.
 9. A statement of life cycle costs, when appropriate. Life cycle costs will not be considered as part of cost savings but shall be calculated for additional support of the Proposal. A discount rate of four percent shall be used for life cycle calculations.
 10. A statement specifying when a response from the Owner is required to avoid delays to the prosecution of the Contract.
- (d) *Evaluation.* VECPs will be evaluated in accordance with the following:
1. The Engineer will determine if a Proposal qualifies for consideration and evaluation. The Engineer may reject any Proposal that requires excessive time or costs for review, evaluation, or investigations. The Engineer may reject proposals that are not consistent with the City's design policies and criteria for the project.
 2. The Engineer will reject all or any portion of work performed under an approved VECP if unsatisfactory results are obtained. The Engineer will direct the removal of such rejected work and require construction to proceed under the original Contract requirements without reimbursement for work performed under the proposal, or for its removal.

3. VECPs, whether or not approved by the City, apply only to the ongoing Contracts referenced in the Proposal and become the property of the City. Proposals shall contain no restrictions imposed by the Contractor on their use or disclosure. The City has the right to use, duplicate and disclose in whole or in part any data necessary for the utilization of the Proposal. The City retains the right to utilize any accepted Proposal or part thereof on other projects without obligation to the Contractor. This provision is subject to rights provided by law with respect to patented materials or processes.
 4. If the City is already considering certain revisions to the Contract or has approved certain changes in the Contract for general use that are subsequently proposed in a VECP, the Engineer will reject the Proposal and may proceed to implement these changes without obligation to the Contractor.
 5. The Contractor shall have no claim against the City for additional costs or delays resulting from the rejection or untimely acceptance of a VECP. These costs include but are not limited to: development costs, loss of anticipated profits, increased material or labor costs, or untimely response.
 6. Proposals will be rejected if equivalent options are already provided in the Contract.
 7. Proposals that only reduce or eliminate contract pay items will be rejected.
 8. The savings generated by the Proposal must be sufficient to warrant a review and processing, as determined by the Engineer.
 9. A Proposal changing the type or thickness of the pavement structure or changing the design of a bridge will be rejected.
 10. Additional information needed to evaluate Proposals shall be provided in a timely manner. Untimely submittal of additional information will result in rejection of the Proposal. Where design changes are proposed, the additional information shall include results of field investigations and surveys, design and computations, and changed plan sheets required to develop the design changes.
- (e) *Payment.* If the VECP is accepted, the changes and payment will be authorized by Contract Modification Order. Reimbursement will be made as follows:
1. The changes will be incorporated into the Contract by changes in quantities of unit bid items, new agreed unit price items, or both, as appropriate, under the Contract.
 2. The cost of the revised work as determined from the changes will be paid to the Contractor. The City will pay the Contractor 50 percent of the savings to the City upon completion of the value analysis work. The savings to the City shall be the difference between the cost of the revised work and the cost of the related construction required by the original Contract computed at Contract bid prices.
 3. Costs incurred by the Contractor for development, design, and implementation of the VECPs will not be reimbursed.
 4. When work performed under an approved VECP is modified to fit field or other conditions, the maximum amount paid for the work will be limited to that which would have been paid if the work had been performed under the original contract provisions. The rejection or limitation of reimbursement shall not constitute the basis of any claim against the City for delay or for other costs except as allowed under the original Contract.

109.07 AUTHORITY OF THE ENGINEER

The Engineer will decide all questions regarding the quality and acceptability of materials furnished, work performed, and the rate of progress of the work; all interpretation of the plans and specifications; and the acceptable fulfillment of the Contract. The Engineer will perform technical inspection of the work and shall have authority to reject all work and materials which do not conform to the Contract.

The Engineer has authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the Contract or for the convenience of the City. The Project Engineer/Manager may order the Contractor, by giving fifteen (15) days written notice, to

suspend, delay, or interrupt all or any portion of the work required by the Contract for a period of up to 10 ten calendar days at no additional cost to the City. The Engineer may immediately stop the work when it is determined that the public's safety and welfare is in jeopardy.

The Engineer shall, within a reasonable time after their presentation to the Engineer, make decisions in writing on all claims submitted to the City by the Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the Contract Documents. The Engineer's decisions shall be final.

109.08 DUTIES OF THE INSPECTOR

Inspectors employed by the City are authorized to inspect all work done and materials furnished. This inspection may extend to all or any part of the work and to the preparation, fabrication or manufacture of the materials to be used. The inspector is not authorized to alter or waive the provisions of the Contract. The inspector is not authorized to issue instructions contrary to the provisions of the Contract or to act as foreman for the Contractor.

109.09 CONSTRUCTION OBSERVATION AND INSPECTION

The Engineer shall at all times have access to the work and the Contractor shall provide proper equipment, materials and labor as required for such access and inspection.

All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. The Engineer shall have the right to reject materials and workmanship, which are defective, or require their correction. Rejected workmanship shall be satisfactorily corrected and rejected materials shall be removed from the premises without charge to the City. If the Contractor does not correct such condemned work and remove rejected materials within a reasonable time fixed by written notice, the City may remove them and charge the expense to the Contractor.

Should it be considered necessary or advisable by the Engineer at any time before final acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall on request promptly furnish necessary facilities, labor and materials. If such work is found to be defective in any material respect due to fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the actual cost of labor and material necessarily involved in the examination and replacement, plus fifteen (15) percent, will be allowed the Contractor.

All materials to be incorporated in the work, all labor performed, all tools, appliances, and methods used shall be subject to the inspection and approval or rejection of the Engineer.

If the Engineer shall point out to the Contractor, Contractor's foreman, or agent any neglect or disregard of the contract provisions, such neglect or disregard shall be remedied and further defective work be at once discontinued.

The Contractor shall execute the work only in the presence of the Engineer or authorized representative, unless provision has been made for the work to proceed without complete engineering supervision or inspection. The presence of the Engineer or authorized representative shall in no way relieve the Contractor of the responsibility of this contract, or be any warrant for the furnishing of bad material or poor workmanship.

The observation of the work by the Engineer is intended to aid the Contractor in applying labor, materials, and workmanship in compliance with the contract provisions. Such observation, however, shall not relieve the Contractor from any of Contractor's contract obligations.

109.10 CONTRACTOR COOPERATION

All work under this contract shall be performed in a skillful and professional manner. The Project Engineer/ Manager shall have the authority to notify the Contractor in writing, that the Contractor remove from the work site any employee the Project Engineer/Manager deems incompetent, careless, or otherwise objectionable to the general public or the City of Colorado Springs.

- (a) Discrepancies: If the Contractor, as the work progresses, finds any discrepancies between the Plans and physical conditions or any errors in the Plans or layout as given by the stakes or instructions, it shall be the Contractor's duty to inform the Engineer in writing and the Engineer shall address such discrepancy in a reasonable period of time. Any work done after such discovery until authorized will be done at the Contractor's risk.
- (b) Workmen, Methods and Equipment: Permission from the Engineer to use any particular methods, equipment or appliances shall not be so construed as to relieve the Contractor from furnishing other equipment or appliances or adopting other methods when those in use prove unsatisfactory to the Engineer, or as to bind the Engineer to accept work which does not comply with the contract.

109.11 CONTRACTOR'S RESPONSIBILITY FOR WORK

Until the work is accepted by the Engineer as evidenced by the issuance of the Certificate of Completion, the Contractor shall have the charge and care thereof and shall take every necessary precaution against injury or damage to any part thereof by action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before its completion and acceptance and shall bear the expense thereof.

The Contractor shall be responsible for the preservation of all public and private property, trees, fences, monuments, and other property, along and adjacent to the improvements and shall use suitable precautions necessary to prevent damage to pipes, conduits, and other underground structures. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect or misconduct in the execution of the work, or inconsequence of the non-execution thereof on the part of the Contractor, such property will be restored by the Contractor and at Contractor's expense to a condition similar, or equal to that existing before such damage or injury to the satisfaction of the City's Project Manager.

It shall be the responsibility of the Contractor, when moving or operating equipment, to make all arrangements for temporary crossings of telephone, transmission, pipe lines, railroad tracks, and irrigation ditches. This work shall not be paid for as a separate item but shall be considered as incidental to the project.

109.12 PROTECTION OF UTILITIES

The Contractor's attention is directed to the fact that utilities may encroach on the construction of this project, and also to the importance of protecting all public/private utilities encountered on this project. These may include telecommunications, cablevision, traffic signal lines, power lines, water lines, sewer lines, gas lines, railroad tracks, and other overhead and underground utilities.

The size and location of all existing utilities as known to the Engineer have been noted on the plans for the information and guidance of the Contractor. The Contractor shall be responsible for the location and protection of all utilities located within his working area regardless of whether or not their existence or location is shown or noted on the drawings.

CITY OF COLORADO SPRINGS

It is the Contractor's responsibility to complete required work and to schedule inspections during normal working hours. The Contractor is responsible for contacting each affected utility for their inspectors' working hours. The Contractor is responsible to request an inspection two (2) working days in advance of the inspection. In the case of an overtime inspection, the request must be in writing. All overtime costs for inspection by City Utilities shall be the Contractor's expense. The City will not entertain any requests for time extensions for delays caused by the Contractor's failure to properly notify the affected utility of a required inspection or the Contractor's failure to complete the required work by the time of the scheduled inspection.

Any information concerning underground utilities shown on the drawings is intended to be merely an aid to the Contractor. The accuracy of information with respect to underground utilities is not guaranteed. The Contractor shall make their own investigation, including exploratory excavations, to determine the locations and type of existing mains or service laterals or appurtenances when their presence can be inferred from the presence of other visible facilities, such as building, manholes, inlets, meters and junction boxes, on or adjacent to the site of the work. If the Contractor discovers utility facilities not identified in the plans or specifications or in a position different from that shown in the plans and specifications, the Contractor shall immediately notify, verbally and in writing, the Engineer and Owner of the utility facility.

Before any excavation is begun in the vicinity of water lines, railroad tracks, or structures, sewer lines, telecommunication conduits or cablevision line, each utility company, department, or company concerned must be notified in advance of such excavation, and such excavation shall not be made until an authorized representative of the utility concerned is at the site.

All utilities encountered must be kept in operation by the Contractor and must be protected and/or repaired at the Contractor's own expense, unless otherwise specified in the contract documents. The Contractor shall be held liable for all damages to any and all public utilities encountered on the project, which damages are due to the Contractor's operations. Such damages shall include all physical damages to utilities and also all damages due to interruption of service of such utilities, when such damages and interruptions are caused by the Contractor's operations.

Where alterations or moving of utilities is not required to permit construction of the project, the Contractor shall take such measures as the Engineer may direct to properly protect these utilities throughout his construction operations and shall cooperate at all times with the proper authorities and/or owners in maintaining service of railroads, conduits, pole lines, transmission lines, pipe lines, sewers, etc., affected by this project.

The costs of damages due to the Contractor's operation or the cost of protecting utilities where alteration or relocation is not required to permit construction of the project shall be included in the original contract price for the project.

Should any pipe line, water lines, or gas mains, electrical conduits, sewer pipes, overhead wiring, telecommunication lines, power lines, or any other such utilities, not specifically mentioned and provided for elsewhere as a part of this contract, have to be moved, repaired, reconditioned, or revised due to the construction, or moved temporarily to permit construction of the project the party or parties owning and operating such utilities shall perform the actual work of moving, repairing, reconditioning, or revising such utilities. The cost of this work shall be borne by the utility companies involved, unless other agreements are reached with the City.

(a) Existing Utilities

CITY OF COLORADO SPRINGS

1. Existing Gas Lines: As of April 1, 1983, Federal law requires anyone who uncovers a gas line to report it to the gas company and allow it to be inspected by the gas company personnel before it is backfilled. The Gas Department is to be notified prior to any excavation around gas lines. A Gas Department inspector is to be notified and present on site prior to construction activities around gas lines.
 2. Existing Sewer Mains and Services: All relocation, replacement protection shown on the plans or determined necessary by the inspector shall be performed according to the latest Wastewater Department Standard Specifications. Minimum 48 hours notice must be given to the Wastewater Department prior to any related work.
 3. The Contractor shall adjust sanitary sewer manhole rims to an elevation acceptable to the City Wastewater Department. The Contractor shall contact the City Wastewater Department twenty-four (24) hours prior to manhole rim adjustments.
 4. Existing Water Mains and Services: All relocation, replacement or protection shown on the plans or determined necessary by the inspector shall be performed according to the latest Water Department Standard Specifications and the Water Service Standard Specifications. Minimum 48-hour notice must be given to the Water Department prior to any related work. The Water Department reserves the right to schedule any operations at their discretion and to provide for any requirements determined necessary to perform the work. The Contractor shall coordinate with the Water Department and receive their approval prior to performance of the work.
- (b) Utility Support Systems:
1. If required by the contract documents, or requested by the Engineer, the Contractor shall submit shop drawings for the method of temporary support for all existing utilities during construction. The temporary support details for existing utilities shall be submitted for review and approval prior to performance of the work. Shop drawings must bear the seal of a Professional Engineer registered in the State of Colorado, unless so waived by the City.
 2. Regardless of City approved shop drawings, the Contractor shall be responsible for the satisfactory support of the utility system and any damages that may occur to the utility involved.
- (c) Electric Utility Installation:
1. Any electric facilities unless otherwise noted are to be relocated or modified by the City of Colorado Springs Electric Department. The Contractor shall coordinate the work with the Electric Department and the Electric Department's Contractor.
 2. Light Pole Installation or Relocation:
 - a. The Contractor is responsible for coordinating with CSU Electric, removing existing light pole foundations, constructing new light pole foundations, installing new conduits, and installing lighting junction boxes. The Contractor is responsible for coordinating with CSU Electric for the de-energizing and removal of existing light poles.
 - b. Colorado Springs Utilities (CSU) Electric Division will remove the existing light standards, reset the light standards upon completion of the new foundations, conduit and junction boxes, pulling wire, and beginning operations of the lighting within the project limits. The Contractor is responsible for scheduling and coordination with CSU crews for reinstallation and re-energizing completed light poles.
- (d) Gas Utilities: The Contractor is responsible for coordinating with CSU Gas for the relocation of existing Gas lines. Colorado Springs Utilities Gas Division will relocate the existing gas lines as necessary to install project improvements within the project

limits. The Contractor is responsible for scheduling and coordination with CSU crews.

- (e) Telecommunication Agencies: Any telephone facilities unless otherwise noted are to be relocated or modified by the respective private utility company. The Contractor shall coordinate the work with the respective private utility company.
- (f) Cablevision: The television utilities are to be relocated by Cablevision. The Contractor shall coordinate the work with Cablevision.

109.13 LABOR

The Contractor shall employ only competent and skilled workmen and foremen in the conduct of work on this contract. The Contractor shall at all times enforce strict discipline and good order among Contractor's employees. The Engineer shall have the authority to order the removal from the work of any Contractor's employee who refuses or neglects to observe any of the provisions of these Plans or Specifications, or who is incompetent, abusive, threatening, or disorderly in conduct, and any such person shall not again be employed on the project.

Eight (8) hours shall constitute a day's labor and Monday through Friday shall constitute a workweek. In no event shall the City be responsible for overtime pay.

109.14 EMPLOYMENT OF LABOR

The Contractor shall comply with, and protect and hold the City harmless from any violation of all laws and lawful rules and regulations, both of the State of Colorado and of the United States, relating to Workmen's Compensation, unemployment compensation, Social Security, payment for overtime, and all other expenses and conditions of employment under this contract.

109.15 EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, sex, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, sex, color or national origin. Such actions 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.
- (b) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (c) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color or national origin.

109.16 FEDERAL FUNDS

If this contract is a Federally assisted construction contract all applicable federal requirements, terms and conditions, provisions and forms will be included in the bidding documents. Additionally, the Contractor agrees as follows:

CITY OF COLORADO SPRINGS

1. The Contractor shall complete and submit with its bid all federal forms and certifications included in the bidding documents.
2. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
3. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
4. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Secretary of Labor, State of Colorado Civil Rights Commission and any other governmental agency entity which may be assisting with the funding under this contract for purposes of investigation to ascertain compliance with such rules, regulations and orders.
5. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further government contracts or Federally assisted construction contracts in accordance with the procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or otherwise provided by law.
6. The Contractor shall include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the city, state, or any federal governmental entity may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or threatened with, litigation with a subcontractor or vendor as a result of such direction by the city, state, or any federal governmental entity, the Contractor may request the city, the state, or the United States to enter into such litigations to protect the interests of such governmental entity.

109.17 SUPERINTENDENCE

The Contractor shall give the work the constant attention necessary to facilitate the progress thereof and shall cooperate with the Engineer and with other Contractors or utility company employees in every way possible. The Contractor shall have at all times, on the work, as Contractor's agent, a competent superintendent capable of reading and thoroughly understanding the Plans and Specifications, and who shall have the necessary authority to receive and promptly execute the instructions and orders from the Engineer or the Engineer's authorized representative. Such superintendent shall be furnished irrespective of the amount of work sublet. The Contractor shall supply the Engineer with a list of phone numbers at which the Contractor, his superintendent and foreman can be reached at any time. The assigned

Superintendent must adhere to the cooperation requirements specified in Section 108.08 and is subject to removal if so ordered in writing by the Engineer/Project Manager.

109.18 PREPARATION

All vegetation, stumps, and debris and other objectionable objects shall be removed from the area staked out by the Engineer, and where necessary from the area immediately adjacent thereto. Such debris shall be hauled from the site of the construction and wasted as directed by the Engineer.

109.19 STAKING WORK

The Engineer shall provide reference points (horizontal and vertical control) only, unless otherwise noted in the bid proposal and project specifications. The Contractor shall engage the services of a licensed surveyor or surveying firm (hereinafter referred to as the Surveyor) to be approved by the Engineer. The Surveyor shall perform all detailed construction layout and staking including the staking of all storm sewer, street improvements, and utility relocations in accordance with the plans and specifications. The Contractor shall be responsible for the correctness and accuracy of the detailed layout of finished structures.

Any instrument man or survey assistant employed on the work by the Contractor or his Subcontractors who is judged by the Engineer to be incompetent shall be removed from the work and replaced by a competent individual.

109.20 DEVIATION ALLOWED

Finished surfaces in all cases shall conform to lines, grades, cross sections and dimensions shown on the approved drawings or described in the Specifications. Deviations from the approved drawings and working drawings as may be required by the expediencies of construction will, in all cases, be determined by the Engineer and authorized in writing. If the Engineer deems it inexpedient to correct work injured or done in an unauthorized manner, an equitable deduction from the contract price of the work done shall be made by the Engineer subject to approval of the City Engineer.

109.21 RIGHT-OF-WAY

The City's right-of-way will in general be adequate for construction purposes. Nothing marked on the drawings shall be interpreted as giving the Contractor exclusive occupancy of the territory provided by the City. The City and its employees for any purpose, and other contractors of the City, for any purpose required by their respective contracts, may enter upon or occupy portion of the land furnished by the City. When the territory of one contract is a necessary or convenient means of access for the execution of another contract, such privileges of access or any other reasonable privilege shall be granted by the Contractor to the extent, amount, in the manner and at times necessary. No such joint occupancy or use of the territory shall be made as the basis of any claim for delay or damages.

109.22 SHOP DRAWINGS AND SUBMITTALS

The Contractor shall submit to the Engineer all shop drawings, submittals and schedules required for the work, including those pertaining to structural and reinforcing steel within fifteen calendar days from the date of the Notice of Award. The Contractor shall make any corrections in the drawings required by the Engineer, and resubmit the same without delay.

Three final copies of all shop drawings, submittals and schedules shall be submitted to the Engineer, who after checking will retain two copies and return one copy to the Contractor. The Engineer's approval of shop drawings of equipment and material shall extend only to determining the conformity of such equipment and materials with the general features of the design drawings prepared by the Engineer. It shall be the responsibility of the Contractor to determine the correctness of all dimensions and minor details of such equipment and materials so that when incorporated in the work, correct operations will result.

109.23 RECORD DRAWINGS

The Contractor shall maintain an up-to-date set of contract documents, legibly marked, depicting all constructed improvements at the site or as otherwise specified and shall submit a complete set labeled "Project Record" to the Engineer upon completion of the project.

(a) Drawings:

1. Depths of various elements of foundation in relation to finish floor datum.
2. Horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements and project survey control.
3. Location of internal utilities and appurtenances concealed in the construction, referenced to permanent surface improvements and project survey control.
4. Field changes of dimensions and detail.
5. Changes made by Field Order or by Change Order.
6. Details not on original Contract Drawings.

(b) Specifications and Addenda:

1. Manufacturer, trade name, catalog number, and supplier of each product and item of equipment actually installed.
2. Changes made by Change Order.

109.24 MATERIALS

Unless otherwise stipulated in the Specifications, all workmanship, equipment, materials, and articles incorporated in the work covered by this contract are to be new and of the best grade of their respective kinds for the purpose. The Contractor shall furnish to the Engineer for the Engineer's approval, the name of the manufacturer of machinery, mechanical and other equipment, which he contemplates installing, together with their performance capacities and other pertinent information including but not limited to instruction manuals pertaining to the use and operation of such machinery, mechanical and other equipment.

When required by the Specifications, or when called for by the Engineer, the Contractor shall furnish for approval full information concerning the materials or articles which he contemplates incorporating in the work. Samples of materials shall be submitted for approval when so directed. Machinery, equipment, materials, and articles installed or used without such approval shall be at the risk of subsequent rejection.

109.25 MATERIAL INSPECTION AT PLANT

If the Engineer inspects the materials at the source, the following conditions shall be met:

- (a) The Engineer shall have the cooperation and assistance of the Contractor and the materials producer.
- (b) The Engineer shall have full entry to all parts of the plant necessary for the manufacture or production of the materials being furnished.
- (c) Adequate safety measures shall be provided and maintained.

The City reserves the right to retest all materials which have been previously tested or inspected. The retesting may be prior to or after incorporation of the materials into the work. Those materials inspected and tested after delivery on the project or after incorporation into the work that do not meet the requirements of the Contract will be rejected.

109.26 HANDLING MATERIALS

All materials shall be handled so their quality and fitness for the work is preserved. Aggregates shall be transported to the work in vehicles constructed to prevent loss or segregation of materials.

109.27 CITY FURNISHED MATERIALS

Material furnished by the Department will be made available to the Contractor at the points specified in the Contract.

The cost of handling and placing materials after they are made available to the Contractor shall be included in the contract price for the item.

The Contractor will be held responsible for all material received until it is incorporated into the work and accepted.

Demurrage charges resulting from the Contractor's failure to accept the material at the designated time and point of delivery will be deducted from monies due the Contractor.

109.28 BUY AMERICA REQUIREMENTS

All manufacturing processes, including the application of a coating, for all steel and iron products permanently incorporated in the work shall have occurred in the United States of America. All manufacturing processes are defined as "processes required to change the raw ore or scrap metal into the finished, in-place steel or iron product". This requirement will not prevent a minimal use of foreign steel or iron provided the total project delivered cost of all such steel and iron which includes the cost of delivering the steel and iron to the project, does not exceed one-tenth of one percent of the total contract cost or \$2,500, whichever is greater.

With every steel or iron product that requires pre-inspection, pretesting, certified test results, or certificate of compliance, the Contractor shall provide a certification by each supplier, distributor, fabricator, and manufacturer that has handled the steel or iron product that every process, including the application of a coating, performed on the steel or iron product either has or has not been carried out in the United States of America. These certifications shall create a chain of custody trail that includes every supplier, distributor, fabricator, and manufacturer that handles the steel or iron product. The lack of these certifications will be justification for rejection of the steel or iron product. Upon completion of the project, the Contractor shall certify in writing of compliance with this requirement and provide evidence of the project delivered cost of all foreign steel or iron permanently incorporated into the project.

109.29 TESTING OF MATERIALS

Tests and Inspections. The City will employ and pay for the services of an approved testing laboratory to perform specified services for the field testing of:

- (a) Soil Compaction Control
- (b) Cast-in-Place Concrete
- (c) Asphalt Concrete Pavement

The Contractor shall perform, or arrange for the performance, and pay all costs in connection therewith, all other tests and inspections required by the contract documents. The Contractor shall pay for all testing laboratory services in connection with tests verifying conformance of proposed materials and installation with project requirements including, but not limited to, mix designs, riprap, gradation tests for embedment, fill and backfill materials. The City shall pay for testing laboratory services in connection with tests on materials after incorporation into the project, unless retesting of materials is necessary because of the failure of the materials to meet the project requirements. The Contractor shall obtain the City's written acceptance of the testing laboratory before having services performed.

- (a) Requirements for Independent Testing Consultants.
 1. Comply with "Recommended Requirements for Independent Laboratory Qualifications", latest edition, published by the personnel, facilities, equipment and other qualification data, including; Report of inspection of facilities made by the American Council of Independent Laboratories, and basic requirements of

ASTM E-329, "Standards of Recommended Practice for Inspection and Testing Agencies for Concrete, Steel, and Bituminous Materials as Used in Construction", latest edition.

2. Submit to the City for prior approval, the name and address of the proposed testing laboratory with description of personnel, facilities, equipment and other qualification data. Certificate of calibration of applicable testing equipment made by an accredited calibrated agency within 12 months prior to submittal date.

(b) Test Reports

1. Testing agency shall be instructed to submit directly to the City three (3) copies of all reports of tests or inspections made, showing compliance, irregularities or deficiencies, identifying project, date of test, location in project, applicable specification section, applicable standard(s) for compliance, observations relating to compliance, name and signature of inspector.

(c) Contractor Responsibilities

1. Furnish access to the work, materials, equipment and labor required to accommodate inspections and test when testing laboratory is retained by the City. In the event retesting of materials, or recompaction is necessary because of the failure of the materials or compaction to meet the project requirements, the cost of said retesting shall be borne by the Contractor. Cost of said retest will be deducted from the final payment amount due the Contractor, or invoiced directly to the Contractor at the City's discretion.

109.30 DIFFERING SITE CONDITIONS

The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Project Engineer/Manager of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract.

The Project Engineer/Manager shall promptly investigate the site conditions after receiving the notice. If the Engineer/Project Manager determines that conditions do materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions encountered, an equitable adjustment shall be made under this clause and the contract modified accordingly.

No request by the Contractor for an equitable adjustment to the contract shall be allowed, unless the Contractor has given the proper written notice and the Project Engineer/Manager determine the condition is in fact a Differing Site Condition; furthermore, the City of Colorado Springs shall not be liable for an equitable adjustment under this clause if the Contractor disturbed or repaired the condition without prior inspection by the Project Engineer/Manager, or if the contract is completed.

109.31 CHANGED CONDITIONS

When additional information regarding foundation or other conditions becomes available as a result of the excavation work, further testing, or otherwise, it may be found desirable and the City shall have the right to change the location, alignment, dimensions, or design of the work to meet such conditions.

During the progress of the work, the City may find it advisable, and it shall have the right to omit portions of the work and to increase or decrease any items as may be deemed necessary or desirable without changing the unit prices in the proposal, provided such increase or decrease does not exceed fifteen percent (15%) of the total monetary value of the original contract. If the material or labor involved in such a change is not included in the unit

prices of the contract, but forms an inseparable part of the work to be done under this contract, and the delay involved in asking for the advertising for bids and the letting of a new contract therefore might result in damage, injury, or impairment of the plant, work system or other property belonging to the City, the City may, in its discretion, declare an emergency and require the Contractor to proceed with such alterations and additions. The Contractor will not, however, be required to perform such extra work and furnish such extra materials without a written Change Order from the Engineer. The parties hereto shall agree upon any sum to be paid for said work in advance of performing it. The Contractor shall make no claims for extra work unless the work was performed as authorized by a properly executed Change Order. Additional compensation or credit for work covered by a Change Order must be determined by one or a combination of the following methods:

- (a) Unit bid prices previously approved.
- (b) An agreed lump sum.
- (c) The actual cost of:
 - 1. Labor (including foremen and extra supervision if required).
 - 2. Materials entering permanently into the work.
 - 3. Rental cost of construction plant and equipment used for the work.
 - 4. Power and fuel required for the operation of power equipment used for change order work.
 - 5. The Contractor shall furnish a breakdown of cost including but not limited to bills, payrolls, invoices and vouchers covering the cost of the work. To this cost there shall be added a fixed fee to be agreed upon, but not to exceed fifteen percent (15%) of the cost of work. The fee shall be compensation to cover the cost of management, insurance, benefits, bond, profit and any other general expenses.
- (d) The cost of Subcontractor's work shall be determined according to methods 2 and 3, above, to which the Contractor may add a maximum of fifteen percent (15%), which amount shall be compensation for the cost of the Contractor's management, insurance, benefits, bond, profit, and any other general expenses.

109.32 CHANGES IN THE WORK

The City may make written changes in the Plans and Specifications or scheduling of the contract within the general scope of this contract at any time by a written order. If such changes add to or deduct from the Contractor's cost of the work, the contract prices shall be adjusted accordingly. All such work shall be executed under the conditions of the original contract except that any claim for an extension of time caused thereby shall be allowed and adjusted at the time of ordering such change or at such time as it can be ascertained.

In giving instructions, the Project Engineer shall have authority to make minor changes in the work not involving additional cost, and not inconsistent with the purpose and scope of the work.

No claim for additional work or change shall be made unless so ordered by a properly executed Change Order, and no claim for an addition to the contract sum shall be valid unless the additional work or change was so ordered by a properly executed change order.

The Contractor shall proceed with the work as changed and the value of any additional work or change shall be determined as provided for in the Contract.

It shall be expressly understood and agreed to by the Contractor that no claim for additional work or money will be recognized by the City unless same has been so ordered by a properly executed Change Order.

109.33 PROTESTS

If the Contractor considers any work demanded of him to be outside the requirements of the contract, or considers any decision, record or ruling of the Project Engineer, the inspectors, or

Project Manager to be unfair, he shall upon such work being demanded or such decision, record or ruling being made, proceed without delay to perform the work or to conform to the decision, record or ruling, and, within five (5) days of receiving said decision, record or ruling request that such decision, record or ruling be provided in writing, if not already provided. The Contractor shall then within ten (10) days after receipt of the written instructions or decisions, file a written formal protest with the Project Engineer, stating clearly and in detail the basis of his objection. Except for such protests or objections as are made of record in the manner herein specified and within the limit stated, the written records, rulings, instructions, or decisions of the Project Engineer shall be final and conclusive. Instructions and decisions of the Project Engineer contained in letters transmitting drawings to the Contractor shall be considered as written instructions or decisions subject to protest or objections as herein provided. In the event of a formal protest, the formal protest shall be presented to the City Engineer and the City Contracting Manager; their decision shall be considered final and conclusive for the City of Colorado Springs. Nothing in this section precludes a Contractor from pursuing any other remedies afforded by the laws of the State of Colorado once the remedies afforded under this contract have been complied with and exhausted.

Subcontractors shall follow the above instructions with the exception that the protest is filed with the General Contractor and a copy of the protest immediately copied to the City Project Manager/Engineer.

109.34 REMOVAL AND SUSPENSION FOR DEFECTIVE WORK

All work or material which has been rejected shall be remedied or removed and replaced in an acceptable manner. Additional compensation will not be allowed for such removal and replacement. Any work done beyond the lines and grades shown on the drawings, except as herein provided, will be considered as unauthorized and will not be measured or paid for. Work so done may be ordered removed at the Contractor's expense. Should the Contractor fail to comply promptly with any order of the Engineer made under the provisions of this paragraph, the Engineer shall have the authority to cause said work to be removed and to deduct the cost from any money due, or to become due, from the Contractor. At any time during the course of construction of this project if the provisions of the Plans, Specifications, or contract provisions are being violated by the Contractor or his employees, the Engineer shall have the right and authority to order all construction to cease or material to be removed, until arrangements satisfactory to the Engineer are made by the Contractor for resumption of the work in compliance with the provisions of the contract.

109.35 CLEANING UP AND FINAL INSPECTION

The Contractor shall at the completion of the work, remove all rubbish from and about the work and all tools, equipment, scaffolding, and surplus materials and shall leave the work clean and ready for use. In case of dispute, the City may remove the rubbish and surplus materials and charge the cost to the Contractor.

All sewers, conduits, pipes, and appurtenances and all tanks, pump wells, chambers, buildings, and other structures shall be kept clean during construction and as the work or any part thereof approaches completion, the Contractor shall systematically and thoroughly clean and make any needed repairs to them. Contractor shall furnish at Contractor's own expense, suitable tools and labor for removing all water and cleaning out all dirt, mortar, and foreign substances. Any undue leakage of water into the structures such as to make the work, in the opinion of the Engineer, fall short of first class work, shall be promptly corrected by the Contractor at Contractor's own expense.

Cleaning and repairs shall be arranged, so far as practicable, to be completed upon finishing the construction work. Notice to begin the final cleaning, and repairing, if such is needed, will be given by the Engineer, who at the same time will make his final inspection of the work. The Engineer will not approve the final estimate of any portion of the work until after the final inspection is made and the work found satisfactory.

109.36 CUTTING AND PATCHING

The Contractor shall do all cutting, fitting, or patching of work that may be required to make its several parts fit together or to receive the work of other contractors shown upon, or reasonably implied by the Plans and Specifications for the completed project.

Cold or wet weather conditions that do not permit a permanent asphalt pavement replacement will require a minimum 2" bituminous pavement patch prior to opening the area to traffic as a temporary measure until the permanent asphalt pavement replacement can be installed. This item shall be incidental to any work requiring such removal or asphalt and will be considered to be included in the unit price of the related item of work.

Any cost caused by defective or ill timed work shall be borne by the Contractor.

The Contractor shall not endanger any work by cutting, digging, or otherwise and shall not cut or alter the work of any other contractor without the consent of the Engineer.

109.37 FINAL TESTS

After completion of the work, the Contractor shall make any and all tests required by the Specifications or by Municipal, State or Federal regulations, and where so provided in said regulations shall furnish the City with certificates of inspection by the Municipal, State or Federal regulation bodies. The Contractor shall also make all tests required by the National Board of Fire Underwriters for the purpose of determining insurance rates or other protection of the City or the public.

109.38 CORRECTION OF WORK AFTER FINAL PAYMENT

Neither the final payment nor any provision in the contract documents shall relieve the Contractor of the responsibility for negligence or faulty materials or workmanship within the extent and periods provided by law and by this contract.

109.39 PERSONAL LIABILITY OF PUBLIC EMPLOYEES

The Engineer or authorized representatives are acting solely as agents and representatives of the City when carrying out and exercising the power or authority granted to them under the Contract. There shall not be any liability on them either personally or as employees of the City.

109.40 NO WAIVER OF LEGAL RIGHTS

Upon written notice that the Contractor considers all work complete, the Engineer shall make a pre-final inspection with the Contractor and shall notify the Contractor in writing of incomplete or defective work revealed by the inspection. The Contractor shall promptly remedy such deficiencies.

After the Contractor has remedied all deficiencies to the satisfaction of the Engineer and delivered all construction records including record drawings, maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection and other documents (all as required by the Contract Documents), the Contractor shall be promptly issued a Certificate of Completion by the Engineer stating that the work is acceptable.

Upon completion of the contract, the City will make final inspection and notify the Contractor of acceptance. Final acceptance shall not preclude the City from correcting any measurement, estimate, or certificate made before or after completion of the Contract, nor from recovering from the contractor or surety, or both, overpayments sustained because the Contractor failed to fulfill the obligations under the contract. A waiver on the part of the City of Colorado Springs any breach of any part of the Contract shall not be held to be a waiver of any other breach.

The contractor without prejudice to the terms of the Contract shall be liable to the City, for latent defects, fraud, or such gross mistakes, as may amount to fraud, or as regards the City's rights under any warranty or guarantee.

For all non-federally funded projects, the following additional requirements shall apply:

- (a) All work shall be constructed in compliance with standard construction codes, and all materials and workmanship must be guaranteed for a period of two years from the date of final acceptance. The Contractor guarantee period (two-year warranty period) will not begin until the contract is 100 percent complete, as determined by the Engineer. Acceptance of the 100 percent complete contract shall be requested in writing by the Contractor. Any item requiring repair and/or replacement prior to expiration of the two-year warranty period shall be guaranteed for a period of one-year after the date of said correction or repair or for the remainder of the two-year warranty period, whichever is longer.
- (b) In placing orders for equipment, the Contractor shall purchase same only under a written guarantee from the respective manufacturers that the equipment supplied will function satisfactorily as an integral part of the completed project in accordance with the Plans and Specifications. Furthermore, the Contractor shall require that the manufacturer agree in writing at the time order of equipment is placed that manufacturer will be responsible for the proper functioning of the equipment in cooperation with the Contractor, and that whenever necessary during the installation period or tuning up period following construction period, the manufacturer will supply without additional cost to the City, such superintendence and mechanical labor and any adjustments and additional parts and labor needed to make the equipment function satisfactorily, even if the same was not shown on approved shop drawings.

109.41 ACCEPTANCE

- (a) *Partial Acceptance.* If, during the prosecution of the project, the Contractor satisfactorily completes a unit or portion of the project, such as a structure, an interchange, or a section of road or pavement that can be used advantageously for traffic, the Engineer may make final inspection of that unit. If the Engineer finds that the unit has been satisfactorily completed in compliance with the Contract, the Contractor may be relieved of further responsibility for that unit except as otherwise provided in these general provisions. Partial acceptance shall not void or alter any of the terms of the Contract.
- (b) *Final Acceptance.* Upon notice from the Contractor of presumptive completion of the entire project, the Engineer will make an inspection. If the work provided for by the Contract has been satisfactorily completed, that inspection shall constitute the final inspection and the Engineer will notify the Contractor in writing of final acceptance indicating the date on which the project was inspected and accepted.

If the inspection discloses any unsatisfactory work, the Engineer will give the Contractor a written list of the work needing correction. Upon correction of the work, another inspection will be made. If the work has been satisfactorily completed, the Engineer will notify the Contractor in writing of the date of final inspection and acceptance. Final acceptance under this subsection does not waive any legal rights contained in subsection 109.40.

SECTION 110 PAYMENTS AND ACCEPTANCE OF WORK

110.00 PAYMENTS AND RETAINAGE

Payments will be made, and required retainage withheld if applicable, in accordance with this section as the work progresses at the end of each month or as soon thereafter as practicable in compliance with Title 24, Article 91, Section 103 and Section 110, Colorado Revised

CITY OF COLORADO SPRINGS

Statutes, on statements made and approved by the Engineer. In preparing statements, only completed work will be taken into consideration. No payment will be made for materials in storage and/or delivered to the site, unless otherwise approved by the City.

Payment for work performed by the contractor under these contract documents will be made at the approved unit price or lump sum price for each of the several items as listed in the bid and measured as hereinafter specified. Such payment shall compensate the Contractor for all costs in connection with furnishing all labor, equipment and material required and performing the operations necessary to complete the item in accordance with the contract documents. All incidental work essential to the completion of the project in a workmanlike manner, and including cleanup and disposal of waste or surplus material, shall be accomplished by the contractor without additional cost to the City. The cleanup and disposal of waste or surplus material shall be performed during construction or as soon after as is reasonably possible in order to better maintain the aesthetics and safety of the construction area. The quantities listed in the bid are estimated quantities, and are listed only for convenience in comparing bids. Payment will be made for the actual quantities constructed or installed, unless otherwise noted in these Contract Documents. However, any changes to plan quantity must be approved through proper change order procedures, said quantities being measured as specified in the Contract Documents.

- (1) If the contract exceeds ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00), and is for the construction, alteration, or repair of any highway, public work, or public improvement, structure, and; the contractor has provided Performance, and Payment Bonds: the City of Colorado Springs shall authorize partial progress payments of the amount due under this contract monthly, or as soon thereafter as practicable, to the contractor, if the contractor is satisfactorily performing the contract. If the City of Colorado Springs finds that satisfactory progress is being achieved during any period for which progress is to be made, the City of Colorado Springs may authorize payment to be made in full without withholding retainage. However, if satisfactory progress has not been made, the City of Colorado Springs may retain a maximum of ten percent (10%) of the amount of the requested payment until satisfactory progress is achieved. When the work is substantially complete, the City of Colorado Springs may retain from the remaining unpaid balance that amount the City Contracting Manager, at the advice of the City's project manager, considers adequate for protection of the City, suppliers and subcontractors, and shall release to the Contractor all the remaining funds associated with completed and acceptable work.

The withheld percentage of the contract price of any such work, improvement, or construction shall be retained on an invoice-to-invoice basis and shall not be cumulative. In other words, if the contractor is not performing satisfactorily the City of Colorado Springs will hold ten percent (10%) of what is actually due to the contractor. for example, if the contractor is behind schedule and has successfully completed fifty percent (50%) of the work, the City of Colorado Springs will only pay forty percent (40%) of the invoice, withholding ten percent (10%) of what is due until the contractor gets back on schedule. Once the City of Colorado Springs determines that satisfactory progress is being made in all phases of the contract, then no retainage will be held on successfully completed work.

- (2) Whenever a contractor receives payment pursuant to this section, the contractor shall make payments to each of the subcontractors of any amount actually received which were included in the contractor's request for payment to the City for such subcontracts. The contractor shall make such payments within seven (7) calendar days of receipt of payments from the City in the same manner as the City is required to pay the contractor under this section if the subcontractor is satisfactorily performing under the contract with the contractor. The subcontractor shall pay all suppliers, sub-

subcontractors, laborers, and any other persons who provide goods, materials, labor, or equipment to the subcontractor any amounts actually received which were included in the subcontractor's request for payment to the contractor for such persons, in the same manner set forth in this subsection (2) regarding payments by the contractor to the subcontractor. If the subcontractor fails to make such payments in the required manner, the subcontractor shall pay those suppliers, sub-subcontractors, and laborers interest in the same manner set forth in this subsection (2) regarding payments by the contractor to the subcontractor.

At the time a subcontractor submits a request for payment to the contractor, the subcontractor shall also submit to the contractor a list of the subcontractor's suppliers, sub-subcontractors and laborers. The contractor shall be relieved of the requirements of this subsection (2) regarding payment in seven (7) days and interest payment until the subcontractor submits such list. If the contractor fails to make timely payments to the subcontractor as required by this section, the contractor shall pay the subcontractor interest as specified by contract or at the rate of fifteen percent (15%) per annum, whichever is higher, on the amount of the payment which was not made in a timely manner. The interest shall accrue for the period from the required payment date to the date on which payment is made. Nothing in this subsection (2) shall be construed to affect the retention provisions of any contract.

- (3) **CONTRACTS UNDER ONE HUNDRED FIFTY THOUSAND DOLLARS:** If the contractor is not progressing in accordance with the project schedule or not performing quality work in accordance with the specifications, the Project Manager may, at that point start withholding retainage up to and including ten percent (10%) of the total contract amount.

110.01 CORRECTION OF WORK BEFORE FINAL PAYMENT

The Contractor shall promptly remove from the premises all materials and work condemned by the Engineer as failing to meet contract requirements, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute Contractor's own work in accordance with the contract and without expense to the City and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

All removal and replacement work shall be done at the Contractor's expense. If the Contractor does not take action to remove such condemned work and materials within ten (10) days time thereafter, the City may, upon ten (10) days written notice, sell such materials at auction or at private sale and retain the proceeds without compensation to the Contractor.

110.02 PAYMENTS WITHHELD PRIOR TO FINAL ACCEPTANCE OF WORK

The City may withhold or nullify the whole or part of any certificate of payment to such extent as may be necessary to protect it from loss caused by:

- (a) Defective work not remedied.
- (b) Claims filed or reasonable evidence indicating probable filing of claims by other parties against the Contractor.
- (c) Failure of the Contractor to make payments properly to subcontractors or for material or labor.
- (d) Damage to another contractor.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

110.03 ACCEPTANCE OF FINAL PAYMENT

Upon notice that the work is fully completed, the Engineer will make a final inspection. If the Engineer finds the work acceptable under the contract and the contract is fully performed, the work may be finally accepted by the Engineer under the terms and conditions of the contract. The entire balance found by the Engineer to be due the Contractor, including the retained percentage, less any retention based on; (1) the Engineer's estimate of the fair value of the claims against the Contractor; and (2) the cost of completing the incomplete or unsatisfactory items of work with specified amounts for each incomplete or defective item of work; and (3) retentions required by law, shall be due and payable to the Contractor. The date of completion is the date as specified in the Certificate of Completion issued by the Engineer.

Upon completion of the work under the contract and before the Contractor shall receive or be paid for the Engineer's final statement, the City Contracts Office shall post a notice on the web-site www.coloradosprings.gov that the City has accepted such work as completed according to the Plans and Specifications and rules set forth in the contract; that the Contractor is entitled to final settlement; that after the date specified in the Notice, the City will pay the full balance due under the contract; and that persons having claims for labor or material furnished the Contractor must present their claim to the City Contracts Office prior to the date specified for such payment. Nothing herein shall be construed as relieving the Contractor and the sureties on the Contractor's bonds from any claim or claims for work or labor done or materials or supplies furnished in the execution of the contract.

The making and acceptance of the final payment shall constitute a waiver of all claims by the Contractor against the City.

If, after the work has been substantially completed, full completion thereof is materially delayed through no fault of the Contractor, and the Engineer so certifies, the City may, upon Certificate of Completion by the Engineer, and without terminating the contract, make payment of the balance due for that portion of the work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment and acceptance of the project shall constitute a waiver of all claims by the Contractor but acceptance shall not constitute a waiver of City claims against the Contractor.

Advertising for Final Payment and processing of the Final Pay Request shall not take place until after the Contractor has submitted Sales and Use Tax Forms to the City of Colorado Springs and said forms have been reviewed and approved by the City Sales Tax Office.

SECTION 111 TERMINATION OF CONTRACT

111.00 THE CITY'S RIGHT TO TERMINATE CONTRACT

In accordance with the City Charter, performance of the City's obligations under this contract is expressly subject to appropriation of funds by the City Council. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the City's obligations under this contract, or appropriated funds may not be expended due to City Charter spending limitations, then the City may terminate this contract without compensation to the Contractor.

If the termination is for failure of the contractor to fulfill the contract obligations, the City may terminate the subject contract for Default, and complete the work by contract or otherwise, and the contractor shall be liable for any additional cost incurred by the City. Prior to issuing a Termination for Default, the City will issue a Notice to Cure allowing the contractor a minimum of ten (10) calendar days to prepare a plan to correct whatever failures are causing the contract obligation failure(s). The City will have the right to accept the plan of correction or to continue with the Termination for Default.

Where the contract has been terminated for Default by the City, said termination shall not affect or terminate any of the rights of the City as against the Contractor or his surety then existing or which may thereafter accrue because of such default. Any retention or payment of monies by the City due the Contractor under the terms of the contract shall not release the Contractor or the Contractor's surety from liability for the Contractor's default.

If the Contractor should become bankrupt and a relief from stay is granted to the City, or if the Contractor should make a general assignment for the benefit of Contractor's creditors, or if a receiver should be appointed on account of Contractor insolvency, or if Contractor should persistently or repeatedly refuse or should fail, except in cases for which extensions of time are provided, to supply enough properly skilled workmen or materials, or if Contractor should fail to make payments to subcontractors or for material or labor so as to affect the progress of the work, or breach, or substantially violate any provision of the contract, then the City, upon the written notice of the Engineer may, without prejudice to any other right or remedy, terminate the contract for default and take possession of the premises and of all materials, tools, equipment, and other facilities installed on the work and paid for by the City, and finish the work by whatever method the City may deem expedient. In such cases, the Contractor shall not be entitled to receive any further payment under the contract.

The City may also terminate this contract for convenience of the City, upon written notice to the Contractor, without additional compensation to the Contractor, unless the Contractor has started or performed portions of the contract prior to receiving such notice. If performance of the contract is underway, the City will be liable only for the portions of work actually satisfactorily completed up to the point of the issuance of the Notice of Termination for Convenience. In no event shall the City be liable for unperformed work or anticipated profits or overhead. Upon receipt of this notice the Contractor shall immediately: discontinue all services affected (unless the notice directs otherwise), and deliver to the City all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

111.01 COMPLETION OF CONTRACTS IN DEFAULT

If for any reason a contract is declared in default, the City shall have the right without process or action at law to take over all or any portion of the work and complete it in any manner the City deems most appropriate. Written notice shall be given the Contractor by the City that the contract has been declared in default, and upon receiving such notice, the Contractor shall peaceably relinquish possession of the said work or the parts thereof specified in the notice.

The City may, at its option and at a rental which it considers reasonable, retain all material, equipment, and tools on the work until the work has been completed.

Neither the City nor any officer, agent or employee of the City shall be in any way liable or accountable to the Contractor or the Contractor's surety for the method by which the completion of the said work, or any portion thereof, may be accomplished or for the price paid. Should the cost of completing the work be in excess of the original contract price, the Contractor and Contractor's surety shall be responsible for such excess cost. Should the cost of such completion, including all proper charges, be less than the original contract price, the amount so saved shall accrue to the City. Neither by taking over the work nor by declaring the contract in default shall the City forfeit the right to recover damages from the Contractor or Contractor's surety for failure to complete the entire contract.

111.02 REMOVAL OF EQUIPMENT

Except as provided in subsection 111.01 above, in the case of termination of this contract before completion from any cause whatever, the Contractor, if notified to do so by the City, shall promptly remove any part or all of Contractor's equipment and supplies from the

CITY OF COLORADO SPRINGS

property of the City, failing which the City shall have the right to remove such equipment and supplies at the expense of the Contractor.

SCHEDULE E

Clauses for Contracts Subject to Federal Requirements

1. DISPUTES

- a. All administrative and contractual disputes arising from or related to this Contract, which are not resolved by mutual agreement, may be decided by recourse to an action at law or in equity in accordance with subparagraph b) of this provision. Until final resolution of any dispute hereunder, the Contractor shall diligently proceed with the performance of this Contract as directed by the City of Colorado Springs Procurement Services Representative. For purposes of this Contract, termination for convenience shall not be deemed a dispute.
- b. The City of Colorado Springs and the Contractor agree to notify each other in a timely manner of any claim, dispute, or cause of action arising from or related to this Contract, and to negotiate in good faith to resolve any such claim, dispute, or cause of action. To the extent that such negotiations fail, the City of Colorado Springs and the Contractor agree that any lawsuit or cause of action that arises from or is related to this Contract shall be filed with and litigated only by the Colorado District Court for El Paso County, CO.

2. TERMINATION

- a. The City may terminate this Contract in whole or, from time to time, in part, for the City's convenience or because of the failure of the Contractor to fulfill the contract obligations.

The City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall:

- i). Immediately discontinue all services affected (unless the notice directs otherwise), and
 - ii). Deliver to the City all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.
- b. If the termination is for the convenience of the City, the City's delegated representative shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Seller shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided.

CITY OF COLORADO SPRINGS

- c. If the termination is for failure of the Contractor to fulfill the contract obligations, the City may complete the work by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the City. Prior to issuing a Termination for failure to fulfill the contract obligations, the City will issue a Notice to Cure allowing the Contractor ten (10) calendar days to prepare a plan to correct whatever failures are causing the contract obligation failure (s).
- d. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.
- e. Disputes under this clause shall be governed by the provisions of the Disputes Clause of this Contract, under Article 1 of this Exhibit. The parties agree that termination for convenience is not a dispute for purposes of this Contract.
- f. The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

3. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled,

terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- (8) *Subcontracts*. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.
- (9) *Incorporation by reference*. The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Deputy Assistant Secretary may designate.
- (10) *Incorporation by operation of the order*. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.
- (11) *Adaptation of language*. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings. [43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

4. EQUAL EMPLOYMENT OPPORTUNITY REPORTS AND OTHER REQUIRED INFORMATION

(a) Requirements for prime contractors and subcontractors.

- (1) Each prime contractor and subcontractor shall file annually, on or before the September 30, complete and accurate reports on Standard Form 100 (EEO-1) promulgated jointly by the Office of Federal Contract Compliance Programs, the Equal Employment Opportunity Commission and Plans for Progress or such form as may hereafter be promulgated in its place if such prime contractor or subcontractor (i) is not exempt from the provisions of these regulations in accordance with § 60-1.5; (ii) has 50 or more employees; (iii) is a prime contractor or first tier subcontractor; and (iv) has a contract, subcontract or purchase order amounting to \$50,000 or more or serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes: *Provided*, That any subcontractor below the first tier which performs construction work at the site of construction shall be required to file such a report if it meets requirements of paragraphs (a)(1) (i), (ii), and (iv) of this section.

- (2) Each person required by § 60-1.7(a)(1) to submit reports shall file such a report with the contracting or administering agency within 30 days after the award to him of a contract or subcontract, unless such person has submitted such a report within 12 months preceding the date of the award. Subsequent reports shall be submitted annually in accordance with § 60-1.7(a)(1), or at such other intervals as the Deputy Assistant Secretary may require. The Deputy Assistant Secretary may extend the time for filing any report.
- (3) The Deputy Assistant Secretary or the applicant, on their own motions, may require a contractor to keep employment or other records and to furnish, in the form requested, within reasonable limits, such information as the Deputy Assistant Secretary or the applicant deems necessary for the administration of the order.
- (4) Failure to file timely, complete and accurate reports as required constitutes noncompliance with the prime contractor's or subcontractor's obligations under the equal opportunity clause and is ground for the imposition by the Deputy Assistant Secretary, an applicant, prime contractor or subcontractor, of any sanctions as authorized by the order and the regulations in this part.

(b) Requirements for bidders or prospective contractors—

- (1) **Certification of compliance with Part 60-2: Affirmative Action Programs.** Each agency shall require each bidder or prospective prime contractor and proposed subcontractor, where appropriate, to state in the bid or in writing at the outset of negotiations for the contract: (i) Whether it has developed and has on file at each establishment affirmative action programs pursuant to Part 60-2 of this chapter; (ii) whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; (iii) whether it has filed with the Joint Reporting Committee, the Deputy Assistant Secretary or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.
- (2) **Additional information.** A bidder or prospective prime contractor or proposed subcontractor shall be required to submit such information as the Deputy Assistant Secretary requests prior to the award of the contract or subcontract. When a determination has been made to award the contract or subcontract to a specific contractor, such contractor shall be required, prior to award, or after the award, or both, to furnish such other information as the applicant or the Deputy Assistant Secretary requests.

(c) Use of reports. Reports filed pursuant to this section shall be used only in connection with the administration of the order, the Civil Rights Act of 1964, or in furtherance of the purposes of the order and said Act.[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

5. CONSTRUCTION WAGE RATE REQUIREMENTS (DAVIS BACON) (From FAR 52.222-6)

The term “Contracting Officer” herein shall refer to the City of Colorado Springs Contracting Specialist assigned to this contract.

(a) Definition.-“Site of the work”-

(1) Means-

- (i) *The primary site of the work.* The physical place or places where the construction called for in the contract will remain when work on it is completed; and
- (ii) *The secondary site of the work, if any.* Any other site where a significant portion of the building or work is constructed, provided that such site is-

CITY OF COLORADO SPRINGS

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided-

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Construction Wage Rate Requirements statute on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Construction Wage Rate Requirements (Davis-Bacon Act) poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

CITY OF COLORADO SPRINGS

(c)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Construction Wage Rate Requirements statute have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

CITY OF COLORADO SPRINGS

6. CONTRACT WORK HOURS AND SAFETY STANDARDS (from FAR 52.222-4)

The term "Contracting Officer" herein shall refer to the City of Colorado Springs Contracting Specialist assigned to this contract.

The term "Government" herein shall refer to the City of Colorado Springs and any interested federal or state entity.

(a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37).

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards statute

(d) Payrolls and basic records.

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

7. CLEAN AIR ACT

CITY OF COLORADO SPRINGS

By signing this Contract, the Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Further, the Contractor agrees to include this clause in all subcontracts in excess of \$150,000.

8. DEBARMENT AND SUSPENSION

By signing this Contract, the Contractor certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions(Federal, State, or local) terminated for cause or default.

9. BYRD ANTI-LOBBYING AMENDMENT

By signing this Contract, the Contractor certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Further, the Contractor certifies that it has not engaged in lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. The Contractor must require the same certification from all subcontractors with subcontracts valued in excess of \$100,000 under this Contract.

10. SMALL BUSINESS REQUIREMENTS

The Contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on subcontract solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources for subcontracting;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

11. PROCUREMENT OF RECOVERED MATERIALS

The Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

SCHEDULE F

PROJECT SPECIFIC SPECIAL PROVISIONS AND MEASUREMENT AND PAYMENT

The **Project Specific Special Provisions** amend or supplement the **General Provisions** of the Construction Contract and other provisions of the Contract Documents as indicated below. All Provisions, which are not so amended or supplemented, remain in full force and effect.

1.0 STANDARD SPECIFICATIONS

1.01 STANDARD SPECIFICATIONS

The Standard Specifications for this project shall be the most recent version of the “CITY OF COLORADO SPRINGS ENGINEERING DIVISIONS STANDARD SPECIFICATIONS”, except as modified hereinafter, which are incorporated in the contract documents by reference as though embodied herein in their entirety.

All Contractors on this project are required to have on the job site and utilize the current updated copy of the City of Colorado Springs Engineering Divisions Standard Specification.

Copies are available on line through the City of Colorado Springs internet site or for purchase from the City of Colorado Springs,– Office Services Unit, 30. South Nevada Avenue, Suite L01, Colorado Springs, during regular business hours.

1.02 UTILITY SPECIFICATIONS

Listed below are utility department specifications that should be utilized (current issue or revision) in the construction and/or protection of the respective utility lines. No work involving water, wastewater, electric, or gas lines is planned to be executed with this project.

Hard copies of these specifications are available at Colorado Springs Utilities Development Services, 111 S. Cascade Avenue, Suite 105, Colorado Springs, Colorado 80903. The specifications can also be accessed online at www.csu.org/pages/standards-bulletins.aspx.

UTILITY SPECIFICATIONS

Colorado Springs Utilities
Wastewater Line Extension
And Service Standards

Colorado Springs Utilities
Water Line Extension
And Service Standards

Colorado Springs Utilities
Natural Gas Line Extension
And Service Standards

Colorado Springs Utilities
Electric Line Extension
And Service Standards

2.0 PROJECT SPECIFIC SPECIAL CONDITIONS

2.01 GENERAL

Work to be completed under this contract consists of furnishing all labor, materials, equipment, accessories, and performing all operations to complete the project work in accordance with the Drawings and Specifications.

All work shall be completed in accordance with the most recent version of the “**City of Colorado Springs Engineering Divisions Standard Specifications,**” referred to hereinafter as “**Standard Specifications**”, except as modified in these **Special Conditions** and the following **Special Technical Specifications** contained in Schedule F of this document.

The **Contractor** shall visit the jobsite to carefully examine the proposed work. The **Contractor** shall also thoroughly review the Drawings and Specifications. The **Contractor** shall satisfy himself as to the character, quality, and quantities of work to be performed, materials to be furnished, and as to the requirements of these Specifications.

The **Contractor** shall take every precaution against damage to any part of the project including but not limited to the existing trail surfaces, nearby concrete walls, riprap bank armoring, landscaping and facilities, and roadway bridges. Specific attention shall be given to the protection of the private land, adjacent facilities, and existing utilities. These items shall be protected from damage from any cause, including all surface and subsurface water, whether arising from the execution of work or any other cause. The **Contractor** shall rebuild, repair, restore, and make good all damages to any portion of the work due to causes beyond the control of and without the fault of negligence of the **Contractor**, including but not restricted to, acts of God, of the public enemy, or of governmental authorities.

2.02 PROJECT DESCRIPTION

General

The project primarily consists of removal of a failed vertical concrete wall drop structure and the replacement of the failed drop structure with a grouted boulder drop structure. The project is located on Cottonwood Creek approximately 100 feet upstream of the Academy Boulevard bridge. One grouted sloping boulder structure with a sheet pile cutoff wall will be placed between the existing riprap banks at the location of the failed drop structure.

2.03 CONTROL OF WORK

In case of any discrepancies in any of the Drawings, Specifications, Special Conditions, and Technical Specifications, the order of precedence is as follows:

- a) Project Specific Special Conditions
 - b) Special Technical Specifications
 - c) Plans
 - i) Detailed Plans
 - ii) Standard Plans
- (Figure dimensions will govern over scaled dimensions on all plans)
- d) General Provisions
 - e) City of Colorado Springs Engineering Division Standard Specifications
 - f) Colorado Springs Utilities Specifications

2.04 OWNER

The City of Colorado Springs (hereinafter referred to as **Owner**) shall administer this project including the finalization of any change orders, pay estimates and payments of such, acceptance of work, and other matters as stipulated in these Contract Documents.

2.05 ENGINEER

Engineer refers to the City Engineer of Colorado Springs or designated representative.

2.06 DRAWINGS

The drawings for this project are separate from the Contract Documents book and are entitled “**May 2015 FEMA Projects, Cottonwood Creek Cutoff Wall/Grade Control Structure – FLD004**” (hereinafter referred to as **The Construction Plans or The Plans**).

CONSTRUCTION LIMITS

The **Contractor** shall limit all construction activities to within the "Limits of Disturbance" as shown in **The Construction Plans** and areas for which construction access and construction staging has been obtained and permitted by the **Contractor**.

If the disturbance does not conform to the 404 permit acquired by the **Owner**, approval of the additional disturbance by the USACOE will be required if the disturbance is within the "Waters of the U.S." or adjacent wetland areas. Disturbance to vegetated areas outside the Limits of Disturbance will require **Owner** approval. All required approvals shall be obtained prior to any vegetated disturbance outside the limits of disturbance.

In areas where access to the construction site is not limited by existing fences, the **Contractor** shall install a 48-inch high construction fence to limit access to the construction site at the direction of the **Owner**. Maintenance of the fence and its removal at the completion of the project will be the responsibility of the **Contractor**. All material associated with the installation and maintenance of this fence will be considered incidental to the other unit prices bid for this project.

2.08 INSPECTION

At all times, representatives of the **Owner or Owner's Representative** and representatives of other agencies affected by the construction work, and the **Owner or Owner's Representative** shall have the right to enter and inspect any and all parts of the work for compliance with the Drawings and Specifications.

The **Owner or Owner's Representative** shall decide any and all questions that may arise as to the quality and acceptability of the materials furnished, the work performed, the manner of performance, and the progress of the work. He shall decide all questions that may arise as to the acceptable fulfillment of the contract. The decision of the **Owner or Owner's Representative** shall be final. The **Contractor** shall give inspection personnel a minimum of forty-eight (48) hours notice prior to needing inspection.

2.09 MATERIAL TESTING

The **Contractor** shall give the **Owner or Owner's Representative** two (2) days notice before placing concrete, grout or earthen fill so that the **Owner or Owner's Representative** may arrange for material tests. The **Owner or Owner's Representative** reserves the right to reject any request for placing concrete, grout or fill with less than two (2) days notice. The **Contractor** agrees to pay any minimum call-out charges or standby time for the tester due to his failure to pour or place on schedule for any reason except by the action of the **Owner or Owner's Representative**. **The Owner or Owner's Representative shall pay for all materials tests taken with the exception of retesting and as specified in the City General Provisions, Section 108.22**

2.10 EXISTING UTILITIES

No underground utility locating or utility potholing was performed in the design of this project. The **Contractor** shall field verify the existence and location of all existing utilities which might affect the work and shall notify the **Owner or Owner's Representative** of any utilities not shown on the construction plans. The utilities shown on the Drawings are noted for informational purposes only and are believed to be correct. However, additional utilities may be present in the area. The **Contractor** must take sole responsibility for damage to any utility line encountered whether or not shown on the Drawings and whether or not actually located in the field as shown on the Drawings. The **Contractor** shall notify the utility companies for field locations prior to the start of construction. This section is supplemental to the **City General Provisions, Section 108.09**.

If the exact location and depth of existing underground utilities are unknown, the **Contractor** shall perform all necessary exploratory excavation at his expense to locate these facilities which may affect the work prior to beginning construction. The **Contractor** shall notify the **Engineer** immediately of any utility discrepancies or conflicts.

The **Contractor** shall inform the **Owner or Owner's Representative** of existing utilities that may need to be relocated. The **Contractor** shall be responsible for contacting, coordinating, and requesting relocations from affected utility owners, and scheduling any relocation in his Work Sequence Plan to meet the Contract Time of Performance.

If the **Contractor** requests that utility companies relocate their utilities for his convenience in construction of any portion of the work, the cost of such shall be at the **Contractor's** expense.

Contract time will not be extended to account for repair of utilities that are damaged by the **Contractor** due to his negligence.

The **Contractor** will be required to contact all Utility Owners 72 hours prior to beginning excavation and/or grading.

Full compensation for compliance and cooperation, as required by this section, shall be considered to be included in the prices bid for items included on the contract bid schedule and no additional compensation will be provided.

2.11 FEES AND PERMITS

Except as noted below, the **Contractor**, prior to commencing any work, shall secure at his own expense (including fees) all of the permits required for the performance of the work. Full compensation for compliance and cooperation, as required by this section, shall be considered to be included in the prices bid for items included on the contract bid schedule and no additional compensation will be provided.

The **Owner** is in the process of obtaining an Army Corps of Engineers 404 permit and a Floodplain Development Permit for this project. Full compliance with the terms of these permits is required. The **Owner** will not award a contract for the project until the 404 permit and Floodplain Development Permit have been obtained.

The **Contractor** shall obtain at a minimum a ***an Erosion and Stormwater Quality Control Permit (ESQCP) from the City of Colorado Springs, and a Construction Dewatering Permit from the Colorado Department of Public Health and Environment.*** Due to locations of construction access the contractor may be required to obtain a ***Traffic Control/Access Permit from the City.*** If the total estimated area of construction activity for the project will exceed one (1) acre, the contractor will be required to obtain a ***Stormwater Construction Permit from the Colorado Department of Public Health and Environment.*** Areas of construction activity includes, but is not limited to clearing, grading, excavation, demolition, installation of new or improved haul and access roads, staging areas, stockpiling of fill materials, and borrow areas.

The **Contractor** shall comply with all requirements of the permits.

The **Contractor** shall submit required permits to the **Owner** for approval at or prior to the preconstruction meeting. The **Contractor** shall also submit a traffic control plan and agreement(s) with property owners for access and staging and plan showing the same at the preconstruction meeting for approval by the **Owner**. The **Contractor** shall obtain any additional permits required for the construction of the project. The **Contractor** shall comply with all conditions of all the required permits.

2.12 WASTE MATERIALS

The **Contractor** shall clean up any debris created by his construction activities and shall dispose of the same in suitable trash containers on a daily basis. All debris shall be disposed of off-site at a disposal site approved by the **Owner**. Should the **Contractor** fail to maintain the construction area in a suitable manner, the **Owner** will have the right to contract with a third party and withhold any amounts incurred from the **Contractor's** payment.

2.13 OPERATIONS WITH OTHERS

The **Owner** reserves the right to have other work performed by other contractors and to permit the public utility companies and others to do work adjacent to or within the site. The **Contractor** shall conduct his operations and shall cooperate with the other parties so as to minimize interference with this other work.

2.14 CONSTRUCTION STAGING AND ACCESS

It is anticipated that the **Contractor** will need to secure a staging area and access to the site from outside of the ***Land owned by the Owner.*** Securing of such a staging area and access and all costs associated with the same shall be considered to be included in the bid prices for items included in the contract Bid Schedule and no additional compensation will be provided.

Prior to beginning work, the contractor shall submit a copy of all agreements between the **Contractor** and private parties providing the **Contractor** with a staging area or access to the site. All agreements between the **Contractor** and private parties regarding the use of private property for staging areas or

construction access shall indemnify and hold harmless the **Owner** for any damage, failure to make payment, or any other harm incurred by the **Contractor** as a result of the **Contractor's** use of the private property.

The **Contractor** will be responsible for protecting all existing streets, sidewalks, drainage facilities, utilities, and other facilities at and along all utilized access roads.

All areas affected by construction shall be cleaned, and restored to the pre-project condition or better at the completion of the project work. All work and costs associated with the use and restoration of staging and access areas that are located outside of the Limits of Disturbance shown on the plans shall be considered to be included in the prices bid for items included on the contract bid schedule and no additional compensation will be provided.

2.15 SANITARY FACILITIES

The **Contractor** shall provide suitable temporary sanitary restroom facilities for use by the construction personnel. Wastes collected in the temporary facilities shall be removed and disposed of in a timely and satisfactory manner, as required to maintain the facilities in a sanitary usable condition.

The **Contractor** shall maintain the facilities so that any offensive odor is controlled. The construction personnel **will not** be permitted to use the facilities provided for by the adjacent businesses.

Full compensation for compliance and cooperation, as required by this section, shall be considered to be included in the prices bid for items included on the contract bid schedule and no additional compensation will be provided.

2.16 CONTRACTOR'S AND OWNERS REPRESENTATIVES

The **Contractor** shall have on the job at all times as his agent, a competent superintendent capable of reading and thoroughly understanding the **Drawings and Specifications** and being thoroughly experienced in the type of work being performed. The **Owner** will have a representative on the job site periodically to observe work for conformance with the **Drawings and Specifications**, and clarify questions the **Contractor** has relative to the job. The **Contractor** shall provide accurate records of any field changes made during construction.

2.17 DUST AND EROSION CONTROL

The **Contractor** shall be responsible to install sufficient temporary erosion control facilities in order to minimize erosion in areas impacted by access, staging, and construction activities. The **Contractor** shall repair, at no additional cost to the project, any erosion and washouts that may occur due to the lack of proper erosion control facilities.

The **Contractor** shall use measures to prevent and control dust and mud within the area affected by the project. No additional compensation will be paid to the **Contractor** for general dust control. **Vehicle-tracking control mats will be required at the access points to the public roadways. Removal of vehicle-tracking mats will be accomplished prior to re-vegetation.**

The **Contractor** shall clean off any soil, dirt, or debris tracked onto any adjacent streets. When notified by the **Owner** that the adjacent streets require cleaning, the **Contractor** shall clean the streets within 24 hours of such notification, or the **Owner** shall arrange to have the streets cleaned and shall deduct the cost of such cleaning from the **Contractor's** payments.

All work and materials associated with installation and maintenance of temporary erosion control facilities until permanent stabilization is achieved will be paid for in the lump sum price bid for Temporary Erosion and Sediment Control.

2.18 TRAFFIC CONTROL AND PEDESTRIAN BARRICADES

The **Contractor** shall furnish all necessary flag persons; erect and maintain warning lights, advance warning signs, detour signs, barricades, temporary fence, and sufficient safeguards around all excavations, embankments, obstructions; and any other work for this project for the protection of all

work being performed and for the safety of the public and pedestrian traffic, as well as motor vehicles. All signs and barricades shall conform to the **Manual of Uniform Traffic Control Devices** and meet the requirements of the **General Provisions and Section 800 of the Standard Specifications**. The **Contractor** shall submit three (3) copies of a **Traffic Control Plan**, acceptable to the **Owner**, for review **at or before the Preconstruction Conference**. This plan must provide traffic control at all access points, and when loading and unloading equipment and material in public street right-of-ways. All material and labor associated with traffic control, fencing, signs, access, and staging shall be considered an incidental to other bid items for the project.

2.19 WATER CONTROL

Until the **Owner** issues final written acceptance of the project, the **Contractor** shall take every precaution against damage to any part of the project including the adjacent land, utilities, paving and structures from any cause, including all surface and subsurface water, whether arising from the execution of work or any other cause. The **Contractor** shall rebuild, repair, restore, and make good all damages to any portion of the work due to causes beyond the control of and without the fault of negligence of the **Contractor**, including but not restricted to, acts of God, of the public enemy, or of governmental authorities.

The **Contractor** shall be responsible for the project and shall take such precautions as may be necessary to construct the project in a dry condition and provide for drainage, dewatering, and control of all surface and subsurface water. The **Contractor** shall erect any necessary temporary structures or other facilities at his expense to control surface water and groundwater. **The Contractor is advised that he is working in a drainage course subject to continuous low flow and intermittent flow of significant magnitude. As such, proper management and control of water through the project area will be required to avoid localized flooding, damage to adjacent facilities, damage to adjacent properties and/or extensive soil erosion.**

At or prior to the Preconstruction Conference and prior to beginning any work, the **Contractor** shall submit three (3) copies of a plan for **Water Control and Dewatering** to the **Owner** for review. The **Owner**, at his option, may require the **Contractor** to update the **Water Control Plan** as conditions warrant.

The **Contractor** shall carefully evaluate and plan the work and develop a water control plan that is compatible with the work plan and minimizes risks to adjacent properties, facilities and completed and in-progress work.

The **Contractor**, at his expense, shall furnish all necessary equipment and materials required to control the surface and subsurface water in all the areas from start of work through the completion of the total project work. The **Contractor** shall perform all work associated with "Project Water Control" in accordance with the **Section 920 "Water Control and Dewatering"** included in the special technical specifications.

2.20 PROGRESS

If the completion of any part of the work or the delivery of materials is behind the approved schedule, the **Contractor** must submit a plan acceptable to the **Owner** for bringing the work up to schedule. The **Owner** shall have the right to withhold progress payments for the work if the **Contractor** fails to update and submit the progress/manpower schedule and reports as specified.

2.21 CLEARING AND GRUBBING

Clearing and Grubbing shall include **all trees and shrubs** located within the grading limits unless otherwise indicated on the plans.

Clearing and Grubbing shall be phased as to reduce the amount of exposed soil within the channel at one time. All work associated with **Clearing and Grubbing** will be accomplished in accordance with **Section 925 "Clearing and Grubbing"** of the special technical specifications.

2.22 PRE-CONSTRUCTION CONFERENCE RESPONSIBILITIES

The **Contractor** will attend a **pre-construction meeting** before beginning construction. The purpose of the meeting will be to discuss project issues, scheduling, phasing, environmental concerns, water control, private property issues, pedestrian issues, storm water clean water act, safety, etc., the **Contractor's** designated Superintendent or Supervisor assigned to the project shall attend this meeting. The **Contractor shall**, at a minimum, provide the following materials at or prior to the **Pre-Construction Conference**:

Traffic Control and Pedestrian Safety Plan
Water Control and Dewatering Plan
Erosion and Stormwater Quality Control Plan
SWMP report and Stormwater Construction Permit application (if required)
Construction Dewatering Permit
Construction Schedule and Manpower Report
Detailed Construction Method and Phasing Plan for Construction
Access and Staging Area Plan

The plans are to be reviewed by the **Owner** prior to construction. All issues are to be resolved prior to beginning construction.

2.23 SHOP DRAWINGS AND OTHER SUBMITTALS

Contractor shall submit all required **Shop Drawings (3 copies)** to the **Owner or Owner's Representative** for review. These include, at a minimum, the following:

Test results for any bedding, riprap, and boulders.
Concrete Mix Designs for grout
Sheet Piling
Seeding, fertilizer, and mulching material

2.22 COORDINATION WITH PRIVATE PROPERTY OWNERS

The **Contractor** is not to enter **private property** unless written access permission from the owner of property is obtained by the **Contractor** and approved by the **Owner**. All damages to private property shall be immediately repaired to as good or better conditions at no additional cost to the project. The **Contractor** will notify the **Owner** immediately if damages occur to private property. **Contractor** shall provide documentation of written access permission to **Owner** prior to accessing private property.

2.23 MOBILIZATION

The Bid Schedule has an item for mobilization, which may include such items as administration, bonding, and insurance. **Mobilization shall be paid as shown in Section 627 of the Special Technical Specifications.**

2.24 DISPOSAL SITE

The **Contractor** is responsible for the removal of all debris, unsuitable material, asphalt, concrete, trees, stumps, remains from clearing and grubbing, and all other materials not used for the construction of the improvements. Disposal of these materials shall not be measured separately but included in the unit price bid for each applicable item on the bid schedule. The **Contractor** shall designate in writing a disposal site acceptable to the **Owner**. Further, the **Contractor** shall consider the following for hauling suitable or disposing of unsuitable materials:

Access to the project beyond the immediate confines of the work area shall be over suitable roadways without violation of any City, County, State, or Federal restrictions for vehicle and truck weights or any other limitation on movement of heavy equipment hauling materials to and from the site.

Violation costs, including fines and repairs to either public or private roadways or appurtenance structures, above or below ground level, shall be at the Contractor's expense.

Unless otherwise presented in the Bid Schedule, the **Contractor's** cost for loading, hauling, daily cleaning of streets, the disposal of material that must be removed from the site, together with the construction, maintaining and altering of haul roads, dump fees and permits, shall not be paid for separately.

Reinforced concrete rubble from damaged cutoff wall to be demolished with the project is to be taken by the **Contractor** for recycle to Rapco Recycled Aggregated Products Co., 2255 E. Las Vegas St. Colorado Springs CO 80906.

2.25 EXCAVATION AND REPLACEMENT OF UNSUITABLE MATERIAL

Excavation and Replacement of Unsuitable Material is defined in the Technical Specifications. The **Contractor** shall not complete any excavation and replacement of unsuitable material without written approval from the **Owner**. Excavation and replacement of unsuitable material shall not be used in lieu of proper dewatering.

2.26 WORK HOURS

Normal work hours are 7:30 AM to 5:30 PM Monday through Friday. Work outside normal hours must be approved in advance in writing by the **Owner**.

2.27 ARCHAEOLOGICAL AND HISTORICAL DISCOVERIES

The **Contractor** is required to inform the **Owner** of any evidence which might suggest to a lay person that archaeological or historic materials may be present in the work area. Upon making such a discovery, the **Contractor** shall do whatever is necessary to avoid disturbing the work area. This could require that the **Contractor's** activities be redirected or stopped until the **Owner** or **Engineer** determines how to proceed.

2.28 CONSTRUCTION DOCUMENTATION

Photographs

Construction photographs will be required on the project.

Photographs shall be 3" X 5" size or larger, matte finish, in color and mounted in 3-ring binders.

Each photograph shall be marked with date description and identification number.

Each photograph must indicate a station reference to work as shown on the plans.

The preconstruction photographs shall be delivered to and approved by the **Owner or Owner's Representative**, prior to the beginning of construction.

Include progress photographs with each pay request. The photos will be a requirement for payment. Digital pictures on a disk may be substituted for the above. However, the pictures must be labeled as described above.

Red-line Drawings

The **Contractor** shall maintain a **red-line set of drawings indicating field changes** to the design, existing facilities not shown, pertinent construction data, etc. The **Contractor** shall submit a current set of red-line plans to the **Owner** with each pay estimate. The **Contractor** shall submit a complete set of red-line plans to the **Owner** at the completion of the project.

Construction photographs and red-line drawings will not be paid for separately, but will be considered incidental to the work.

2.29 SPILL KIT

The **Contractor** shall supply and maintain a spill kit on-site. The spill kit shall contain any and all necessary devices to be used in the event of a spill on-site during construction activities. The **Contractor** shall coordinate with the **Owner's** stormwater inspector regarding the site specific contents of the spill kit. The spill kit shall remain on-site and be available at all times for the **Contractor's** crew. A meeting shall be set up by the **Contractor's** Stormwater Supervisor prior to any construction activities to clarify the uses and implementation of the spill kit.

The spill kit will not be paid for separately, but will be considered incidental to the bid item for Temporary Erosion and Sediment Control.

2.30 CONSTRUCTION METHOD AND PHASING PLAN

The Contractor shall submit a construction method and phasing plan detailing the methods and sequence to be utilized in construction of the proposed facilities. The plan is to include the following items:

Control of base flows, flood flows, and groundwater as it relates to work phasing.
Traffic control as it relates to work phasing.
Concrete wall demolition and excavation
Phased construction of grouted boulders as applicable for the project to be constructed
Sheet pile cut off wall construction
Method for Placement of grouted boulders as applicable for the project to be constructed
Grouting of boulders
Riprap and bedding placement sequencing and method of placement

The **Owner** is to review the construction method and phasing plan and have all questions and issues addressed before construction can proceed. All costs associated with preparation and potential revisions to the method and phasing plan will be considered incidental to the price bid for associated items and no separate payment will be provided.

2.31 REQUESTS FOR INFORMATION (RFI)

“Requests for Information” (RFI) sheets shall be completed by the **Contractor** if additional information of clarification is required. The **RFI** shall be submitted to the **Owner** for processing. Any changes to the plans, specifications, and construction requirements are to be made in writing. No changes will be permitted based on verbal agreements.

2.32 CONSTRUCTION COORDINATION MEETINGS

The **Contractor will conduct weekly construction progress meetings** with the attendance of all pertinent project related personnel. The **Contractor** shall coordinate with the **Owner** as to the location where the meetings are to be held.

2.33 CONSTRUCTION SURVEYING AND STAKING

The **Contractor** shall be responsible for providing horizontal and vertical control for the project elements. The **Contractor** shall protect all existing control points, property corners and monuments. The **Contractor** shall be responsible for replacing any damaged or destroyed monument, property corner or control point.

2.34 AS-BUILT SURVEY

The **Contractor** shall submit and have approved an as-built survey signed and stamped by a Colorado Registered Professional Surveyor prior to receiving Final Payment for the project. The as-built survey shall meet the requirements of Section 960 of the Special Technical Specifications.

2.34 CLEAN UP AND REMOVAL OF SEDIMENT DEPOSITS

The **Contractor** shall implement stabilization measures within the project area to control erosion to the extent practical. If sediment or other material from the site migrates downstream of the project area during construction it shall be removed and disposed of by the **Contractor** without any additional compensation. The **Contractor** is advised to document the existing conditions in the channel and to provide a copy of the documentation to the **Owner** prior to beginning construction.

2.35 MEASUREMENT AND PAYMENT

Payment for work performed by the **Contractor** under these Contract Documents will be made at the approved unit price or lump sum price for each of the items as listed in the bid proposal and measured as hereinafter specified. Such payment shall compensate the **Contractor** for all costs in connection with furnishing all labor, equipment and material required and performing the operations necessary to complete the item in accordance with the contract documents.

Any items of work which are called out in the plans and/or the specifications and do not have a specific line item in the bid proposal but which are necessary to complete the work in accordance with the requirements of good and standard practice, such as sub-grade preparation and form work are to be considered as incidental to the construction of the project and the **Contractor's** cost for such work shall be included in the bid price for the related item of work.

The **Contractor** shall accomplish all incidental work essential to the completion of the project, including cleanup and disposal of waste or surplus material without additional cost to the **Owner**. The cleanup and disposal of waste or surplus material shall be performed during construction or as soon after as is reasonably possible in order to better maintain the safety and aesthetics of the construction area.

The quantities listed in the bid schedule are estimated quantities and are listed only for convenience in comparing bids. Unless otherwise noted, final payment will be made for the actual quantities constructed or installed, be they more or less than the listed quantities, said quantities being measured as specified.

Unit prices listed in the Bid Schedule shall include labor and materials as described in this section.

Base Bid Items

Bid Item No. 1: Mobilization

This item will be paid for on a Lump Sum (LS) basis. Measurement and payment for this item shall be in accordance with Section 627 of the Special Technical Specifications.

Bid Item No. 2: Water Control and Dewatering

This item will be paid for on a Lump Sum (LS) basis. Measurement and payment for this item shall be in accordance with Section 920 of the Special Technical Specifications

Bid Item No. 3: Concrete Wall Demolition and Haul Offsite

This item will be paid for on a Linear Foot (LF) basis. Measurement and payment for this item shall be in accordance with Section 220 of the City of Colorado Springs Standard Specifications. All concrete removed from the existing cutoff wall will be transported by the contractor to Rapco Recycled Aggregate Products Co, 2255 E Las Vegas St, Colorado Springs, CO 80906.

Bid Item No. 4: Excavation – Fill on Site

This item will be paid for on a Cubic Yard (CY) basis. Measurement and payment for this item shall be in accordance with revisions to Section 620 of the Standard Specifications as provided in the Special Technical Specifications.

Bid Item No. 5: Excavation – Export

This item will be paid for on a Cubic Yard (CY) basis. Measurement and payment for this item shall be in accordance with revisions to Section 620 of the Standard Specifications as provided in the Special Technical Specifications.

Bid Item No. 6: Muck Removal and Replacement

Measurement and payment for this item shall be in accordance with revisions to Section 620 of the Special Technical Specifications. Use of and payment for this item shall require preapproval by the Engineer.

Bid Item No. 7: 48" Grouted Boulders

This item will be paid for on a Square Yard (SY) basis. Measurement and payment for this item shall be made in accordance with Section 625.2 of the Special Technical Specifications.

Bid Item No. 8: Clearing and Grubbing

*Measurement and payment for this item shall be accomplished and paid for based on Section 925 of the Special Technical Specifications and shall be paid based on the bid schedule quantity. Payment for this item shall be based on the quantity on the Bid Schedule. No separate measurement will be made unless the **Owner or Owner's Representative** requests in writing that additional areas outside the grading limits shown on the plans be "**Cleared and Grubbed**".*

Bid Item No. 9: Type VH Riprap

Measurement and payment for this item shall be made in accordance Section 624.03 of the City of Colorado Springs Standard Specifications.

Bid Item No. 10: CDOT Type II Bedding

This item will be paid for on a Cubic Yard (CY) basis. CDOT Bedding as indicated on the project documents. Measurement and payment for this item shall include purchase, delivery, placement and compaction and all necessary materials and labor in accordance with the plans and specifications.

Bid Item No. 11: Sheet Pile

This item will be paid for on a Square Foot (SF) basis. Measurement and payment for this item shall be in accordance with Section 650 of the Special Technical Specifications.

Bid Item No. 12: Construction Surveying

Measurement and payment for this item shall be in accordance with Section 950 of the Special Technical Specifications.

Bid Item No. 13: As-built Survey

Measurement and payment for this item shall be in accordance with Section 960 of the Special Technical Specifications.

Bid Item No. 14: Temporary Erosion and Sediment Control

This item will be paid for on a Lump Sum (LS) basis. Measurement and payment for this item shall be in accordance with Section 910 of the Special Technical Specifications.

Bid Item No. 15: Wetland Planting

This item will be paid for on a per acre (AC) basis. Measurement and payment for this item shall be in accordance with Section 900 of the Special Technical Specifications.

SCHEDULE G

TECHNICAL SPECIFICATIONS

The Standard Specifications for this project shall be the **latest version** of the “**CITY OF COLORADO SPRINGS ENGINEERING DIVISIONS STANDARD SPECIFICATIONS**”, (revised Feb. 1995, General Provisions revised January 2008 and Sections 400, 410 and 420 Revised January 2007), except as modified hereinafter, which are incorporated in the contract documents by reference as though embodied herein in their entirety.

All Contractors on this project are required to have on the job site and utilize the current updated copy of the City of Colorado Springs Engineering Divisions Standard Specifications.

Copies are available for purchase at the cost of \$25.00 from the City of Colorado Springs, City Engineering Division, Suite 403, 30 South Nevada Avenue, Colorado Springs, during regular business hours.

SCHEDULE H

EXHIBITS

This section includes the examples of the forms used for submitting the required bonds as well as a sample contract format, which will be issued as a result of this solicitation:

- Exhibit 1 -- Bid Bond
- Exhibit 2 -- Performance Bond
- Exhibit 3 -- Materials and Payment Bond
- Exhibit 4 -- Maintenance Bond
- Exhibit 5 -- Sample Contract
- Exhibit 6 -- Minimum Insurance Requirements
- Exhibit 7 -- Change Order Form
- Exhibit 8- Representations and Certifications
- Exhibit 9- Federal Forms

APPENDIX 1

Index of Drawings

CITY OF COLORADO SPRINGS

EXHIBIT 1 - CITY OF COLORADO SPRINGS BID BOND

1. KNOW ALL MEN BY THESE PRESENTS, THAT:

(Name) _____

(Address) _____ As Principal, hereinafter called Principal, and

(SURETY Name) _____

a corporation organized and existing under the laws of the State of:

(SURETY Address) _____

and AUTHORIZED TO DO BUSINESS IN THE STATE OF COLORADO, as Surety, hereinafter called Surety, are held firmly bound to the CITY OF COLORADO SPRINGS, COLORADO, as Obligee, hereinafter called the Obligee, in the sum of: (Insert Proposal Amount in Words)

(\$ _____ DOLLARS),

lawful money of the United States of America, for payment of which sum well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS, the Principal has submitted to the Obligee,

a contract bid dated the _____ day of _____ For the following contract:

B16-023 NS COTTONWOOD CREEK CUTOFF WALL/GRADE CONTROL STRUCTURE FLD004

3. NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT, If Principals bid is accepted by Obligee and Principal is awarded the contract in whole or in part, and the Principal shall enter into the contract with the Obligee in accordance with the terms of such bid, and give such Payment, Performance, and Maintenance bond or bonds as may be specified in the bidding or contract documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such contract and give such bond or bonds, if the Principal shall promptly pay to the Obligee the amount of this bond as set forth herein above, then this obligation shall be null and void, otherwise this obligation to remain in full force and effect.

Signed and sealed on the dates set forth below:

(Witness) _____ FOR: _____ (Principals Name)

BY: _____

(Seal) ITS: _____ This _____ day of _____

(Witness) _____ FOR: _____ (Surety's Name)

BY: _____

(Seal) ITS: _____ This _____ Day of _____

Bond # _____ This Bond (is) ___ (is not) a SBA Guaranteed Bond.

CITY OF COLORADO SPRINGS

EXHIBIT 2 – PERFORMANCE BOND
CITY OF COLORADO SPRINGS PERFORMANCE BOND

1. KNOW ALL MEN BY THESE PRESENTS, THAT:

(Name) _____ As Principal, hereinafter called Principal, and

(Address)

(SURETY Name) _____ a corporation organized and existing under
the laws of the State of:

(SURETY Address)
and AUTHORIZED TO DO BUSINESS IN THE STATE OF COLORADO, as Surety, hereinafter called Surety, are held firmly bound to the CITY OF COLORADO SPRINGS, COLORADO, as Obligee, hereinafter called the Obligee, in the sum of: (Insert Proposal Amount in Words)
_____ (\$ DOLLARS),

lawful money of the United States of America, for payment of which sum well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS, the Principal and the Obligee have entered into,
a contract dated the _____ day of _____ For the following project:
16-023 NS COTTONWOOD CREEK CUTOFF WALL/GRADE CONTROL STRUCTURE FLD004

Contract # _____ which contract is by reference made a part hereof, and referred to as the Contract.

3. NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the Principal shall promptly and faithfully perform all terms, conditions and other obligations of the Contract, and any modifications or extensions thereof granted by the Obligee, then this obligation shall be null and void: otherwise this obligation shall remain in full force and effect.

4. The Surety for value received agrees that no extension of time, change in, addition to, or other alteration modification of the terms, conditions or obligations of the Contract or work to be performed thereunder, or any forbearance on the part of either the Obligee or the Principal to the other shall in any way release or affect the liability or obligation of this Bond, and the Surety hereby waives notice of any such extension of time, change, addition, modification, alteration or forbearance.

Signed and sealed on the dates set forth below:

(Witness) FOR: _____
(Principals Name)

BY: _____

(Seal) ITS: _____
This _____ Day of _____

(Witness) FOR: _____
(Surety's Name)

BY: _____

(Seal) ITS: _____
This _____ Day of _____

Bond # _____ This Bond __ (is) __ (is not) a SBA Guaranteed Bond.

CITY OF COLORADO SPRINGS

EXHIBIT 3 - CITY OF COLORADO SPRINGS LABOR & MATERIAL PAYMENT BOND

1. KNOW ALL MEN BY THESE PRESENTS, THAT:

(Name) _____

As Principal, hereinafter called Principal, and

(Address) _____

(SURETY Name) _____

a corporation organized and existing under the laws of the State of:

(SURETY Address) _____

and AUTHORIZED TO DO BUSINESS IN THE STATE OF COLORADO, as Surety, hereinafter called Surety, are held firmly bound to the CITY OF COLORADO SPRINGS, COLORADO, as Obligee, hereinafter called the Obligee, in the sum of: (Insert Proposal Amount in Words)

(\$ [redacted] DOLLARS),

lawful money of the United States of America, for payment of which sum well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS, the Principal and the Obligee have entered into,

a contract dated the _____ day of _____ For the following project:

16-023 NS COTTONWOOD CREEK CUTOFF WALL/GRADE CONTROL STRUCTURE FLD004

Contract # _____ which contract is by reference made a part hereof, and referred to as the Contract.

3. NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the Principal shall promptly make payments of all amounts lawfully due to all persons supplying or furnishing the Principal or the Principals subcontractors with labor, materials, rental machinery, tools or equipment used or performed in the prosecution of the work provided for in the Contract; and if the Principal shall indemnify and save harmless the Obligee to the extent of any payments in connection with the carrying out of the Contract which the Obligee may be required to pay under the law, all in accord with Colorado State Law, Section 38-26-105 C.R.S., then this obligation shall be null and void; otherwise this obligation shall remain in full force and effect.

AND FURTHER, should the Principal or the Principals subcontractors fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by the Principal or the Principals subcontractors in the 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 under the Contract, the Surety shall pay the same in an amount not exceeding the sum specified in this Bond together with interest at the rate of eight percent per annum, in accord with Colorado State Law, Section 38-26-106 C.R.S.

In accord with Colorado State Law, Section 38-26-105 C.R.S., actions against the Principal and Surety under this Bond shall be brought within six months after the final completion of the Contract as defined by the ordinances, rules and regulations of the City of Colorado Springs, Colorado, a home rule City, and not afterwards.

4. The Surety for value received agrees that no extension of time, change in, addition to, or other alteration or modification of the terms, conditions or obligations of the Contract or work to be performed thereunder, or any forbearance on the part of either the Obligee or the Principal to the other shall in any way release or affect the Surety's liability or obligation on this Bond, and the surety hereby waives notice of any such extension of time, change, addition, modification, alteration or forbearance.

Signed and sealed on the dates set forth below:

(Witness)

FOR: _____
(Principals Name)

CITY OF COLORADO SPRINGS

Page Two (2) of Labor & Material Payment Bond

(Seal) BY: _____
ITS: _____
This _____ day of _____

(Witness) FOR: _____
(Surety's Name)

(Seal) BY: _____
ITS: _____
This _____ day of _____

Bond # _____
This Bond ___ (is) ___ (is not) a SBA Guaranteed Bond.

CITY OF COLORADO SPRINGS

EXHIBIT 4 - CITY OF COLORADO SPRINGS MAINTENANCE BOND

1. KNOW ALL MEN BY THESE PRESENTS, THAT:

(Name) _____ As Principal, hereinafter called Principal, and
(Address) _____

(SURETY Name) _____ a corporation organized and existing under the laws of the State of:
(SURETY Address) _____

and AUTHORIZED TO DO BUSINESS IN THE STATE OF COLORADO, as Surety, hereinafter called Surety, are held firmly bound to the CITY OF COLORADO SPRINGS, COLORADO, as Obligee, hereinafter called the Obligee, for the use and benefit of claimants as herein below defined, in the amount of: (Insert Proposal Amount in Words)

(\$ _____ DOLLARS),

lawful money of the United States of America, together with interest as may be provided by law, for the maintenance and guarantee obligations of the Contract, for the payment whereof Principal and Surety bind themselves, their heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS, the Principal and the Obligee have entered into,

a contract dated the _____ day of _____ For the following project:

Contract # _____ which contract is by reference made a part hereof, and referred to as the Contract.

3. NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the Principal shall promptly, properly and without cost to Obligee perform all maintenance and other guarantee obligations under the terms of the Contract, including any modifications or extensions thereof granted by the Obligee, for a period of TWO (2) year(s) from the date of final payment upon the Contract by the Obligee, and in the case of each correction or repair, during a period of one year after the date of said correction or repair or for the remaining period of years set forth herein, whichever is longer, then this obligation shall be null and void; otherwise this obligation shall remain in full force and effect.

4. The Surety for value received agrees that no extension of time, change in, addition to, or other alteration or modification of the terms, conditions or obligations of the Contract or work to be performed thereunder, or any forbearance on the part of either the Obligee or the Principal to the other shall in anyway release affect the Surety's liability or obligation on this Bond, and the surety hereby waives notice of any such extension of time, change, addition, modification, alteration or forbearance.

Signed and sealed on the dates set forth below:

(Witness) _____ FOR: _____ (Principals Name)

BY: _____

(Seal) _____ ITS: _____ This _____ day of _____

(Witness) _____ FOR: _____ (Surety's Name)

BY: _____

(Seal) _____ ITS: _____ This _____ day of _____

Bond # _____ This Bond __ (is) __ (is not) a SBA Guaranteed Bond.

EXHIBIT 5 - SAMPLE CONTRACT



CITY OF COLORADO SPRINGS CONSTRUCTION CONTRACT

| | | | | | |
|--------------------------------|---------------|--------------------|--|----------|----------------------|
| Contract Number: | | Project Name/Title | COTTONWOOD CREEK CUTOFF WALL/GRADE CONTROL STRUCTURE FLD004 | | |
| Vendor/Contractor | | | | | |
| Contact Name: | | Telephone | | Fax | |
| Address: | | | | | |
| Federal Tax ID # | | Please check one: | <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Individual <input type="checkbox"/> Partnership | | |
| City Contracting Specialist | Name & Phone# | City Dept Rep | Name & Phone# & Department Name | | |
| NOT TO EXCEED Contract Amount: | | City Account # | Acct Code (5) | Fund (3) | Dept (4) Project (7) |

THIS FIRM FIXED PRICE CONTRACT, in the Not to Exceed amount of \$_____ made and entered into this _____ day of _____ 2016 by and between the City of Colorado Springs, Colorado, a municipal corporation, in the County of El Paso, State of Colorado, party to the first part hereinafter in the Contract Documents referred to as the "City", and _____, and trading as an individual or acting as partners consisting of or a corporation organized and existing under the laws of the State of Colorado, hereinafter in the Contract Documents called the "Contractor"; party of the second part.

WITNESSETH:

Whereas the City has heretofore prepared the necessary Contract Documents for: COTTONWOOD CREEK CUTOFF WALL/GRADE CONTROL STRUCTURE FLD004, in the City of Colorado Springs; and whereas the party of the second part did on the ____ day of _____ 2016, submit to the City their written offer and proposal to do the work therein described under the terms and conditions therein set forth and furnish all labor, materials, tools, equipment, transportation and services for said work in strict conformity with the accompanying Contract Documents which include: Bid Proposal, Notice of Award, Contract, Notice to Proceed and General Conditions.

NOW, THEREFORE, it is hereby agreed that for the considerations and amounts specified in the Bid Proposal and the total contract amount designated above and in the Notice of Award, to be paid by the City to the Contractor, Contractor agrees to furnish all materials and to perform all work as set forth in his proposal and as required by the Contract Documents, which are attached hereto and incorporated herein by this reference.

Contractor agrees that the Contractor shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, cause or causes of action, or any liability whatsoever resulting from, or arising out of, or in connection with the Contractor's obligations or negligent actions under this Contract.

It is further agreed that the Contractor will start work promptly and continue to work diligently until completed. The contractor shall complete all work on an as ordered basis throughout the contract period 100 Calendar Days after the Notice-to-Proceed as per the specifications and drawings. The Contractor shall provide a two-year guarantee on all works performed under this contract after the job has been completed and accepted.

FISCAL OBLIGATIONS OF CITY

CITY OF COLORADO SPRINGS

This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

The Contractor and the City agree and acknowledge as a part of this contract, that no Change Order or other form or order or directive may be issued by the City which requires additional compensable work to be performed, which work causes the aggregate amount payable under the contract to exceed the amount appropriated for this contract as listed above, unless the Contractor has been given a written assurance by the City that lawful appropriations to cover the costs of the additional work have been made

The Contractor and the City further agree and acknowledge as a part of this contract that no Change Order or other form or order or directive which requires additional compensable work to be performed under this contract shall be issued by the City unless funds are available to pay such additional compensable work performed under this contract, and expressly waives any rights to additional compensation, whether by law or equity, unless, prior to commencing the additional work, the contractor was given a written Change Order describing the additional compensable work to be performed, and setting forth the amount of compensation to be paid, which Change Order was signed by the authorized City Representative. It is the Contractor's sole responsibility to know, determine, and ascertain the authority of the City representative signing any Change Order under this contract.

Books of Account and Auditing. The Contractor shall make available to the City if requested, true and complete records, which support billing statements, reports, performance indices, and all other related documentation. The City's authorized representatives shall have access during reasonable hours to all records, which are deemed appropriate to auditing billing statements, reports, performance indices, and all other related documentation. The Contractor agrees that it will keep and preserve for at least seven years all documents related to the Contract, which are routinely prepared, collected or compiled by the Contractor during the performance of this contract.

The City's Auditor and the Auditor's authorized representatives shall have the right at any time to audit all of the related documentation. The Contractor shall make all documentation available for examination at the Auditor's request at either the Auditor or Contractor's office and without expense to the City.

GRATUITIES

- 1) The right of the Contractor to proceed or otherwise perform this Contract, and this Contract may be terminated if the City Manager and/or the City Contracting Manager determine, in their sole discretion, that the Contractor or any officer, employee, agent, or other representative whatsoever, of the Contractor offered or gave a gift or hospitality to a City officer, employee, agent or contractor for the purpose of influencing any decision to grant a City Contract or to obtain favorable treatment under any City Contract.
- 2) The terms "hospitality" and "gift" include, but are not limited to, any payment, subscription, advance, forbearance, acceptance, rendering or deposit of money, services, or anything of value given or offered, including but not limited to food, lodging, transportation, recreation or entertainment, token or award.
- 3) Contract termination under this provision shall constitute a breach of contract by the Contractor, and the Contractor shall be liable to the city for all costs of reletting the contract or completion of the contract. Further, if the Contractor is terminated under this provision, or violates this provision but is not terminated, the Contractor shall be subject to debarment under the City's Procurement Regulations. The rights and remedies of

CITY OF COLORADO SPRINGS

the City provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract."

CONTRACT SIGNATURE PAGE

The Contractor certifies in accord with Section 8-17.5-102(1) C.R.S. that, on the date the Contractor signs this contract, the Contractor does not knowingly employ or contract with an illegal alien who will perform work under this contract and that the Contractor shall participate in the e-verify program or Colorado Department of Labor and Employment program in order to confirm the employment eligibility of all employees who are newly hired for employment or to perform work under this contract. The contractor is expressly prohibited from using basic pilot program procedures to undertake pre-employment screening of job applicants while this Contract and any services under this Contract is being performed.

IN WITNESS WHEREOF, the parties have caused these presents to be executed on the day and the year first above written.

This contract is executed in one (1) original copy.

| |
|--|
| THE CITY OF COLORADO SPRINGS, COLORADO: |
| JEFFREY H. GREENE, CHIEF OF STAFF DATE |

| |
|---|
| SECOND PARTY: |
| Corporate Name |
| Signature Date |
| Title |
| Witness |

EXHIBIT 6 MINIMUM INSURANCE REQUIREMENTS

The minimum insurance requirements specified in the General Provisions, Section 107 shall be carried by all contractors as specified in the City's solicitation package, Special Provisions and Standard Specifications.

- Except for workers compensation and employer's liability insurance, the City of Colorado Springs must be named as an additional insured. Certificates of Insurance must be submitted before commencing the work and provide 30 days notice prior to any cancellation.
- All coverage furnished by contractor is primary, and that any insurance held by the City of Colorado Springs is excess and non-contributory.
- The certificates of insurance shall provide that there will be no cancellation, reduction or modification of coverage without thirty (30) days' prior written notice to the City of Colorado Springs any cancellation. If CONTRACTOR does not comply with this section, the City may, in addition to any other remedies it may have, terminate this Agreement, subject to any provision of this Agreement.

The undersigned certifies and agrees to carry and maintain the insurance requirements indicated above throughout the contract Period of Performance.

(Name of Company)

(Signature) (Date)

RETURN THIS FORM WITH YOUR BID.

EXHIBIT 8 REPRESENTATIONS AND CERTIFICATIONS

1. INSURANCE REQUIREMENTS

This firm shall comply with all insurance requirements and will submit the Insurance Certificates prior to performance start date. If limits are different from the stated amounts, Contractor shall explain variance. Certain endorsements and “additionally insured” statements may require further clarification and specific statements on a project specific basis and should have been described in the Contractor’s proposal.

Initials for 1

2. ETHICS VIOLATIONS

- a) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this clause in its own operations and direct business relationships.
- b) When the Contractor has reasonable grounds to believe that a violation described in this clause may have occurred, the Contractor shall promptly report the possible violation to the City Contracts Specialist in writing.
- c) The Contractor must disclose with the signing of this Contract, the name of any officer, director, or agent who is also an employee of the City and any City employee who owns, directly or indirectly, an interest of five percent (5%) or more in the Contractor’s firm or any of its branches.
- d) In addition, the Contractor must report any conflict or apparent conflict, current or discovered during the performance of the Contract, to the City Contracts Specialist.
- e) The Contractor shall not engage in providing gifts, meals or other amenities to City employees. The right of the Contractor to proceed may be terminated by written notice issued by City Contracts Specialist if Contractor offered or gave a gratuity to an officer, official, or employee of the City and intended by the gratuity to obtain a contract or favorable treatment under a contract.
- f) The Contractor shall cooperate fully with the City or any agency investigating a possible violation on behalf of the City. If any violation is determined, the contractor will properly compensate the City.
- g) The Contractor agrees to incorporate the substance of this clause in all subcontracts under this contract.

Initials for 2

3. ILLEGAL ALIENS

If Provider has any employees or subcontractors, Provider shall comply with § 8-17.5, C.R.S. regarding Illegal Aliens – Public Contracts for Services, and this section of this Agreement. 8-17.5-102 includes, in part, that:

1. Provider shall not:
 - a. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or
 - b. Enter into a contract with a subcontractor that fails to certify to Provider that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
2. Provider has verified or attempted to verify that Provider does not employ any illegal aliens and, will participate in the E-Verify Program or State Department program in order to confirm eligibility of all employees who are newly hired to perform work under public contract for services.
3. Provider will not use E-Verify Program or State Department program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.
4. If Provider obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Provider shall:
 - a. Notify the subcontractor and the City within three days that Provider has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - b. Terminate the subcontract with the subcontractor if within three days of receiving the notice under 4.a., the subcontractor does not stop employing or contracting with the illegal alien. However, the Provider shall not terminate the contract with the subcontractor if during this three day period:
 - i. The subcontractor provides information which establishes that the subcontractor has not knowingly employed or contracted with an illegal alien, and
 - ii. The Provider will not employ the illegal aliens in the performance of any City contract.
5. Provider shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in §8-17.5-102(5), C.R.S.
6. If Provider violates this provision, the City may terminate the Agreement for a breach of contract. If the Agreement is terminated, the Provider shall be liable for actual and consequential damages.

Initials for 3

4. COOPERATION WITH OTHER CONTRACTORS

Other City activities/contracts may be in progress or start during the performance of this contract. The Contractor shall coordinate the work harmoniously with the other

contractors or City personnel.

Initials for 4

5. INTERNET USE

Should the Contractor require access to City Internet resources in the performance of this requirement, a "Contractor's Internet Use Agreement" form must be separately signed by each individual having access to the City Network. The completed Contractor's Internet Use Agreement will be maintained with this agreement. Inappropriate use of the City Network will be grounds for immediate termination of this Contract.

Initials for 5

6. LITIGATION

If awarded the contract, Contractor shall notify the City within five (5) calendar days after being served with a summons, complaint, or other pleading in any matter which has been filed in any federal or state court or administrative agency. The Contractor shall deliver copies of such document(s) to the City's Procurement Services Manager. The term "litigation" includes an assignment for the benefit of creditors, and filings of bankruptcy, reorganization and/or foreclosure.

Initials for 6

7. CONTRACTOR'S REGISTRATION INFORMATION

Offeror's firm verifies and states that they are (check all that apply):

- _____ Small Business
- _____ Minority Owned Business/Small Disadvantaged Business
- _____ Woman Owned Business
- _____ Veteran Owned Business
- _____ Service-Disabled Veteran Owned Business

_____ HUBZone Business

Initials for 7

8. CONTRACTOR PERSONNEL

- a) The Contractor shall appoint one of its key personnel as the "Authorized Representative" who shall have the power and authority to interface with the City and represent the Contractor in all administrative matters concerning this Contract, including without limitation such administrative matters as correction of problems modifications, and reduction of costs.
- b) The Authorized Representative shall be the person identified in the Contractor's Proposal, unless the Contractor provides written notice to the City naming another person to serve as its Authorized Representative. Communications received by the City Contracts Specialist from the Authorized Representative shall be deemed to have been received from the Contractor.
- c) The Contractor shall appoint a "Point of Contact" (POC) who shall be responsible for the day-to-day management and supervision of the contract performance. Before commencing the contract, the Contractor shall provide the City in writing with information regarding how to contact the POC including, for example, his or her name, telephone number, facsimile number, pager number, if any, address, and information relating to other means of communication.

The individual, _____ (Name)
 with position, _____ (Title)
 Can be reached at _____
 Work telephone number: _____
 Home telephone number: _____
 Cellular telephone number: _____
 E-mail address: _____

Initials for 8

9. CONTRACTOR'S CERTIFICATION

- The undersigned hereby affirms that:
- a) He/She is a duly authorized agent of the Contractor;
 - b) He/She has read and agrees to the City's standard terms and conditions attached.
 - c) The offer is presented in full compliance with the collusive prohibitions of the State of Colorado. The Contractor certifies that no employee of its firm has

discussed, or compared the offer with any other offeror or City employee and has not colluded with any other offeror or City employee.

d) The Contractor certifies that it has checked all of its figures, and understands that the City will not be responsible for any errors or omissions on the part of the Contractor in preparing its bid.

e) By submitting an offer the Contractor certifies that it has complied and will comply with all requirements of local, state, and federal laws, and that no legal requirements have been or will be violated in making or accepting this solicitation.

I hereby certify that I am submitting the proposal based on my company's capabilities to provide quality products and/or services on time.

Initials for 9

10. CONTRACTOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS:

1. The offeror certifies to the best of its knowledge and belief, that (i) the Offeror and/or any of its Principals
 - a. Are (), Are not () presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
 - b. Have (), Have not (), within a three year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, local) contract or subcontract; violation of Federal or state antitrust statutes relation to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, tax evasion, or receiving stolen property; and
 - c. Are (), Are not () presently indicated for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in any paragraphs above.
2. The Offeror shall provide immediate written notice to the City Contracts Specialist if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reasons of changed circumstances.
3. The certification in paragraph 1. above, is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City Contracts Specialist may terminate the contract resulting from this solicitation for default. Termination

for default may result in additional charges being levied for the costs incurred by the City to initiate activities to replace The awarded Contractor.

Initials for 10

11. ACCEPTANCE OF CITY CONTRACTS SPECIALIST'S SOLE AUTHORITY FOR CHANGES

The Contractor hereby agrees (if awarded a contract for this effort), that any changes to the scope of work, subsequent to the original contract signing, shall be generated in writing and an approval signature shall be obtained from the City Contracts Specialist prior to additional work performance.

Initials for 11

EXHIBIT 9 FEDERAL FORMS

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION
AND OTHER RESPONSIBILITY MATTERS**

The undersigned duly authorized official of the proposer certifies to the best of its knowledge and belief, that it and its principals:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
- B. Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements or receiving stolen property.
- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (B) of this certification; and
- D. Have not within a three-year period preceding this application/proposal had one or more public transaction (federal, state or local) terminated for cause or default.
- E. Are not on the Comptroller General’s List of Ineligible Bidders or any similar list maintained by any other governmental entity.

Where the proposer is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

(Check One)

I DO CERTIFY (____)

I DO NOT CERTIFY (____)

Date: _____

Signature: _____

Title: _____

RESTRICTIONS ON LOBBYING CERTIFICATION

Pursuant to United States Public Law 101-121, Section 319, the undersigned duly authorized official of the proposer hereby certifies, to the best of her/his knowledge and belief, that:

1. No Federal appropriated funds have paid or will be paid, by or on behalf of the undersigned, to any person for the purpose of influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person or agency for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit a Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
3. The undersigned duly authorized official shall require and ensure that the language of this certification be included in any award documents for subcontracts, grants, loans, and cooperative agreements, and that all subcontractors shall so certify and disclose accordingly.

This Certification is a material representation of fact, upon which reliance was placed when this transaction was made or entered into. The submission of this Certification is a prerequisite for making or entering into this transaction, imposed by Title 31 USC Section 1352. Any proposer (person) who fails to file the required certification shall be subject to civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure to file.

Proposer: _____
Signature: _____
Title: _____
Date: _____

NON-COLLUSION AFFIDAVIT

The undersigned duly authorized official of the proposer hereby certifies, to the best of her/his knowledge and belief, that:

1. That I am an officer or employee of the _____
_____ (proposing entity) having the authority to sign on behalf of the corporation, and,
2. That the prices in the attached proposal were arrived at independently by _____
_____(proposing entity) without collusion, consultation, communication, or any agreement, for the purpose of restricting competition as to any matter relating to such prices with any other proposer or with any other competitor regarding an understanding, or planned common course of action with any other vendor of materials, supplies, equipment, or service described in the RFP/IFB designed to limit independent proposals or competition; and
3. That unless otherwise required by law, the contents and prices contained in the proposal have not been communicated by _____
_____(proposing entity) or its employees or agents to any person not an employee or agent of _____
_____(proposing entity), or its surety on any bond furnished with the proposal, and will not be communicated to any such person prior to the official opening of the proposal; and,
4. That I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Proposer: _____

Signature: _____

Title: _____

Date: _____

CITY OF COLORADO SPRINGS
EQUAL OPPORTUNITY CLAUSE

During the performance of this contract, the Contractor agrees that:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin. The Contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age or national origin. Such actions 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. The Contractor agrees to post in conspicuous places, available to employees for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin.
3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or applicants, a notice to be provided by the City's contract compliance officer advising the labor union or worker's representative of the Contractor's commitments under this contract and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with the rules of the City Manager and applicable to this contract and the Federal Rules and Regulation relevant to equal employment opportunity should those rules and regulations become applicable during the duration of this contract.
5. The Contractor will furnish all information and reports required by the Rules of the City Manager, and if applicable Executive Order 11246 of September 24, 1965, and the Rules, Regulations and Orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts, by the contract compliance officer for purposes of investigation to ascertain compliance with such Rules, Regulations, and Orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such Rules, Regulations, or Orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further City of Colorado Springs contracts in accordance with Executive Order 11246 of September 24, 1965, and such other sanctions authorized by that Order.
7. The Contractor will include the portion of the sentence immediately preceding Paragraph one above and the provisions of Paragraphs one through seven in every subcontract or purchase order unless exempted by Rules of the City Manager so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such actions with respect to any subcontract or purchase order as the contract compliance officer may direct as a means of enforcing such provisions, including in, or is threatened with, litigation with a sub-contractor or vendor as a result of such direction by the contract compliance officer, the Contractor may request the City of Colorado Springs to enter into such litigation to protect the interest of the City.

Contracts with the City for purposes of construction work (as defined in 41 CFR 60-1.3) shall include the following term: "Contractor will cooperate with the City in using his best efforts to insure that minority business enterprise shall have the maximum practical opportunity to compete for subcontract work under this contract."

EXHIBIT 6
EQUAL EMPLOYMENT STATUS REPORT

Contractor's Name _____

Street Address _____

City _____ State _____ Zip _____

This firm is:

_____ Independently owned and operated

_____ An Affiliate Parent Company _____

or

_____ A Subsidiary of Address _____

or

_____ A Division City and State _____

Zip _____

Contractor HAS HAS NOT (1) developed and has on file an affirmative action program in conformance with the Rules of the City or 41 CFR 60-2; (2) participated in any previous contract or subcontract subject to the equal opportunity clause either the City or Federal _____ Contract Compliance requirement;

(3) Filed with the City, or where applicable, joint Reporting Committee, or other Federal Agency, all reports due under the applicable. _____ previous contract or subcontract.

Contractor's Equal Employment Opportunity Program _____ has _____ has not been subject to a Federal Equal Opportunity Compliance Review. If so, then when

Signature _____ Date _____

Title _____

Return to: City of Colorado Springs Affirmative Action Officer

APPENDIX 1

INDEX OF DRAWINGS

SHEET INDEX

| <u>SHEET NUMBER</u> | <u>SHEET TITLE</u> |
|---------------------|---|
| 01 | COVER SHEET |
| 02 | GENERAL NOTES |
| 03 | SPECIFICATION NOTES |
| 04 | SURVEY CONTROL, GEOTECHNICAL, AND PROPERTY OWNERSHIP INFORMATION |
| 05 | DROP STRUCTURE PLAN SHEET |
| 06 | DROP STRUCTURE PLAN AND PROFILE |
| 07 | TYPICAL SECTIONS |
| 08 | TYPICAL SECTION AND CUTOFF WALL SECTION |
| 09 | CONSTRUCTION DETAILS (1 OF 2) |
| 10 | CONSTRUCTION DETAILS (2 OF 2) |
| 11 | EROSION CONTROL PLAN |
| 12 | EROSION CONTROL PLAN DETAILS (1 OF 2) |
| 13 | EROSION CONTROL PLAN DETAILS (2 OF 2) |