INVITATION FOR BID

Construction

B20-070 NS

Issued: May 18, 2020

Airline Ticketing and Rental Car Counter Modernization

The City of Colorado Springs
**Bid Summary**

The City of Colorado Springs and Colorado Springs Airport (located at 7770 Milton E Proby Parkway Colorado Springs CO 80916), hereby solicits for Firm Fixed Price bids, for replacement and modernization of the airline ticketing and rental car counters. This will include the manufacturing and installation of 13 airline ticketing and 13 rental car counters.

This IFB is posted to Rocky Mountain E-Purchasing or [www.bidnetdirect.com](http://www.bidnetdirect.com). Submittals for this bid must be made through Bidnet. All required bid documents need to be uploaded from the Bidnet website. Bidnet registration is free and can be accessed through the following link:

[www.bidnetdirect.com](http://www.bidnetdirect.com)

SUBMITTALS FOR THIS PROJECT WILL NOT BE ACCEPTED ON THE BONFIRE PROCUREMENT PLATFORM AS THE CITY WILL NO LONGER BE USING BONFIRE AFTER JULY 1, 2020.

Bid opening will be held via Webex see 1.2

Bids are due by June 30, 2020 by 3:00pm.
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**Bid Information**

Section I provides general information to potential Bidders, such as bid submission instructions and other similar administrative elements. This Invitation for Bid (IFB) is available on BidNet (www.bidnetdirect.com). All addenda or amendments shall be issued through BidNet and may not be available through any other source.

1.0 **Special Terms**

Please note the following definitions of terms as used herein:

- **City**: Shall mean the City of Colorado Springs
- **Contractor or Consultant**: Shall mean the Bidder whose offer is accepted and is awarded the contract to provide the products or services specified in the IFB.
- **Offer or Bid**: Shall mean a bid submitted in response to this IFB.
- **Offeror or Bidder**: Shall mean the person, firm, or corporation that submits a formal bid or offer and that may or may not be successful in being awarded the contract.
- **Project**: Shall refer to B20-070 NS Airline Ticketing and Rental Car Counter Modernization.
- **Invitation for Bid or IFB**: shall mean this solicitation of formal, competitive, sealed bids from prospective bidders in which the intent is to award a contract to the resultant lowest responsible and responsive bidder.

1.1 **Bid Dates**

- Invitation for Bid Issue: May 18, 2020
- Pre Bid Conference: May 29, 2020 AT 11:00 am
- IFB Questions Deadline: June 12, 2020 by 10:00 am
- Bids Due on or Before: June 30, 2020 by 3:00 p.m. MST
- Anticipated Contract Award: July 31, 2020
- Anticipated NTP: upon contract execution

1.2 **Submission of Bids**

Bids shall be received on or before June 30, 2020 by 3:00 PM MST on the Bidnet website. Paper bids or electronic bids submitted in Bonfire will not be accepted.

Bid bond is required if total bid exceeds $50,000.00. (Reference Section 1.21)

The cost of Bid preparation is not a reimbursable cost. Bid preparation shall be at the Bidder’s sole expense and responsibility.

1.3 **Pre-Bid Conference**

A pre-bid conference will be held on Friday May 29, 2020 at 11:00AM (Mountain Standard Time) through Webex teleconference meeting. This meeting is not mandatory however, all Offerors are encouraged to attend. Please email contracting specialist to request an invitation to the Webex teleconference.
1.4 LATE BIDS / LATE MODIFICATIONS OF BIDS
Bids, withdrawals or modifications of Bids received after the time set for opening, as designated in 1.2 above, are considered "late bids", and will not be accepted by the City, except as provided for in the City of Colorado Springs Procurement Rules and Regulations and approved by the Procurement Services Manager. Bidders are solely responsible for insuring their bids arrive on time and to the place specified in this Invitation for Bid.

1.5 MISTAKES IN BIDS – CONFIRMATION OF BID
If it appears from a review of a Bid that a mistake has been made, the Bidder may be requested to confirm their Bid in writing. Situations in which the confirmation may be requested include obvious, apparent errors on the face of a 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.

1.6 PROCUREMENT RULES AND REGULATIONS
All formal IFBs 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's Procurement Services Division website (www.coloradosprings.gov). Any discrepancies or conflicting statements, decisions regarding bidding irregularities, or clarifications regarding clauses or specifications will be rectified utilizing the City's Procurement Rules and Regulations, when applicable. It is the Bidder's responsibility to advise the Contracts Specialist listed in this IFB of any perceived discrepancies, conflicting statements, or problems with clauses or specifications prior to the Bid opening date and time.

1.7 MINOR INFORMALITIES / IRREGULARITIES IN BIDS
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 goods and/or services being acquired.

If the City Procurement Services Division determines that a Bid submitted contains a minor informality or irregularity, then the Procurement Services Manager shall either give the Bidder an opportunity to cure any deficiency resulting from the minor informality or irregularity 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:
A. 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 security, or signed cover letter which references the Bid Number and amount of Bid).

B. Bidder fails to acknowledge an Amendment, although 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.

1.8 REJECTION OF BIDS

The Procurement Services Manager has the authority to reject any Bid based on, but not limited to, the following:

A. Any Bid that fails to conform to the essential requirements of the Invitation for Bids shall be rejected.

B. Any Bid that does not conform to the applicable specifications shall be rejected unless the IFB authorizes the submission of alternate bids and the items or services offered as alternates meet the requirements specified in the IFB.

C. A Bid that fails to conform to the specified delivery schedule.

D. A Bid shall be rejected when the Bidder imposes conditions that would modify requirements of the IFB 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:

   (1) Protects against future changes in conditions, such as increased costs, if total possible costs to the City cannot be determined. This includes failure to completely fill out required bid schedule.

   (2) Fails to state a price and indicates that price shall be “price in effect at time delivery”.

   (3) States a price but qualifies it as being subject to “price in effect at time of delivery”.

   (4) Takes exceptions to the IFB terms and conditions.

   (5) Inserts the Bidder’s terms and conditions.

   (6) Limits the rights of the City under any Contract/Invitation for Bid clause.

E. Any Bid in which the price is considered to be unreasonable or is over budget.

F. Any Bid if the prices are determined to be unbalanced.

G. Bids received from any person or contractor that is suspended, debarred, proposed for debarment, or under investigation for fraud, including failure to pay federal, state, local or city taxes.

H. When a bid guarantee is required and the bidder fails to furnish the guarantee in accordance with the requirements of the IFB.

I. Low Bids received from bidders who are determined to be non-responsible in accordance with the City’s Procurement Rules and Regulations.
J. Any Bid that was prepared and submitted by a vendor who has been determined by the Procurement Services Manager to have an unfair advantage over other Bidders. Examples of an unfair advantage include, but are not limited to, the following:

   (1) A previous or prior employee who in the last six (6) months was directly involved in the design or specification preparation of the competed procurement.

   (2) A vendor who was directly involved in design or specification preparation of the competed project either for pay or voluntarily.

1.9 ESTIMATED QUANTITIES
If the Bid Form herein contains estimated quantities, this provision is applicable. The quantities listed for each of the items in the Bid Form are only estimated quantities. Contractors are required to bid a firm unit price 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 Form such as overhead, profit, mobilization, de-mobilization, bonding, etc. shall be distributed throughout the Bidder's Unit Prices for the items listed on the Bid Form.

1.10 NUMBER OF COPIES
Bidders shall submit one electronic copy on Rocky Mountain E-Purchasing (www.bidnetdirect.com). Upon submission, all Bid documents shall become and remain the property of the City.

1.11 INTENTIONALLY DELETED

1.12 SALES TAX
The successful Offeror, if awarded a contract, shall apply to 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 which shall be applicable and should be included in all bids and proposals. The tax exempt project number and the exemption certificate only apply to County, PPRTA (Pikes Peak Rural Transportation Authority), and State taxes when purchasing construction and building materials to be incorporated into 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 at the current taxation rate.

The Offeror and all subcontractors shall include in their Offer City of Colorado Springs Sales and Use Tax on the work covered by the offer, and all other applicable taxes. Any increase in applicable sales or use tax occurring after the contract has been let shall be borne by the contractor and not passed through to the City.

Forms and instructions can be downloaded at the City of Colorado Springs Website: https://coloradosprings.gov/sales-tax/page/construction-contractors?mlid=47576. 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.: 84-6000573
Federal Excise: A-138557
State Sales Tax: 98-03479

1.13 PREPARATION OF A BID OFFER
A. 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. 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.
C. All items, (unless the invitation specifically states otherwise) including any additive or deductive alternates on the Bid Form, must be completely filled out or the Bid will be determined non-responsive and ineligible for consideration for award.
D. 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 IFB.
E. The Bidder certifies that no person or firm other than the Bidder or as otherwise indicated has any interest whatsoever in the Bid or the contract that may be entered into as a result of the Bid and that in all respects the Bid is legal and firm, submitted in good faith without collusion or fraud.
F. 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 determining whether a Bidder is responsive and responsible and awarding contracts in the best interest of the City.

G. 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.

1.14 BASIS OF AWARD
The City of Colorado Springs intends to award a contract to the lowest responsive and responsible Bidder whose Bid meets the requirements and the criteria set forth in the Invitation for Bids and is determined to be in the best interest of the City.

A. The City reserves the right to reject any or all Bids and to waive informalities and/or irregularities in a Bid. Whether or not a contract is awarded as a result of this Invitation for Bid, as stated above, Bid preparation costs are not reimbursable.

B. Total Bid will be evaluated and awarded as follows: It is the City’s intent to award this bid based on the TOTAL BASE BID, not on a line item by line item basis.

C. Bid offers that include a base bid and add alternates will be evaluated and awarded as follows. At bid opening, the City will announce a Budgetary Control Dollar Amount to be used for determining the low bidder. The City intends to award a contract for the base bid item if the Budgetary Control Amount is not exceeded, to the lowest responsive and responsible bidder.

1. If the Budgetary Control Amount is exceeded by all bidders then the deductive alternate(s) will be subtracted from each bid accordingly and the award made to the resulting lowest responsible bidder that does not exceed the Budgetary Control Amount. The deductive alternates will be deducted in the order in which they appear on the Bid Form.

D. If the lowest responsible and responsive bid still exceeds the City’s budget for these items after the deduct alternate is read, the City reserves the right to reduce estimated quantities to get within the available budget and award a contract that is within budget. D only applies to the lowest responsible and responsive bidder at time of bid opening.

1.15 PERIOD OF ACCEPTANCE
The Bidder agrees that its Bid shall remain open for acceptance by the City for a period of sixty (60) calendar days from the date specified in the IFB for receipt of Bids.

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

1.17 NOTICE TO PROCEED
Work may not start under any awarded contract until a written notice to proceed is issued by the City. The City may issue the Notice to Proceed any time after the contract is signed and, if required, insurance and bonds have been provided in accordance with 1.21 below.

1.18 AMENDMENTS TO THE SOLICITATION
Amendments are also referred to as addendum or addenda; and these terms shall be considered synonymous. It is the Bidder's responsibility to contact the Contracts Specialist listed in 1.20 below to confirm the number of Amendments which have been issued.

A. If this solicitation is amended, then all specifications, terms and conditions, which are not specifically amended, remain unchanged.
B. Bidders shall acknowledge receipt of any amendment to this solicitation by signing and returning the amendment and by identifying the amendment number and date in the space provided on the form for submitting a Bid.
C. Acknowledged amendments must be received prior to Bid opening. Bidders are encouraged to include signed addenda or initialed acknowledgment with returned Bids.

1.19 EXPLANATIONS TO PROSPECTIVE OFFERORS
Any prospective Bidder desiring an explanation or interpretation of the IFB documents, drawings, specifications, etc., must request it in writing within ten days of the Bid due date to allow enough time for 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 Bids or if the lack of it would be prejudicial to other prospective Bidders.

1.20 QUESTIONS AND OTHER REQUESTS FOR INFORMATION
All questions shall be submitted in writing to the following Contract Specialist. All questions must be submitted by email and must be received no later than the indicated due date provided in Section 1.1.

All questions shall be directed to the Contract Specialist:
Nicole Spindler, Nicole.Spindler@coloradosprings.gov

DO NOT CONTACT ANY OTHER INDIVIDUAL AT THE CITY OF COLORADO SPRINGS REGARDING THIS SOLICITATION.
1.21 SECURITY REQUIREMENTS

A. Bid Security

(1) If the total amount of the accumulative Bid is more than $50,000, or a bond is required elsewhere in this IFB, the Bidder is required to furnish with their Bid a bid security in the form of a bank certified check, bank cashier’s check or a one-time bid bond underwritten by a company licensed to issue bonds in the State of Colorado and acceptable to the City in an amount equal to at least 5% of the total amount of the Bid payable without condition to the City.

(2) The Bid security shall guarantee that the Bid will not be withdrawn or modified for a period of sixty (60) calendar days after the time set for the receipt of Bids, and, if the Bid is accepted within those sixty (60) 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, enter into a Contract and furnish the required bonds and all insurance certificates called for under this Invitation for Bid.

(3) 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 as Bid security, it will be returned as soon as possible after the lowest responsive and responsible Bidder is determined and a contract is executed.

(4) In the event the Bidder whose Bid is accepted fails to enter into the contract and/or furnish the required contract bonds, its certified check, cashier’s check or bid bond will be forfeited in full to the City.

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

(1) For contracts in excess of $50,000, the Contractor shall furnish to the City each of the following: a Performance Bond, a Labor and Materials Payment Bond, and a Maintenance Bond. Each such bond shall be in the amount of one hundred percent (100%) of the contract price. Bonds shall be submitted within ten (10) calendar days after notification of award of a Contract. The cost of all bonds shall be included in Contractor’s Bid.

(2) Bonds shall:
   a) Be for the full amount of the Contract price.
   b) Guarantee the Contractor’s faithful performance of the work under the Contract, and the prompt and full payment for all labor and materials involved therein.
   c) Guarantee protection to the City against liens of any kind.
   d) Be from a surety company operating lawfully in the state of Colorado and accompanied by an acceptable "Power of Attorney" form attached to each bond copy.
e) Be issued from a surety company that is acceptable to the City.
f) Be submitted using the forms in the Exhibit section of this IFB or such forms as are approved by the City Attorney’s Office.

1.22 SPECIFICATIONS AND DRAWINGS
No Fee solicitations: Specifications and Drawings are normally included in the IFB. If Specifications and Drawings are too large to be included in the IFB, all interested Bidders may obtain one copy of the Project Specifications and a set of the Project Drawings for use in preparing Bids from the City Procurement Services Division office. If the Bidder requires additional sets, it is the Bidder’s responsibility to duplicate any additional copies, at its own expense.

1.23 TYPE OF CONTRACT
As a result of this Invitation for Bids, it is the City’s intention to award a firm fixed price contract based on the prices offered by the lowest responsive and responsible bidder. Contract unit prices shall remain firm and fixed throughout the Contract performance period.

1.24 F.O.B. DESTINATION
Unless otherwise specified in the Invitation for Bid, all goods, materials, supplies, equipment or services covered by this IFB shall be delivered F.O.B. Destination shall be the location indicated in the awarded Contract or Purchase Order.

1.25 BID RESULTS
The City does not mail Bid results or tabulations. Bidders submitting Bids in response to this solicitation may also request the Bid tabulation for this solicitation via email to the Contracts Specialist indicated as the point of contact for this solicitation.

1.26 APPROPRIATION OF FUNDS
A. In the event funds are not appropriated in whole or in part sufficient for performance of the City's obligations under this IFB, or appropriated funds may not be expended due the City Charter spending limitations, then the City, without compensation to Bidders, may terminate or cancel this IFB or not award any contracts under this IFB.
B. In accordance with the Colorado Constitution and City Charter, performance of the City's obligations under any resultant Contract will be expressly subject to appropriations of funds by the City Council, and, in the event the budget or other means of appropriation for any year of the Contract fails to provide funds in sufficient amounts to discharge such obligations, such failure (i) shall act to terminate the Contract 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 the Contract, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City.
1.27 PERIOD OF PERFORMANCE
The Contractor shall complete all work within **120 Calendar Days** after the Notice to Proceed and shall meet all milestones required in Appendix B – Scope of Work. The Contractor will start work promptly after receipt of the Notice to Proceed and Pre-Construction meeting and continue to work diligently until all work is completed and accepted by the City.

1.28 BID DOCUMENTS
The following comprise this Invitation for Bid.

- Appendix A – Additional Terms and Conditions
- Appendix B – Scope of Work
- Appendix C – Design Documents
- Appendix D – Project Manual (Technical Specifications)
- Appendix E – Price Sheet/Bid Form
- Appendix F – General Construction Terms and Conditions
- Appendix G – Minimum Insurance Requirements Checklist
- Appendix H – Qualification Statement
- Appendix I – Representations and Certifications
- Appendix J – Bid Bond

The following listed documents **must** be included with your Bid in order for your Bid submittal to be considered responsive.

- **Appendix E** – Price Sheet/Bid Form
- **Appendix G** – Minimum Insurance Requirements Form
- **Appendix H** – Qualification Statement
- **Appendix I** – Representations and Certifications
- **Appendix J** – Bid Bond (if applicable, see 1.21)
- Acknowledged Addendums, if issued
**PRICE SHEET/BID FORM**

The undersigned declares that it has carefully examined the bid information and the complete Solicitation, (The term solicitation means the complete invitation for bid) in submitting a bid for “Airline Ticketing and Rental Car Counters Modernization”. The bidder’s signature will be considered the bidder’s acknowledgment of understanding and ability to comply with all items in this solicitation.

The bidder’s signature will be considered the bidder’s acknowledgment of understanding and ability to comply with all items in this solicitation. If an bidder 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 contract to the lowest responsible and responsive bidder as specified under the Basis of Award Section herein. Each bidder will provide pricing for each area listed in the following documentation.

**OFFICIAL PRICE SCHEDULE TO BE COMPLETED IN BIDNET, HARDCOPY BIDS WILL NOT BE ACCEPTED.**

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Demolition &amp; disposal of existing airline ticket counters – to include replacement of flooring finishes to match existing carpet and LVT (Second Floor)</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>Manufacturing/assembly of airline ticketing counter shells using solid surface materials (Second Floor)</td>
<td>13</td>
</tr>
<tr>
<td>3</td>
<td>Manufacturing and installation of airline millwork counter inserts (Second Floor)</td>
<td>13</td>
</tr>
<tr>
<td>4</td>
<td>Installation of airline ticketing counter shells - Including coring, cabling, conduit (Second Floor)</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Description</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>-----------------------------------------------------------------------------</td>
<td>---</td>
</tr>
<tr>
<td>5</td>
<td>Airline ticket counter baggage scale equipment – Including materials, installation, and electrical/IT requirements (Second Floor)</td>
<td>13</td>
</tr>
<tr>
<td>6</td>
<td>Manufacturing and installation of pony walls (Second Floor)</td>
<td>2</td>
</tr>
<tr>
<td>7</td>
<td>Manufacturing and installation of counter shell monitor arm mounts &amp; keyboard platforms (First &amp; Second Floors)</td>
<td>1</td>
</tr>
<tr>
<td>8</td>
<td>Manufacturing/assembly of rental car counter shells using solid surface materials (First Floor)</td>
<td>13</td>
</tr>
<tr>
<td>9</td>
<td>Installation of rental car counter shells (First Floor)</td>
<td>1</td>
</tr>
</tbody>
</table>

**TOTAL BASE BID**

Alt #1 Cambria Stone material for all counter shells

**TOTAL BASE BID + Alt#1**
SIGNATURE PAGE

By signing in this space, the undersigned hereby certifies that the Bidder 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 undersigned hereby certifies that at the time of this certification, the Bidder does not knowingly employ or contract with any illegal aliens and that the Bidder has participated or attempted to participate in the E-verify program in order to verify that the Contractor does not employ any illegal aliens.

If awarded the contract, the undersigned hereby agrees to execute and enter into a contract with the City, and furnish the necessary security within ten (10) days of receipt of the “Notice of Award”, to begin work within ten (10) days from the date of receipt of the “Notice to Proceed”, and to complete the work within ONE HUNDRED TWENTY (120) 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 statements or representations on behalf of the Bidder.

(Name of Company)                        (Signature)                         (Date)

(Address)

(City, State and Zip)                     (Telephone Number)

(Name Typed/Printed)                     (Title)                                (Email Address)

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 ☐
AMENDMENT #2 ☐
AMENDMENT #3 ☐
AMENDMENT #4 ☐
AMENDMENT #5 ☐
AMENDMENT #6 ☐
AMENDMENT #7 ☐
AMENDMENT #8 ☐
AMENDMENT #9 ☐
AMENDMENT #10 ☐
SAMPLE CONTRACT

CONSTRUCTION CONTRACT

Contract Number:  Project Name/Title

Vendor/Contractor

Contact Name:  Telephone:

Email Address:  

Address:

Federal Tax ID #  Please check one:  □ Corporation  □ Individual  □ 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)

Contract Type:  Period of Performance:

1. INTRODUCTION

THIS Not to Exceed, Firm Fixed Price CONTRACT ("Contract") is made and entered into this ___ day of ____________, 2020 between the City of Colorado Springs, a Colorado municipal corporation and home rule city, in the County of El Paso, State of Colorado, (the "City"), and ________________________ (the "Contractor").

THE CITY AND THE CONTRACTOR HEREBY AGREE AS FOLLOWS:

The City has prepared the necessary Contract Documents for the following performance obligations: XXXXXXXXX.

On ____ ________, 2020 Contractor submitted its written offer and proposal ("Contractor’s Proposal") to perform the work described in Contractor’s Proposal. Based on the representations and information provided in Contractor’s Proposal the City awarded this Contract to Contractor. Contractor acknowledges it is responsible for furnishing all materials, supplies, labor, services, transportation, tools, equipment, and parts for the work in accordance with the following Contract Documents:

1. This Contract
2. All Appendices listed in Section 44
2. COMPENSATION/CONSIDERATION

Not to Exceed, Firm Fixed Price Contract:

THIS NOT TO EXCEED, FIRM FIXED PRICE CONTRACT is established at $xxxxxxxx.

Subject to the terms and conditions of the Contract Documents, Contractor shall provide all materials, supplies, labor, services, transportation, tools, equipment, and parts to perform ______________ services for the City of Colorado Springs in a good and workmanlike manner to the satisfaction of the City for the total contract amount designated above and in the Notice of Award, to be paid by the City to the Contractor.

All pricing provided by the proposer shall be in accordance with the price sheet line item prices found in Schedule A. Payment shall be made for actual work completed as set forth in Schedule B, General Construction Terms and Conditions. At no time shall the total obligation of the City exceed the not to exceed amount of this Contract.

3. TERM OF CONTRACT

Contractor will start work promptly after the Notice to Proceed and continue to work diligently until completed. The Contractor shall complete all work as defined in the contract documents in coordination with the Project Manager by the Period of Performance provided in this Contract. The Contractor shall provide a two-year warranty on all work performed under this Contract after the job has been completed and accepted by the City’s delegated Project Manager.

4. INSURANCE

The Contractor shall provide and maintain acceptable Insurance Policy(s) consistent with the Minimum Insurance Requirements attached as Schedule F, which includes Property, Liability, and as otherwise listed in Schedule F. The City of Colorado Springs shall be listed, as an additional insured on the Property and Liability policy(s) approved by the City.

Further, Contractor understands and agrees that Contractor shall have no right of coverage under any existing or future City comprehensive, self, or personal injury policies. Contractor shall provide insurance coverage for and on behalf of Contract that will sufficiently protect Contractor, or Contractor’s agents, employees, servants or other personnel, in connection with the services which are to be provided by Contractor pursuant to this Contract, including protection from claims for bodily injury, death, property damage, and lost income. Contractor shall provide worker’s compensation insurance coverage for Contractor and all Contractor personnel. Contractor shall file applicable insurance certificates with the City and shall also provide additional insurance as indicated in this Contract. A CURRENT
CERTIFICATE OF INSURANCE IS REQUIRED PRIOR TO COMMENCEMENT OF SERVICES LISTING THE CITY, AND SUCH OTHER PERSONS AND ENTITIES AS ADDITIONALLY INSURED.

5. RESPONSIBILITY OF THE CONTRACTOR

A. The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all Scope of Work services furnished by the Contractor under this Contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in services provided under this Contract to the satisfaction of the City.

B. The City's review, approval of, acceptance of, or payment for the services required under this Contract shall not be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the City for any and all damages to the City caused by the Contractor's negligent performance of any of the services furnished under this Contract.

C. The rights and remedies of the City provided for under this Contract are in addition to any other rights and remedies provided by law.

D. If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

E. Offsite equipment is required to be insured and evidence of insurance shall be provided to the City. All losses (including insurance claims & deductibles) resulting from lost, damaged or stolen tools and equipment shall be the sole responsibility of the Contractor, and not the City, and the cost of such losses shall not be reimbursable under this contract.

F. In the event that Contractor elects to utilize subcontractor insurance, the maximum amount to be considered reimbursable costs under this contract will be 0.75% of the total value of subcontracts enrolled in such an insurance program; however, the cost of the subcontractor insurance shall be reduced from the Contractor’s insurance cost. Enrollment in any such program will be limited to subcontracts in excess of $100,000. Any Contractor costs incurred in connection with Contractor’s elected subcontractor default insurance program that exceeds the amount reimbursed by City under the formula in this paragraph will be considered to be covered by Contractors’ FEE. In the event Contractor elects to bond selected subcontractors rather than utilize subcontractor insurance program, the maximum allowable cost of the subcontractor bond shall not exceed 0.75% of the total value of subcontract.
Cash discounts obtained on payments made by the Contractor shall accrue to the City if (i) before making the payment, the Contractor included the amount to be paid, less such discount, in an Application for Payment and received payment from the City, or (ii) the City has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. The Contractor shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work prior to providing the City with seven (7) days prior written notice of the potential discount, rebate or refund and an opportunity to furnish funds necessary to obtain such discount, rebate or refund on behalf of the City in accordance with the contract documents. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the City, and the Contractor shall make provisions so that they can be obtained.

6. WORK OVERSIGHT

A. The extent and character of the work to be done by the Contractor shall be subject to the general approval of the City’s delegated Project Manager.

B. If any of the work or services being performed does not conform to the requirements of the Contract Documents, the City may require the Contractor to perform the work or services again in conformity with Contract Documents, at no increase in Contract amount. When defects in work or services cannot be corrected by re-performance, the City may (1) require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements and (2) reduce the Contract price to reflect the reduced value of the work or services performed.

C. If the Contractor fails to promptly perform the defective work or services again or to take the necessary action to ensure future performance is in conformity with Contract requirements, the City may (1) exercise self-help remedies, including performing or causing to be performed the work and services and charge the Contractor all expenses incurred by the City that are directly related to the performance of such work or service or (2) terminate the Contract for breach of contract.

7. SUBCONTRACTORS, ASSOCIATES, AND OTHER CONTRACTORS

A. Any subcontractor, outside associates, or other contractors used by the Contractor in connection with Contractor's work under this Contract shall be limited to individuals or firms that are specifically identified by the Contractor in the Contractor's proposal and agreed to by the City. The Contractor shall obtain the City’s Project Manager’s written consent before making any substitution of these subcontractors, associates, or other contractors.
B. The Contractor shall include a flow down clause in all of its subcontracts, agreements with outside associates, and agreements with other contractors (collectively “Non-party Agreements”). Contractor shall cause the flow down clause to include terms that provide that if the Non-party Agreement terms and conditions conflict with the flow down clauses, then the flow down clauses provided in this Section will control. The flow down clause shall cause the following sections of this Contract to be incorporated into all Non-party Agreements: (i) Construction Contract Document terms: (a) 3 Term of Contract, (b) 10 Appropriation of Funds, (c) 13 Choice of Law, (d) 15 Indemnification, (e) 23 Books of Accounting and Auditing, (f) 26 Labor, (g) 41 Use of the City Name and Logo, and (h) Civil Rights; and (ii) General Construction Terms and Conditions document: (a) 103.03 Independent contractor, (b) 107.12 Protection of Utilities, (c) Record of Drawings, and (d) Dispute resolution.

8. KEY PERSONNEL

The key personnel listed in the proposal and/or below will be the individuals used in the performance of the work. If any of the listed key personnel leave employment or are otherwise not utilized in the performance of the work, approval to substitute must be obtained by the Contractor from the City’s Project Manager. Any substitute shall have the same or a higher standard of qualifications that the key personnel possessed at the time of Contract award.

The City shall have the opportunity to interview and be part of the selection process when the Contractor selects or assigns the Project Manager for this Contract. Once selected, should a change occur or planned to occur, the City has the right to reject the proposed replacement Project Manager. The Contractor agrees to provide written correspondence to the City when a change in Project Manager will or is known to occur with as much advance notice as possible.

9. RESERVED

10. APPROPRIATION OF FUNDS

This Contract 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 Contract, 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 Contract 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 Contract, 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 Contract.

11. CHANGES

The parties acknowledge that no change order or other form or order or directive may be issued by the City that requires (i) additional compensable work to be performed and (ii) the aggregate amount payable under the Contract to exceed the not to exceed, Firm Fixed Price amount appropriated for this Contract 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 or unless such work is covered under a remedy-granting provision of this Contract. The parties acknowledge that no change order or other form or order or directive that requires additional compensable work to be performed under this Contract shall be issued by the City unless funds are available to pay such additional costs, and, regardless of any remedy-granting provision included within this Contract, the Contractor shall not be entitled to any additional compensation for any change which increases or decreases the Contract completion date, or for any 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 is given a written change order in accordance with Section 11.

No change, change order, amendment, or modification to this Contract shall be valid unless issued in writing by the City of Colorado Springs Procurement Services Division. The City shall not be liable for any costs incurred by the Contractor resulting from work performed for changes not issued in writing by the City of Colorado Springs Procurement Services Division and signed by the authorized City Representative.

The following personnel are authorized to sign changes, amendments, or modifications to this Contract.

The Project Manager: Changes up to $14,999.99
The City of Colorado Springs Chief of Staff: Changes up to $499,999.99
The Mayor of the City of Colorado Springs: Unlimited

Change Orders Affecting the Not to Exceed, Firm Fixed Price Contract Amount:

Contractor acknowledges that changes orders are subject to Section 11 and may be issued based on (i) Firm Fixed Price payment, (ii) time and materials, (iii) unit pricing, or (iv) other methods provided by the City. Contractor further
acknowledges that if a change order is issued, then, by signing the change order, Contractor is releasing and fully discharging the City from any claim, loss, damage, request for equitable adjustment, or demand arising from the matters described in the change order. The amount of compensation to be paid shall be deemed to cover all additional, direct, indirect, or other expenses and profit of the Contractor. The parties shall mutually draft and sign a document for attachment to each change order that describes, in detail, each (i) condition or matter causing the need for the change order, (ii) claim, loss, damage, delay, and change in time related to the condition or matter giving rise to the change order, and (iii) claim, loss, damage, delay, and change in time that was (a) fully resolved and (b) any claim loss, damage, delay, or change in time that is disputed. If Contractor identifies any disputed claim, loss, damage, delay, or change in time, then the City shall issue a ruling on the disputed matter within 10 calendar days. If the Contractor disputes, disagrees with, or otherwise considers unfair any decision or ruling by the City, then Contractor shall, within 10 calendar days, provide the City with written notice of the dispute and follow the dispute resolution process set forth in this Contract.

**Firm Fixed Price Contract Change Orders**

If requested by the City, the Contractor shall promptly provide itemized and sufficient substantiating data, including calculations, measurements, cost records, production rates, equipment types and capacity, labor costs by craft and other information that the City may reasonably require the Contractor to produce in order to permit the City to evaluate any Firm Fixed Price Contractor Change Request. In pricing such proposals, the Contractor shall include estimates of the type of costs described below:

Calculation of the Contract Adjustment: In no event shall the charge or credit to the City associated with any change exceed the sum of the following:

A. Direct Labor. The actual net, direct increase or decrease in the cost of the Contractor's labor. Such cost shall include only the cost associated with the workers who actually perform the changed Work. The cost of supervision, management and field or office overhead shall not be included or calculated as a direct labor cost. For shop work, the direct labor cost shall include only those workers who work directly on the item being manufactured or the actual operators of the equipment being used to handle the items being manufactured.

B. Labor Burden. Contractor's actual costs for worker's compensation and liability insurance, payroll taxes, social security and employees' fringe benefits (including employer paid health insurance) imposed on the basis of payrolls. This burden must reflect the variability of some burdens, i.e., social security. The burden shall be itemized. Be included in the markup as stated below.

C. Direct Material, Supplies, Installed Equipment. The actual net, direct cost of materials, supplies and equipment incorporated into or consumed by the Work. If actual costs are not available, this cost shall be the lowest commercially
available price including all discounts and rebates and all applicable taxes. Such cost shall be based on buying the material, supplies and equipment in the largest practical quantity to receive quantity discounts.

D. Equipment Costs. Without markup or operator, the lesser of (i) the actual net cost to the Contractor of owned or rented equipment, other than small tools; or (ii) the rental rate for such equipment as determined by using the following method(s):

1. Equipment rental rates listed in the appropriate rental rate book currently in use by the Colorado Department of Transportation. If an item of equipment does not appear in the rental rate book currently in use by the Colorado Department of Transportation, the rental rates published by the Associated Equipment Dealers may be used as a basis for negotiating a rental rate for a particular piece of equipment. The Contractor shall provide all information necessary to determine the appropriate rental rate at the time the equipment is brought on the job. This shall include, but not be limited to, type, description, make, year, model, series, serial number, fuel type, transmission, wheel combination, GVW, capacity and equipment owner.

2. Rental equipment costs shall be determined using actual invoiced rates, less all discounts for basic equipment rental.

3. Mobilization/demobilization costs will be paid if the equipment is mobilized exclusively or Work described in a Change Order. If the equipment is also used on Base Contract Work, no mobilization or demobilization cost will be paid. Mobilization/demobilization costs will be based on using the least expensive means to mobilize or demobilize. Equipment shall be obtained from the nearest available source. When the least expensive methods are used, the costs shown in the actual invoice will be the basis for pricing.

E. Mark Up for Overhead and Profit.

1. The Contractor or Subcontractor of any tier who actually performs the Work shall be entitled to a markup of fifteen percent (15%) on the actual costs for items A through D above. The markup for overhead and profit shall include all management, oversight, estimating, all overhead (direct and indirect), insurance, benefits, bond, profit, tools, health, safety, environmental, and any other expenses.

2. A supervising Subcontractor (if any) shall be entitled to a three percent (3%) markup on the actual price charged to the Subcontractor by a Subcontractor of lower tier.

3. The Contractor shall be entitled to a three percent (3%) markup on the actual price for the Subcontractor’s work.

4. All of the Contractor’s and Subcontractor’s field and office overhead and supervision costs are included in the markups listed above.
(5) Neither the Contractor nor Subcontractor of any tier, nor the City in the case of a credit, will apply or attempt to apply these percentage adjustments in a way that would pyramid either the cost or credit because of the involvement of a Subcontractor or sub subcontractor.

12. ASSIGNMENT

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 under the terms of this Contract. In addition to the usual recitals in assignment contracts, the following language must be included in the assignment:

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.

13. CHOICE OF 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, Colorado, a Colorado home rule city. Court venue and jurisdiction shall be exclusively in the Colorado District Court for El Paso County, Colorado. The Parties agree that the place of performance for this Contract is deemed to be in the City of Colorado Springs, El Paso County, State of Colorado. The Contractor shall ensure that the Contractor and the Contractor's employees, agents, officers and subcontractors are familiar with, and comply with, applicable Federal, State, and Local laws and regulations as now written or hereafter amended.

14. WORKERS’ COMPENSATION INSURANCE

Contractor shall take out and maintain during the Period of Performance, Colorado Worker's Compensation Insurance for the Contractor and all employees of the Contractor. If any service is sublet by the Contractor, the Contractor shall require the subcontractor to provide the same coverage for the subcontractor and subcontractor's employees. Workers' Compensation Insurance shall include occupational disease provisions covering any obligations of the Contractor in accord with the provisions of the Workers’ Compensation Act of Colorado.

15. 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 (i) the Contractor's obligations or actions under this Contract caused by any willful or negligent error, omission or act or a failure to observe any applicable standard of care by the Contractor, or subcontractor or any person employed directly or indirectly by them, by anyone for whose acts they may be legally liable, or (ii) the Contractor's breach of any of the Contractor's obligations under this Contract. In consideration of the award of this Contract, to the extent damages are covered by insurance, the Contractor agrees to waive all rights of subrogation against the City, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers for losses arising from the work performed by the Contractor for the City. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 15.

The Contractor's indemnity obligations under this Section 15 shall also specifically include, without limitation: all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable legal expenses) and punitive damages (if any) arising out of or in connection with and (i) violation of or failure to comply with any law, statute, ordinance rule, regulation, code or government requirement which bears upon the performance of the Work by the Contractor, a subcontractor or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses and inspections as required under the Contract Documents, or any violation any permit or other approval of a public authority applicable to the Work.

The indemnification obligation shall survive the expiration of termination of this Contract.

16. 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 City shall not provide any direction to the Contractor on the work necessary to complete the project. Contractor understands that it is an independent contractor responsible for knowing how to perform all work or tasks necessary to complete project. The Contractor shall supervise and direct the work, using the Contractor's best skill and attention based on industry standards. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the Contract. If
the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

The Contractor shall be responsible to the City for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the work for, or on behalf of, the Contractor or any of its subcontractors. The Contractor shall be responsible for inspection of portions of work already performed to determine that such portions are in proper condition to receive subsequent work.

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 is 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.

17. APPLICABLE LAW AND LICENSES

In the conduct of the services or work contemplated in this Contract, the Contractor shall ensure that the Contractor and all subcontractors comply with all applicable state, federal and City and local law, rules and regulations, technical standards or specifications. The Contractor shall qualify for and obtain any required licenses prior to commencement of work.

18. PRIOR AGREEMENTS

This is a completely integrated Contract and contains the entire agreement between the parties. Any prior written or oral agreements or representations regarding this Contract shall be of no effect and shall not be binding on the City. This Contract may only be amended in writing, and executed by duly authorized representatives of the parties hereto.

19. INTELLECTUAL PROPERTY

The Parties hereby agree, and acknowledge, that all products, items writings, designs, models, examples, or other work product of the Contractor produced pursuant to this Contract are works made for hire, and that the City owns, has, and possesses any and all ownership rights and interests to any work products of the Contractor made under this Contract, including any and all copyright, trademark,
or patent rights, and that compensation to the Contractor for Agreement and acknowledgment of this intellectual property right section of this Contract is included in any compensation or price whatsoever paid to the Contractor under this Contract. It is the intent of the parties that the City shall have full ownership and control of the Contractor's work products produced pursuant to this Contract, and the Contractor specifically waives and assigns to the City all rights which Contractor may have under the 1990 Visual Artists Rights Act, federal, and state law, as now written or later amended or provided. In the event any products, items writings, designs, models, examples, or other work product produced pursuant to this Contract is deemed by a court of competent jurisdiction not to be a work for hire under federal copyright laws, this intellectual property rights provision shall act as an irrevocable assignment to the City by the Contractor of any and all copyrights, trademark rights, or patent rights in the Contractor's products, items writings, designs, models, examples, or other work product produced pursuant to this Contract, including all rights in perpetuity. Under this irrevocable assignment, the Contractor hereby assigns to the City the sole and exclusive right, title, and interest in and to the Contractor's products, items writings, designs, models, examples, or other work product produced pursuant to this Contract, without further consideration, and agrees to assist the City in registering and from time to time enforcing all copyrights and other rights and protections relating to the Contractor's products, items writings, designs, models, examples, or other work product in any and all countries. It is the Contractor's specific intent to assign all right, title, and interest whatsoever in any and all copyright rights in the Contractor's products, items writings, designs, models, examples, or other work product produced pursuant to this Contract, in any media and for any purpose, including all rights of renewal and extension, to the City. To that end, the Contractor agrees to execute and deliver all necessary documents requested by the City in connection therewith and appoints the City as Contractor's agent and attorney-in-fact to act for and in Contractor's behalf and stead to execute, register, and file any such applications, and to do all other lawfully permitted acts to further the registration, prosecution, issuance, renewals, and extensions of copyrights or other protections with the same legal force and effect as if executed by the Contractor; further, the parties expressly agree that the provisions of this intellectual property rights section shall be binding upon the parties and their heirs, legal representatives, successors, and assigns.

20. WAIVERS

No waiver of default by the City of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the Contractor shall be construed, or shall operate, as a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained to be performed, kept, and observed by the Contractor.
21. THIRD PARTIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Contract shall give or allow any such claim or right of action by any other or third person or entity on such Contract. It is the express intention of the Parties hereto that any person or entity, other than the Parties to this Contract, receiving services or benefits under this Contract shall be deemed to be incidental beneficiaries only.

22. TERMINATION

A. Termination for Convenience.

By signing this Contract, Contractor represents that it is a sophisticated business and enters into the Contract voluntarily, has calculated all business risks associated with this Contract, and understands and assumes all risks of being terminated for convenience, whether such risks are known or not known. Contractor agrees that the City may terminate this Contract at any time for convenience of the City, upon written notice to the Contractor. Contractor expressly agrees to and assumes the risk that the City shall not be liable for any costs or fees of whatsoever kind and nature if termination for convenience occurs before Contractor begins any work or portion of the work. Contractor further expressly agrees and assumes the risks that the City shall not be liable for any unperformed work, anticipated profits, overhead, mobilizations costs, set-up, demobilization costs, relocation costs of employees, layoffs or severance costs, administrative costs, productivity costs, losses on disposal of equipment or materials, cost associated with the termination of subcontractors, costs associated with purchase orders or purchases, or any other costs or fees of any kind and nature, if Contractor has started or performed portions of the Contract prior to receiving notice from the City. The City shall be liable only for the portions of work Contractor actually satisfactorily completed up to the point of the issuance of the Notice of Termination for convenience. In no event shall the City be responsible for the Contractor’s anticipated profits or general conditions. 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. All obligations of the Contractor under the Contract Documents with respect to the completed Work, including, but not limited to, all warranties, guaranties, punch list obligations, and indemnities, shall apply to all Work completed or substantially completed by the Contractor prior to a convenience termination or any other termination by the City pursuant to this Section 22.
Notwithstanding the above, any convenience termination by the City or payments to the Contractor shall be without prejudice to any claims or legal remedies that the City may have against the Contractor for any cause.

Upon a determination that a termination of this Contract other than termination for convenience under this Section 22A was wrongful or improper for any reason, such termination shall automatically be deemed converted to a convenience termination under this Section 22A, and the Contractor’s remedy for such wrongful termination shall be limited to the recoveries specified under this Section 22A.

B. Termination for Cause: The occurrence of any one or more of the following events (“Event of Default”) will justify termination for cause:

1. Contractor’s failure to perform the work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule as adjusted from time to time.

2. Contractor’s disregard of the laws or regulations of any public body having jurisdiction.

3. Contractor’s disregard of the authority of Project Manager.

4. Contractor’s violation in any material provision of the Contract Documents.

5. Contractor’s failure to make prompt payments to its subcontractors, and suppliers of any tier, or laborers or any person working on the work by, through, or under the Contractor or any of them, any all of their employees, officers, servants, members, and agents.

6. Contractor files a petition commencing a voluntary case under the U.S. Bankruptcy Code, or for liquidation, reorganization, or an arrangement pursuant to any other U.S. or state bankruptcy Laws, or shall be adjudicated a debtor or be declared bankrupt or insolvent under the U.S. Bankruptcy Code, or any other federal or state laws relating to bankruptcy, insolvency, winding-up, or adjustment of debts, or makes a general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, or if a petition commencing an involuntary case under the U.S. Bankruptcy Code or an answer proposing the adjudication of Contractor as a debtor or bankrupt or proposing its liquidation or reorganization pursuant to the Bankruptcy Code or any other U.S. federal or state bankruptcy laws is filed in any court and Contractor consents to or acquiesces in the filing of that pleading or the petition or answer is not discharged or denied within sixty (60) Calendar Days after it is filed.

7. A custodian, receiver, trustee or liquidator of Contractor, all or substantially all of the assets or business of Contractor, or of Contractor’s interest in the Work or the Contract, is appointed in any
proceeding brought against Contractor and not discharged within sixty (60) Calendar Days after that appointment, or if Contractor shall consent to or acquiesces in that appointment.

(8) Contractor fails to commence correction of defective work or fails to correct defective work within a reasonable period of time after written notice.

If one or more of the events identified in Paragraphs 1 through 8 listed above occur, City may give Contractor written notice of the event and direct the event be cured. Any such Notice to Cure will provide Contractor a minimum of ten (10) calendar days to prepare and submit to the Project Manager a plan to correct the Event of Default. If such plan to correct the Event of Default is not submitted to the Project Manager within ten (10) days after the date of the written notice or such plan is unacceptable to the City, the City may, give Contractor (and the Surety, if any) written notice that Contractor’s services are being terminated for cause. Upon delivery of the termination notice, City may terminate the services of Contractor in whole or in part, exclude Contractor from the site, and take possession of the work and of all Contractor’s tools, appliances, construction equipment, and machinery at the project site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the work all materials and equipment stored at the site or for which City has paid Contractor but which are stored elsewhere, and finish the work as City may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until Certificate of Completion of the work. In the event City terminates this Contract for Cause and the cost of completing the work exceeds the unpaid balance of the Contract price, Contractor shall pay City for any costs of completion which exceed the Contract price when combined with all amounts previously paid to Contractor. When exercising any rights or remedies under this paragraph City shall not be required to obtain the lowest price for the work performed. 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 the City nor any officer, agent or employee of the City shall be in any way liable or accountable to the Contractor or the Surety for the method by which the completion of the said work, or any portion thereof, may be accomplished or for the price paid.

Where Contractor’s services have been so terminated by City, the termination will not affect any rights or remedies of City against Contractor or Surety then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by City will not release Contractor from liability.
C. Termination Notice. Upon receipt of a termination notice, whether for convenience or cause, 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.

D. Removal of Equipment. Except as provided 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 property of the City, failing which the City shall have the right to remove such equipment and supplies at the expense of the Contractor.

23. BOOKS OF ACCOUNT AND AUDITING

The Contractor shall keep and make available to the City if requested, full detailed, 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’s or Contractor’s offices, and without expense to the City.

Records for all contracts, specifically including but not limited to Firm Fixed Price contracts (i.e. fixed price or stipulated sum contracts), unit price, cost plus or time & material contracts with or without a guaranteed maximum (or not to-exceed amounts) shall upon reasonable notice be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. City’s Auditor may (without limitation) conduct verifications such as counting employees at the Construction Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Contractor employees, field and agency labor, subcontractors, and vendors.

Contractor’s "records" as referred to in this shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily
diaries, e-mails, superintendent reports, drawings, receipts, vouchers and memoranda, RFID data, GPS tracking data, and any and all other agreements, sources of information and matters that may in City’s judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other contractor records which may have a bearing on matters of interest to the City in connection with the contractor's dealings with the City (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of any or all of the following:

- Compliance with contract requirements for deliverables
- Compliance with approved plans and specifications
- Compliance with contract provisions regarding the pricing of change orders
- Accuracy of contractor representations regarding the pricing of invoices
- Accuracy of contractor representations related to claims submitted by the contractor or any of his payees.

Contractor shall require all payees receiving $7,500 or more in connection with this contract (examples of payees include subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between Contractor and payee. Contractor will ensure that all payees (including those entering into Firm Fixed Price contracts) have the same right to audit provisions contained in this contract.

City’s authorized representative(s) shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract and shall be provided adequate and appropriate work space, to conduct audits in compliance with this article.

If an audit inspection or examination in accordance with this article, discloses overpricing or overcharges to the City (of any nature) by the Contractor and/or the Contractor’s Subcontractors more than $25,000 in addition to making adjustments for the overcharges, the reasonable actual cost of the City's audit shall be reimbursed to the City by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's
invoices and/or records shall be made within a reasonable amount of time (not to exceed 30 days) from presentation of City’s findings to Contractor.

In addition, to the normal paperwork documentation the Contractor typically furnishes to the City, in order to facilitate efficient use of City resources when reviewing and/or auditing the Contractor’s billings and related reimbursable cost records, the Contractor agrees to furnish (upon request) the following types of information in the specified computer (PC) readable file format(s):

<table>
<thead>
<tr>
<th>Type of Record</th>
<th>PC Readable File Format</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly Job Cost Detail</td>
<td>.pdf and Excel</td>
</tr>
<tr>
<td>Detailed job Cost History To Date</td>
<td>.pdf and Excel</td>
</tr>
<tr>
<td>Monthly Labor Distribution detail (if not already separately detailed in the Job Cost Detail)</td>
<td>.pdf and Excel</td>
</tr>
<tr>
<td>Total Job to date Labor Distribution detail (if not already included in the detailed Job Cost History to date)</td>
<td>.pdf and Excel</td>
</tr>
<tr>
<td>Employee Timesheets documenting time worked by all individuals who charge reimbursable time to the project</td>
<td>.pdf</td>
</tr>
<tr>
<td>Daily Foreman Reports listing names and hours and tasks of personnel who worked on the project</td>
<td>.pdf</td>
</tr>
<tr>
<td>Daily Superintendent Reports</td>
<td>.pdf</td>
</tr>
<tr>
<td>Detailed Subcontract Status Reports (showing original subcontract value, approved subcontract change orders, subcontractor invoices, payment to subcontractors, etc.)</td>
<td>.pdf and Excel</td>
</tr>
<tr>
<td>Copies of Executed Subcontracts with all Subcontractors</td>
<td>.pdf</td>
</tr>
<tr>
<td>Copies of all executed change orders issued to Subcontractors</td>
<td>.pdf</td>
</tr>
<tr>
<td>Copies of all documentation supporting all reimbursable job costs (subcontractor payment applications, vendor invoices, internal cost charges, etc.)</td>
<td>.pdf</td>
</tr>
</tbody>
</table>

24. **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. 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 the e-verify program or Colorado Department of Labor and Employment program procedures to undertake pre-employment screening of job applicants while this Contract and any services under this Contract are being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this 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. If the Contractor violates or fails to comply with any provision of C.R.S. 8-17.5-101 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.

25. COMPLIANCE WITH IMMIGRATION REFORM AND CONTROL ACT OF 1986

Contractor certifies that Contractor has complied with the United States Immigration Reform and Control Act of 1986. All persons employed by Contractor for performance of this Contract have completed and signed Form I-9 verifying their identities and authorization for employment.

26. 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 Project Manager shall have the authority to order the removal from the work of any person, including Contractor's or any subcontractor’s employees, 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.

In accord with the Keep Jobs in Colorado Act, codified at sections 8-17-101, et seq., C.R.S., Colorado labor shall be employed to perform the work to the extent of not less than eighty percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed on this Project et seq.=;
provided however, that this paragraph shall not apply if the Project receives federal funding.

In no event shall the City be responsible for overtime pay.

27. **GRATUITIES**

A. This Contract may be terminated if the Mayor, the Mayor's designee, and/or the Procurement Services 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.

B. 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.

C. 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 project. 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 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.

28. **NON-DISCRIMINATION**

[Intentionally deleted]

29. **ORDER OF PRECEDENCE**

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

A. This Contract document with its terms and conditions
B. Specific Construction Terms and Conditions
C. General Construction Terms and Conditions
D. The Statement of Work
E. Specific Specifications
F. General Specifications
G. Other Appendices, Attachments, Exhibits, or Schedules

30. **HEADINGS**

The section headings contained in this Contract are for reference purposes only and shall not affect the meaning or interpretation of this Contract.
31. DISPUTES

A. All administrative and contractual disputes arising from or related to this Contract other than those arising under Change Orders provisions (in section 107.27 of Schedule B General Construction Terms and Conditions) shall be addressed in the following manner:

1. If either Party disputes or disagrees with a Contract term or the other Party’s interpretation of a Contract term or has any other administrative or contractual dispute not addressed in the Change Orders provisions, such Party shall promptly give the other Party written notice of said dispute.

2. The Parties shall hold a meeting as soon as reasonably possible, but in no event later than thirty (30) calendar days from the initial written notice of the dispute, attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute; provided, however, that no such meeting shall be deemed to vitiate or reduce the obligations and liabilities of the Parties or be deemed a waiver by a Party of any remedies to which such Party would otherwise be entitled unless otherwise agreed to by the Parties in writing.

3. If, within thirty (30) calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation and to bear equally the costs of the mediation.

4. The Parties will jointly appoint a mutually acceptable mediator. If they fail to do so within twenty (20) calendar days from the conclusion of the negotiation period, they shall each select a mediator. The two mediators will then appoint a third mediator who shall conduct mediation for the Parties as the sole mediator.

5. The Parties agree to participate in good faith in the mediation and negotiations for a period of thirty (30) calendar days. The substantive and procedural law of the State of Colorado shall apply to the proceedings. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to pursue any other remedy afforded by the laws of the State of Colorado.

6. Until final resolution of any dispute hereunder, the Contractor shall diligently proceed with the performance of this Contract as directed by the City. For purposes of this Contract, termination for convenience shall not be deemed a dispute. 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.

32. **DELIVERY**

The City may cancel this Contract or any portion thereof if delivery is not made when and as specified, time being of the essence in this Contract. Contractor shall pay the City for any loss or damage sustained by the City because of failure to perform in accordance with this Contract.

33. **PAYMENTS**

All invoices shall be sent to the Project Manager and Airport’s Accounting Department Via email to:

bud.geng@coloradosprings.gov
AccountsPayable@coloradosprings.gov

The City will pay the Contractor, upon submission of proper invoices, the prices stipulated in the Contract for services rendered and accepted, less any deductions provided in this Contract within 30 days (Net 30). The City will not pay late fees or interest. Any discount payment terms offered on the invoice may be taken by the City.

All payments for Construction will be made in accordance with the Payment provisions found in Schedule B – General Construction Terms and Conditions.

Each invoice must contain at least the following information:

Contract number, invoice number, invoice date, timeframe covered by invoice, type and amount of labor and materials used for that time period, dollar amount in unit price, extended price, and total value of invoice.

IF a Change Order is granted on a T&M basis, then;

The City will make payments for services on a monthly basis for services performed during the previous month in accordance with this Contract. All labor Invoices shall include labor categories, rates, hours worked, and total amounts per category. All labor categories and rates charged must be included in this Contract. No other categories or rates will be allowed or payable. All labor invoices are subject to City approval.

Materials will be payable on a reimbursable basis with no additional profit, fee, overhead, handling, or General and Administrative (G&A) costs. All costs for
materials shall be approved by the City Contracts Specialist before the costs are incurred and payable.

The City will pay the Contractor, upon submission of proper invoices, the prices stipulated in the Contract for services rendered and accepted, less any deductions provided in this Contract within 30 days (Net 30). The City will not pay late fees or interest. Any discount payment terms offered on the invoice may be taken by the City.

34. **INSTRUCTION OF SERVICES**

The Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the services furnished under this Contract conform to Contract requirements, including any applicable technical requirements for specified manufacturers’ parts. This clause takes precedence over any City inspection and testing required in the Contract’s specifications, except for specialized inspections or tests specified to be performed solely by the City.

A. Definition of “services”, as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City during Contract performance and for as long afterwards as the Contract requires.

C. The City has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. The City will perform inspections and tests in a manner that will not unduly delay the work.

D. If the City performs inspections or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

35. **SECURITY**

The City maintains security requirements regarding access to City buildings and other City workplaces and worksites on City property. All Contractor personnel accessing City buildings, workplaces, or worksites, may be required to produce a valid, Government issued picture identification. Contractor personnel lacking such identification may not be allowed access to such sites. No costs incurred by the Contractor due to City security requirements shall be allowable or payable under this Contract.
36. **TIME IS OF THE ESSENCE**

In as much as the Contract concerns a needed or required service, the terms, conditions, and 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 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.

37. **EMPLOYMENT OF LABOR**

The Contractor shall comply with, and defend 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.

38. **SALES TAX**

The Contractor must have a tax-exemption certificate from the Colorado Department of Revenue for this project. The certificate does not apply to City of Colorado Springs Sales and Use Tax which shall be applicable. 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 into 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. Such purchases and rentals are subject to full applicable taxation.

All contracts with subcontractors must include the City of Colorado Springs Sales and Use Tax 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 Use Tax 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. Any outstanding taxes due may be withheld from the final payment due the Contractor and may result in suspension of Contractor from bidding on City projects.

Forms and instructions can be downloaded at [https://coloradosprings.gov/sales-tax/page/construction-contractors?mlid=47576](https://coloradosprings.gov/sales-tax/page/construction-contractors?mlid=47576). 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.: 84-6000573
Federal Excise: A-138557
State Sales Tax: 98-03479

The Contractor's payment or exemption of State of Colorado, El Paso County and City Sales and Use Taxes shall be as specified herein.

39. SEVERABILITY

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

40. LIABILITY OF CITY EMPLOYEES

All authorized representatives of the City 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.

41. USE OF CITY NAME OR LOGO

Except as otherwise provided in this Contract, the Contractor shall not refer to this Contract or the City of Colorado Springs in any advertising or promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by the City of Colorado Springs, its employees, or its Departments, or is considered by these entities to be superior to other products or services. Any use of the name or logo of the City of Colorado Springs in advertising or promotions must be approved in writing by the City of Colorado Springs Contracts Specialist assigned to the Contract prior to such use.

42. TRAVEL

If travel expenses are included as a line item in this Contract, all travel expenses incurred and billable by the Contractor are subject to City approval. Air travel shall be limited to the round trip "economy coach" fare. Travel from the Colorado Springs Airport is encouraged. Unless there are extenuating circumstances, the Contract should take advantage of lower airfares by purchasing tickets more than 14 days in advance of travel. In-state travel by air must be more economical than travel by private vehicle. Use of a private vehicle may be reimbursed per mile at the current rate published by the IRS annually. Short-term parking, long-term parking or cab fare associated with airport departure and arrival may be allowable expenses. Valet parking will not be allowed unless it is the least expensive or only option. Car rental rates may be reimbursed for car rentals no greater than the intermediate or standard classification. The City will not reimburse any other travel methods or
expenses. The City will pay for lodging, meals, and miscellaneous expenses on a per diem basis only, in accordance with the current per diem rates published by the IRS annually. The City will not pay for Contractor expenses exceeding the per diem rates. Receipts for all reimbursable expenses must be provided with the Contractor’s invoice.

43. CIVIL RIGHTS.

A. Title VI Solicitation Notice: The City in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, [select disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

B. Compliance with Nondiscrimination Requirements:
During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

(1) Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

(3) Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
(4) Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of a Contractor’s noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
   a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
   b. Cancelling, terminating, or suspending a contract, in whole or in part.

C. Incorporation of Provisions:
The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

D. Title VI List of Pertinent Nondiscrimination Acts and Authorities:
During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:
   • Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC§ 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
44. ELECTRONIC SIGNATURES

This Agreement and all other documents contemplated hereunder may be executed using electronic signatures with delivery via facsimile transmission, by scanning and transmission of electronic files in Portable Document Format (PDF) or other readily available file format, or by copy transmitted via email, or by other electronic means and in one or more counterparts, each of which shall be (i) an original, and all of which taken together shall constitute one and the same agreement, (ii) a valid and binding agreement and fully admissible under state and federal rules of evidence and (iii) enforceable in accordance with its terms.

45. APPENDICES

The following Appendices are made a part of this Agreement:

Appendix A – Additional Terms and Conditions
Appendix B – Contractor’s Proposal,
Appendix C – Statement of Work.
Appendix D – Project Schedule
Schedule A – Proposal Price Sheet
Schedule B – General Construction Terms and Conditions
Schedule C – Special Construction Terms and Conditions
Schedule D – Construction Drawings
Schedule E – Specifications
Schedule F – Insurance Requirements
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 the e-verify program or Colorado Department of Labor and Employment program procedures to undertake pre-employment screening of job applicants while this Contract and any services under this Contract are 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:

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SECOND PARTY:

SAMPLE CONTRACT DO NOT SIGN

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APPENDIX A – ADDITIONAL TERMS AND CONDITIONS

Federal Requirements:
Not Applicable.

ADA Standards:
It is a requirement of the City and required by law that any new or renovated facility meet the scoping and technical requirements of the 2010 ADA Standards for newly designed and constructed or altered local government facilities, public accommodations, and facilities. The selected Design Professional shall design the project so it both conforms to the 2010 ADA Standards, as applicable and as amended, and is readily accessible to and usable by individuals with disabilities. The selected Contractor shall build the project so it both conforms to the 2010 ADA Standards, as applicable and as amended, and is readily accessible to and usable by individuals with disabilities. Facilities that are designed, constructed, and/or altered facilities that meet or exceed the IBC 2015/ANSI A117.1 2009, used by Pikes Peak Regional Building Department, will be accepted as meeting or exceeding the 2010 ADA Standards.

Title VI Solicitation Notice:
The City of Colorado Springs, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, [select disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
APPENDIX B – SCOPE OF WORK

1. Introduction

The Colorado Springs Airport (Airport or Owner) requests a Contractor to build/manufacture and install airline ticketing and rental car service counters within the terminal as a part of the Terminal Rehabilitation Program (TRP). The contractor will utilize the Contract Documents provided by the Airport, or Airport representatives, to complete the work. This work will primarily take place in the public areas of the terminal building on the first and second floors.

2. Scope of Work

This project consists of manufacturing/fabricating and installing thirteen (13) airline ticketing counters and two (2) pony walls on the second floor and thirteen (13) rental car service counters on the first floor of the terminal building.

Counter Design

Design drawings and specifications for the counters have been provided by the Airport (Appendix C and D attached) and are a part of the Contract Documents. Modifications to counters may be made with the approval of the Airport Project Manager. Contractor shall provide shop drawings of the counters to the Airport for approval prior to building or manufacturing.

Installation

Installation of the counters shall performed in the locations outlined in the Contract Documents. Contractor shall field verify all dimensions prior to manufacture and installation of counters and shall notify the Airport Project Manager promptly in writing of any discrepancies with the Contract Documents. Any Contractor proposed adjustments to counter locations, dimensions or installation orientations shall be approved by the Airport Project Manager in writing prior to installation. All existing rental car and airline counters shall be removed and disposed of by Contractor in accordance with all applicable laws and regulations.

Contractor shall include all costs associated with the installation of all electrical and data infrastructure/distribution to the counter locations on the 2nd floor for the airline ticketing counters. Rental car counter locations on the 1st floor have local power and data existing in the floor; however, Contractor shall include all costs associated with the installation of all electrical and data infrastructure/distribution within the counters.

Any and all existing second floor utility penetrations that are abandoned (devoid of power or data conveyance) as the result of Contractor reconfiguration shall be filled
to match existing floor slab and Contractor shall install floor tile to match surrounding floor (replacement floor tile to be provided by the Airport). Proper floor surveys and scans shall be conducted by Contractor prior to the coring of new floor penetrations. All new core penetrations and existing core abandonments must be approved by the Airport prior to performance. Contractor personnel may require Airport badging to work in the secured area (likely required during coring performance) and Contractor shall include all associated costs in its bid.

The contractor shall anticipate and include cost for counter installations to occur during overnight hours where requested by Owner, approximately 10pm to 4am (subject to change), and shall consider and include cost for counter installations over multiple nights if necessary.

3. Requirements

All communication and coordination shall be routed through the Airport Project Manager. Communication efforts and correspondence to airline tenants, airport staff and customers will be coordinated with the Airport Project Manager during all phases of construction/installation.

Working hours within the Airport terminal are expected to be irregular working hours. Contractor shall anticipate working irregular/night hours to limit operational impacts. Contractor shall coordinate with Airport Project Manager on schedule dates and times of installation.

Material loading and unloading, including trash hauling shall be during periods of low operations. Delivery locations will be limited to those specified by the Airport within the terminal building. Contractor will not be allowed to use curbside arrival or departure areas. Material, equipment and tool storage shall be in limited areas to be approved by the Airport Project Manager.

Work crews shall park in the construction lot designated by the Airport and car pool or walk to the terminal.

4. Scheduling

The Contractor shall provide a schedule outlining the dates and durations of the manufacture and installation of the counters. The Contractor shall minimize operational impacts to the Airport passengers, airlines, rental car agencies and any other customers of the Airport during counter installations. Contractor shall communicate and coordinate all construction activities with the Airport.

5. Delivery & Installation

Delivery and installation for the counters will be coordinated with the Airport.
Contractor shall complete installation of all rental car counters (1st floor) before airline ticket counters (2nd floor) and shall complete all work within the Period of Performance.

Schedule & Phasing coordination with the Airport Project Manager will be required.

6. **Documents Provided by the Airport**

The following list of documents have been provided by the Airport:

- *Contract Drawings: COS Airport Modernization – Ticketing and Rental Counters*
- *Project Manual (Technical Specifications)*
APPENDIX C – DESIGN DOCUMENTS
Incorporated herein by reference are the COS Airport Modernization – Ticket and Rental Counters design package, 100% CD SET dated 05/12/2020, consisting of 17 pages.
APPENDIX D – PROJECT MANUAL (TECHNICAL SPECIFICATIONS)
Incorporated herein by reference is the Project Manual for the COS Airport Modernization (Ticket and Rental Car Counters) dated May 13, 2020, consisting of 134 pages.
**APPENDIX E – PRICE SHEET**

Provided by the Offeror, Contractor, Bidder, to the City of Colorado Springs in response to the B20-070 NS Airlines Ticketing and Rental Car Counter Modernization shall be included herein.

BIDNET SUBMITTED DOCUMENT ONLY THE TABLE BELOW PROVIDES A REFERENCE OF THE UNIT PRICE ITEMS ONLY.

<table>
<thead>
<tr>
<th>Item #</th>
<th>Description</th>
<th>UI</th>
<th>Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Demolition &amp; disposal of existing airline ticket counters – to include replacement of flooring finishes to match existing carpet and LVT (Second Floor)</td>
<td>LS</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>Manufacturing/assembly of airline ticketing counter shells using solid surface material (Second Floor)</td>
<td>EA</td>
<td>13</td>
</tr>
<tr>
<td>3</td>
<td>Manufacturing and installation of airline millwork counter inserts (Second Floor)</td>
<td>EA</td>
<td>13</td>
</tr>
<tr>
<td>4</td>
<td>Installation of airline ticketing counter shells - Including coring, cabling, conduit (Second Floor)</td>
<td>LS</td>
<td>1</td>
</tr>
<tr>
<td>5</td>
<td>Airline ticket counter baggage scale equipment – Including materials, installation, and electrical/IT requirements (Second Floor)</td>
<td>EA</td>
<td>13</td>
</tr>
<tr>
<td>6</td>
<td>Manufacturing and installation of pony walls (Second Floor)</td>
<td>EA</td>
<td>2</td>
</tr>
<tr>
<td>7</td>
<td>Manufacturing and installation of counter shell monitor arm mounts &amp; keyboard platforms (First &amp; Second Floors)</td>
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<td></td>
<td>Description</td>
<td>Unit</td>
<td>Quantity</td>
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<tr>
<td>8</td>
<td>Manufacturing/assembly of rental car counter shells using solid surface material (First Floor)</td>
<td>EA</td>
<td>13</td>
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<tr>
<td>9</td>
<td>Installation of rental car counter shells (First Floor)</td>
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<td><strong>BASE BID:</strong></td>
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<td>Cambria stone material for all counter shells</td>
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<td><strong>BASE BID + Alt#1</strong></td>
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<td><strong>TOTAL</strong></td>
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</table>
APPENDIX F – GENERAL CONSTRUCTION TERMS AND CONDITIONS
GENERAL CONSTRUCTION TERMS AND CONDITIONS

SECTION 100  DEFINITIONS AND TERMS

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 any gender.

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 The City of Colorado Springs, Colorado.

Contract Documents Contract Documents include the Request for Proposal, Instructions to Offerors, Proposal, Amendments, the signed Contract, surety bonds, insurance documents, all terms, conditions, and provisions, and 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 for 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.

Engineer
An engineer of the City of Colorado Springs.

Notice
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:

The Project Manager assigned to the Contract, City of Colorado Springs, City Engineering, 30 South Nevada Ave., Room 403, Colorado Springs, CO 80903.

Notice to the Contractor will be to the Authorized Representative of the Contractor at the site of the Project in person; or by registered mail to the Contractor’s principal place of business as indicated in the Contractor’s proposal certifications; or as to the Surety on the performance bond by registered mail to the Surety at the home office of such surety.

Plans
The drawings, or reproductions, provided by the City that show the location, character, dimensions, and details of the work to be done.

Project Manager
An individual representing the City responsible for managing and oversight of the Contract.

Project
The entire improvement outlined in the Scope of Services which is to be constructed in whole or in part pursuant to the Contract.

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 Proposal, Performance, Payment and Maintenance Bonds.

Work
Work performed under the Contract.

Working Days
Days of the week, not including weekends and City holidays, unless otherwise stated.
SECTION 101 CONTRACT DOCUMENT INTERPRETATION

101.00 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, plants, 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 the Contract.

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 Project Manager and the Project Manager will promptly verify them. Any work done after such discovery without written consent of the Project Manager authorizing the same shall be done at the Contractor’s risk and sole expense.

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 Project Manager, shall be included as a part of the Contractor’s proposal price and furnished at no additional cost to the City.

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.

101.01 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.

101.02 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 submission of proposals, 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 submission of proposals shall, prima facie, be deemed to have been engaged in such business for a reasonable length of time.

101.03 "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 Project Manager. The Project Manager may require that proposed equals be submitted for review and approval.

SECTION 102 COMPLIANCE WITH LAWS
102.00 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.

102.01 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.

102.02 LICENSES AND PERMITS
It shall be the responsibility of the Contractor to obtain, at its 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).

SECTION 103 AWARD AND EXECUTION OF CONTRACT
103.00 CONTRACT EXECUTED
A single original Contract to include the Contractor's Performance, Labor and Material Payment and Maintenance Bonds may 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 Procurement Services 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 the following, as applicable:

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

Each Bond shall have an original Power of Attorney attached. The Contractor 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. Bonds shall be furnished on forms prepared by the City. Copies of the City's Bond Forms are included in the Exhibits Section of the Request for Proposal, if applicable.

103.01 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.

103.02 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, as determined in the City’s sole and absolute discretion, 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.

103.03 INDEPENDENT CONTRACTOR  
[Intentionally deleted – refer to Section 16 of Contract]

SECTION 104 THE CONTRACT: FOLLOWING EXECUTION  
104.00 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.
104.01 SCHEDULE

In the event of contradictions or inconsistencies, this clause shall take precedence over any language relevant to scheduling included anywhere else in this Contract.

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 detailed Project schedule ("Project Schedule") that shall be used for coordination, for evaluation of progress, and for the evaluation of changes to the Contract. The Project 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 Project Schedule shall consist of a Methods Statement as defined in subsection (a) below and a progress schedule consisting of (1) a Critical Path Method ("CPM") schedule as defined in subsection (b) below, or (2) a Bar Chart schedule as defined in subsection (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 other software designated by the Project Manager), or be capable of being read and manipulated by Suretrak Project Manager software (or other software designated by the Project Manager). The Project Schedule shall show all work completed within the Contract Period of Performance. The City reserves the right to approve or disapprove any proposed schedule. If disapproved, the Contractor must make requested changes and resubmit the schedule for approval within five working days of the disapproval by the City.

After award, 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 CPM 90-day schedule shall be submitted at least 14 Calendar Days prior to the start of the work. The Project Manager’s review will not exceed five working days. Work shall not begin until the Project Schedule is accepted in writing, unless otherwise approved by the Project Manager.

(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;
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 Manager’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 Manager. 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 one Calendar Day duration may also need to be included in the Project Schedule as determined by the Project Manager (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 the Period of Performance. This submittal shall include a Time Scaled Logic Diagram.

2. Project Schedule, as described above. The Project Schedule shall cover the entire Period of Performance.

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 Manager 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 Manager 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 coordinate and schedule its work to include anticipated utility work. Various City and private utility entities 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.
3. The City is compensated by the Contractor for any inconvenience or expense associated with the change(s).
4. There is no increase to Contract cost.

A Job Progress Narrative Report shall be submitted bi-weekly as a minimum and with all Project 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 Project Schedule. If the Job Progress Narrative Report indicates problem areas and impacts to job milestones or Project completion, a revised Project Schedule shall also be submitted as specified below.
Revision of the Project Schedule may be required, as determined by the Project Manager, 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 Manager, the Contractor falls behind the approved Project Schedule, the Contractor shall take steps necessary to improve Project progress, including those steps that may be required by the Project Manager, 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 planned and to submit such changes and revisions to the Project Schedule to the Project Manager 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 Manager 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 Project Schedule is required, it shall be provided to the Project Manager for review within 15 Calendar Days of Contractor receiving written notification of the requirement from the Project Manager. The Project Manager’s review of the revised schedule will not exceed 5 working days. Revisions required as a result of the Project Manager’s review shall be submitted within 5 working days. When accepted by the Project Manager in writing, the revised schedule shall become the Project Schedule.

The Contractor shall participate in the Project Manager’s review and evaluation of the submittals. Meetings will be held to review progress and planning when requested by the Project Manager or Contractor. The Project Manager 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 Project 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 Project Schedule. The City shall be entitled to rely on the Project Schedule for planning and coordination.

Acceptance of the Contractor’s Project Schedule by the Project Manager 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 Project 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 may be grounds for a determination by the Project Manager that no further progress payments are to be made until the Contractor is in full compliance.

104.02 SCHEDULE OF VALUES
Promptly following the execution of the Contract Documents for all Firm Fixed Price Contracts, the Contractor shall prepare and transmit to the Project Manager two copies of an itemized Project cost 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, once approved by the Project Manager, will be used primarily in determining payment due the Contractor as provided herein. If, in the opinion of the Project Manager, any unit price submitted by the Contractor is unbalanced, a detailed breakdown of the items contained in the unit will be required.

For Contracts executed on a fixed 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.

104.03 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 City 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.

104.04 SUBCONTRACTS
The Contractor will be permitted to subcontract a portion of the Contract work. Contractor shall (i) ensure that the subcontractor's work complies with all Contract Documents, (ii) manage the subcontractor's performance and perform all quality control review and inspections as necessary, and (iii) ensure that the subcontractor timely completes all subcontracted obligations within the Period of Performance.

The Contractor shall as soon as practical after signing the Contract notify the Project Manager in writing, giving the names and qualifications, of all subcontractors proposed to do work on the Project 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 federal government, State government, or the City of Colorado Springs. The Contractor shall notify the Project Manager 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 Contractor to file with the Project Manager copies of applicable permits and licenses required to do the subcontracted work. Subcontracts or transfer of Contract obligations shall not release the Contractor of liability under the Contract and bonds.

104.05 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 Manager. The Contractor shall not commit or permit any act, which will interfere with the performance of work by any other contractor.

SECTION 105 CONSTRUCTION SITE
105.00 LANDS TO BE USED FOR WORK
The Contractor shall confine the work activities to the area shown in the construction drawings. The Project Manager will furnish the Contractor with copies of all executed right of way (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 indemnify and hold the City harmless from any claims or losses from damage or disruption of private property.

Contractor shall provide, at its 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 will not result in additional cost to the City. Contractor personnel shall not unnecessarily enter upon private property without the express written consent of the landowner. The Contractor shall provide the Project Manager with a copy of the written permission. The Contractor shall indemnify and hold the City harmless from any claims or losses related to Contractor trespassing.
105.01 STORAGE OF MATERIALS
The Contractor shall confine its 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.

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

105.03 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 Public Health Department. All portable toilet facilities for this Project shall be kept on City or State right-of-way as directed by the Project Manager.

105.04 ACCIDENT PREVENTION
The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The Contractor shall submit to the City an acceptable, comprehensive Safety Plan for review prior to commencement of the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

a.) All persons on or about the Site or who may be affected by the Work;

b.) All Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

c.) Other property at the site or adjacent thereto, including buildings, real property, trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of the Work.

Notwithstanding the foregoing, the City reserves the right to direct the Contractor to stop work and correct an unsafe condition at any time that any person present at the job site identifies any unsafe condition or action. For this purpose only, any person at the job site is authorized to act on behalf of the City, but such intermittent delay shall not be grounds for an increase in the Contract price or schedule.

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
Project Manager, 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 a trench which may be detrimental to human safety, traffic flow, a 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 a trench unless the trench is adequately braced.

The Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger the structure's safety.

The Contractor shall designate a qualified and experienced safety representative at the Work site(s) whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety plans and programs.

105.05 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 its operations in the performance of this Contract, and the Contractor shall defend any suit that may be brought against itself or the City on account of damage inflicted by its operations, and shall pay any judgments awarded to cover such damage and shall indemnify the City for any losses arising out of such damage or related claims. All indemnities by the Contractor under these General Terms and Conditions shall survive the expiration or earlier termination of the Contract.

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.
105.06 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 Project Manager 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 a Traffic Control Plan approved 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. Detour routings must first be submitted to the City 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 City Traffic Engineer may require flag persons or off-duty police officers for traffic direction.

105.07 PROTECTION OF EXISTING CURBS, GUTTERS AND DRIVEWAYS
[Intentionally Deleted.]

105.08 PROTECTING AND REMOVING PLANTINGS
[Intentionally Deleted.]

105.09 PUBLIC CONVENIENCE AND SAFETY
The Contractor shall make every effort to minimize the inconvenience to property owners and to the traveling and pedestrian public, and shall conduct the Work to minimize obstruction to traffic and inconvenience to property owners affected by the Work.

The Contractor shall notify and coordinate the closing and construction of the driveways, curb, gutter and sidewalks with the Project Manager and the adjoining property owners in advance of Work in writing. The Contractor shall provide 72
hours written notice 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. 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 or property owner 30 minutes prior to the actual access drive closure.

Relocating of fences and structures shall be coordinated with property owners and shall include miscellaneous items including, but not limited to, utility services, street signs and mailboxes, sod replacement, sprinkler system modifications, control boxes, railroad tie walls, etc. If no such items are specifically 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 salvaging of any materials suitable for re-use with the City Inspector and, if on private property, with the respective property owners.

Any restrictions on street parking or traffic movement shall be coordinated with the City Traffic Engineer.

105.10 FAILURE TO MAINTAIN SAFE SITE
If the City becomes aware of failure to comply with applicable safety regulations, the Project Manager may inform the Contractor who shall take immediate steps to remedy the noncompliance. The Project Manager shall give written notification to the Contractor directing it to correct the unsafe acts or conditions. If the Contractor fails to comply with such a notification, the Project Manager may issue a Stop Work order in accordance with this Contract, and work shall only be resumed after adequate corrective actions have been taken to correct the safety deficiencies the Contractor has been notified of. Stoppage of work because of noncompliance with prescribed accident precaution measures shall not be considered a changed condition or changes in work, nor reason for extension of completion time.

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 or omission 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 a waiver of its right to indemnity under the this Contract.

105.11 EROSION AND DRAINAGE CONTROL
[Intentionally Deleted.]

105.12 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 Project Manager. 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 RFP.

105.13 TEMPORARY CONSTRUCTION
All temporary facilities, including the Contractor's field office which it 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 Project Manager, 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 its office at the site.

105.14 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 Colorado Springs Utilities for temporary connections and payment of service charges. Upon completion of the Contract work, all temporary waterlines shall be removed. The City will devise a method and plan to monitor and enforce the proper use of temporary water. The City will inspect for compliance.

105.15 TEMPORARY ELECTRICITY
The Contractor shall arrange with the Colorado Springs Utilities for temporary electricity 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.

105.16 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 Project Manager. 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. This applies only to structures. It does not apply to road improvements or other outdoor improvements.

105.17 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. This applies only to structures. It does not apply to road improvements or other outdoor improvements.

105.18 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 Manager.

SECTION 106 ROYALTIES, PATENT INFRINGEMENTS, SPECIAL LICENSES AND PERMITS
106.00 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 may 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.

SECTION 107 WORK PROVISIONS AND RULES
107.00 COMMENCEMENT AND COMPLETION OF WORK
(a) Preconstruction Conference. After issuance of Notice to Proceed, or as otherwise established by the City, a preconstruction conference (“Preconstruction Conference”) shall be held for review of the construction schedule, Contractor’s 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 Project Manager 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 of 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 are Calendar Days.

(d) The dates fixed for commencement and completion of the work may be extended by the Project Manager. All requests for extension of time by the Contractor shall be made in writing to the Project Manager and shall set forth the reasons for such requests. The Project Manager may fix the period of extension, if any. In addition, the Project Manager may grant a period of extension upon an execution of a Change Order. Any Project Manager’s decision on extensions of time 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 may 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.

107.01 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 may be subject to a stop work order, as provided in this Contract. In addition, 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. The City may deduct the as described liquidated damages from any unpaid amounts from time to time due to the Contractor. Any liquidated damages not so deducted shall be payable by the Contractor to the City upon demand of the City.

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<thead>
<tr>
<th>Original Contract Amount</th>
<th>Amount of Liquidated Damages Per Day</th>
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<td>Less than $50,000</td>
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<tr>
<td>Over $1,000,000</td>
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107.02 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 Project Manager.

The granting of a time extension for inclement weather does not imply or guarantee that additional compensation for incidental and appurtenant work caused by such weather will be approved or authorized by the Project Manager. Weather delays that can be reasonably anticipated shall not result in increased cost to the City. The Project Manager will be the sole judge as to the reasonableness of delays for inclement weather.

107.03 EXCUSABLE DELAYS
The Contractor’s right to proceed will not be terminated, and the Contractor will not be charged with damages, for delays in completing the work that arise 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) Fires,
(d) Floods,
(e) Epidemics,
(f) Quarantine restrictions,
(g) Strikes of employees other than Contractor’s employees,
(h) Freight Embargos,
(i) Unusually severe weather, or

107.04 COMPENSATION FOR COMPENSABLE DELAYS
If the Project Manager 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, reasonable wages and benefits, including FICA, paid for additional non-salaried labor;
2. Reasonable and actual costs for additional bond, insurance and tax;
3. Increased, reasonable, and actual costs for materials;
4. Reasonable 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. Reasonable and actual costs of extended job site overhead;
6. Reasonable 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, overhead, and general and administrative expenses.

(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 or other overhead or general and administrative expenses 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 or consequential costs or expenses of any nature in excess of that provided in (a) above;
7. Attorney’s fees, claim preparation fees, and expert fees.

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

107.05 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 Project Manager, 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 Project Manager. Any reasonable compensation claimed by the Contractor on account of emergency work shall be determined by mutual agreement or in accordance with the Changes provision of this Contract.

107.06 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. If a Value Engineering Change Proposal (VECP) Proposals shall be submitted only after contract award. If a VECP is rejected, the work shall be completed in accordance with the Contract at the Contract price. The Contractor shall have no claim against the City for compensable or noncompensable delay to the Contract based on the failure to respond to a VECP.

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

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

If the Project Manager 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 Project Manager for review and the effect on the Contractor’s schedule caused by the added time, the Project Manager 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 Project. 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 Project Manager 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 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 required to avoid delays to the existing contract prosecution,
   b. the amount of time necessary to develop the full Proposal,
   c. the date by which a Change Order must be executed to obtain maximum benefit from the VECP, and
   d. the VECP’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 VECP.

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 VECP compared to the new costs and quantities generated by the VECP. All costs and proposed unit prices shall be documented by the Contractor.
5. A statement specifying the date by which a Change Order must be executed to obtain the maximum cost reduction during the remainder of the Contract.
6. A statement detailing the effect the VECP 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 VECP was previously submitted on another City project, the VECP 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 VECP. A discount rate of four percent shall be used for life cycle calculations.
10. A statement specifying when a response from the City is required to avoid delays to the prosecution of the Contract.

(d) **Evaluation.** VECPs will be evaluated in accordance with the following:

1. The Project Manager will determine if a VECP qualifies for consideration and evaluation. The Project Manager may reject any VECP that requires excessive time or costs for review, evaluation, or investigations. The Project Manager may reject proposals that are not consistent with the City's design policies and criteria for the Project.
2. VECPs, whether or not approved by the City, apply only to this Contract and become the property of the City. VECPs 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 VECP 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.

3. If the City is able to demonstrate that it is already considering certain revisions to the Contract, prior to receipt of the VECP, or has approved certain changes in the Contract for general use that are subsequently proposed in a VECP, the Project Manager will reject the VECP and may proceed to implement these changes without obligation to the Contractor.

4. 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.

5. VECP will be rejected if equivalent options are already provided in the Contract.

6. VECP that only reduce or eliminate Contract pay items will be rejected.

7. The savings generated by the VECP must be sufficient to warrant a review and processing, as determined by the Project Manager.

8. A VECP changing the type or thickness of the pavement structure or changing the design of a bridge will be rejected.

9. Additional information needed to evaluate VECPs shall be provided in a timely manner. Untimely submittal of additional information will result in rejection of the VECP. 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 a Change Order. Reimbursement will be made as follows:

1. The changes will be incorporated into the Contract by changes in quantities of unit items, new agreed unit price items, or both, as appropriate, under the Contract.

2. The Price of the contract will be revised to reflect the changes in the VECP. The City will pay the Contractor 50 percent of the savings to the City upon completion of the Project. 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 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.
107.07  **AUTHORITY OF THE PROJECT MANAGER**
The Project Manager 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 Project Manager 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 Project Manager 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 Manager may order the Contractor, by giving ten (10) 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 Project Manager may immediately stop the work when it is determined that the public’s safety and welfare is in jeopardy.

The Project Manager will, within a reasonable time after their presentation to the Project Manager, 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 Project Manager's decisions shall be final.

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

107.09  **CONSTRUCTION OBSERVATION AND INSPECTION**
The Project Manager 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 Project Manager 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 and replaced without charge to the City. If the Contractor does not correct such rejected 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 Project Manager 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, reasonable cost of labor and material necessarily involved in the examination and replacement, plus ten (10) 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 Project Manager.

If the Project Manager points 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 discontinued immediately.

The Contractor shall execute the work only in the presence of the Project Manager or authorized representative, unless provision has been made for the work to proceed without complete engineering supervision or inspection. The presence of the Project Manager or authorized representative shall in no way relieve the Contractor of any responsibility under this Contract.

The observation of the work by the Project Manager 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.

107.10 CONTRACTOR COOPERATION
All work under this Contract shall be performed in a skillful and professional manner. The Project Manager shall have the authority to order the Contractor to remove from the work site any employee the Project Manager deems incompetent, careless, or otherwise objectionable to the general public or the City by notify the Contractor of such order in writing.

(a) Workmen, Methods and Equipment: Permission from the Project Manager 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 Project Manager, or as to bind the Project Manager to accept work which does not comply with the Contract.

107.11 CONTRACTOR'S RESPONSIBILITY FOR WORK
Until the work is accepted by the Project Manager 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.

107.12 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 City does not warrant any survey work or location of utilities or other underground apparatuses whether performed by the City, its agent, or an independent contractor. Contractor understands and agrees any survey or location work performed by the City, its agent, or other independent contractor is provided for guidance purposes only, so as to show the approximate location of underground utilities or apparatuses. Contractor understands the existence or exact location of underground utilities or apparatuses may not be known to the City or the design engineer of record. Contractor, therefore, agrees that it shall verify the existence and location of any underground utilities or apparatus along the route of work. Verification shall be done by potholing or using other methods which will detect the exact depth, dimensions, and location of any underground utilities or apparatus.
Contractor shall be liable for any damages, loss, or claims of whatsoever kind caused by its failure to pothole or use other methods of identifying the exact depth, dimensions, and location of any underground utilities or apparatus. Contractor agrees that any claim of any kind whatsoever, damages, loss, lawsuit, demand, or request for equitable adjustment (“Claims”), shall be waived and the City shall be forever released and discharged from such Claims if Contractor fails to comply with its obligations under this section. Contractor agrees that if it fails to maintain all records or other evidence establishing that it potholed or otherwise determined the exact location, depth, and dimensions of all underground utilities and apparatuses, then it shall not be permitted to make any Claim arising from or related to the location of underground utilities or apparatus.

The size and location of all existing utilities as known to the Project Manager 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.

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 Colorado Springs Utilities, or other utilities personnel, 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 Project Manager 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, including Colorado Springs Utilities (if applicable), 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 Project Manager 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 shall not be allowable under this Contract and shall result in no additional cost to the City. The cost of protecting utilities where alteration or relocation is not required to permit construction of the project shall be considered as included in the original Contract price for the project and shall result in no additional cost to the City.

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. Any such work would be added via change order, and the cost of this work will be borne by Colorado Springs Utilities, the utility companies involved, or other means arranged by the City.

(a) Existing Utilities

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. Colorado Springs Utilities or other provider is to be notified prior to any excavation around gas lines. A Colorado Springs Utilities or other applicable provider. 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 Colorado Springs Utilities
Wastewater Standard Specifications. Minimum 48 hours’ notice must be given to Colorado Springs Utilities prior to any related work.

3. The Contractor shall adjust sanitary sewer manhole rims to an elevation acceptable to Colorado Springs Utilities. The Contractor shall contact Colorado Springs Utilities 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 Colorado Springs Utilities Water Standard Specifications and the Water Service Standard Specifications. Minimum 48-hour notice must be given to Colorado Springs Utilities prior to any related work. Colorado Springs Utilities 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 Colorado Springs Utilities 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 Project Manager, 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 Project Manager 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 Colorado Springs Utilities. The Contractor shall coordinate the work with Colorado Springs Utilities and Colorado Springs Utilities Contractor.

2. Light Pole Installation or Relocation:
   a. The Contractor is responsible for coordinating with Colorado Springs Utilities, 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 Colorado Springs Utilities for the de-energizing and removal of existing light poles.
   
   b. Colorado Springs Utilities 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 Colorado Springs Utilities crews for reinstallation and re-energizing completed light poles.

(d) Gas Utilities: The Contractor is responsible for coordinating with Colorado Springs Utilities for the relocation of existing Gas lines. Colorado Springs Utilities 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 Colorado Springs Utilities 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 the cable provider. The Contractor shall coordinate the work with any affected cable provider.

107.13 FEDERAL FUNDS
If this Contract is a federally assisted construction contract all applicable federal requirements, terms and conditions, provisions and forms shall apply. Additionally, 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advancements 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, sexual orientation, gender identity, or national origin.

3. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This
 provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee’s essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor’s legal duty to furnish information.

4. 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.

5. 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.

6. 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.

7. 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.

8. The Contractor shall include the provisions of Paragraphs (1) through (8) 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 is threatened with, litigation with a subcontractor or vendor as a result of such direction, 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.
107.14 SUPERINTENDENCE
The Contractor shall give the work the constant attention necessary to facilitate the progress thereof and shall cooperate with the Project Manager and with other contractors or Colorado Springs Utilities 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 Project Manager or the Project Manager's authorized representative. Such superintendent shall be furnished irrespective of the amount of work sublet. The Contractor shall supply the Project Manager with a list of phone numbers at which the Contractor and its superintendent and foreman can be reached at any time. The assigned superintendent must adhere to the cooperation requirements specified in this Contract and is subject to removal if so ordered in writing by the Project Manager.

107.15 PREPARATION
All vegetation, stumps, and debris and other objectionable objects shall be removed from the area staked out by the Project Manager, 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 Project Manager.

107.16 STAKING WORK
The Project Manager may provide reference points (horizontal and vertical control) only, unless otherwise noted in the 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 Project Manager. 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 are judged by the Project Manager to be incompetent, shall be removed from the work and replaced by a competent individual.

107.17 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, in all cases, must be determined by the Project Manager and authorized in writing. If the Project Manager 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 Project Manager subject to approval of the City Procurement Services Manager.
107.18  **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 any 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.

107.19  **SHOP DRAWINGS AND SUBMITTALS**

The Contractor shall submit to the Project Manager all shop drawings and submittals required for the work, including those pertaining to structural and reinforcing steel within fifteen (15) Calendar Days from the date of the Notice of Award. The Contractor shall make any corrections in the drawings required by the Project Manager and resubmit the same without delay.

Three final copies of all shop drawings (if applicable), submittals (if applicable) and schedules shall be submitted to the Project Manager, who after checking will retain two copies and return one copy to the Contractor. The Project Manager'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 Project Manager. 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.

107.20  **RECORD DRAWINGS**

The Contractor shall maintain an up-to-date set of Contract drawings and Contract records, legibly marked; depicting all constructed improvements at the site or as otherwise specified and shall submit a complete set labeled "Project Record" to the Project Manager 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 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.

107.21 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 Project Manager for the Project Manager’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 Project Manager, 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.

107.22 MATERIAL INSPECTION AT PLANT
If the Project Manager inspects the materials at the source, the following conditions shall be met:

   (a) The Project Manager shall have the cooperation and assistance of the Contractor and the materials producer.

   (b) The Project Manager 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 and replaced at no additional cost to the City.

107.23 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.
107.24  CITY FURNISHED MATERIALS
Material furnished by the City 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 considered as included in the Contract price for the item, and shall result in no additional cost to the City.

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.

107.25  BUY AMERICA REQUIREMENTS [RECOMMENDED BUT NOT REQUIRED]
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.

107.26  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.
   2. The Contractor shall 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, including certificate of calibration of applicable testing equipment made by an accredited calibrated agency no more than twelve (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 tests when testing laboratory is retained by the City. In the event retesting of materials or compaction 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.

(d) Reliance on Technical Data
Without warranty or representation as to the accuracy or completeness of any information or data, Contractor may rely upon the general accuracy of the “technical data” contained in the reports, specifications and drawings. The “technical data” is identified in the work technical specifications, drawings and reports that are signed and sealed by a registered Professional Engineer, Architect or Landscape Architect in the State of Colorado. Except for the reliance on the general accuracy of the “technical data,” Contractor may not rely upon or make any claim against the City with respect to:

1. the accuracy or completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in the reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

107.27 CHANGE ORDERS
Contractor understands that this is a Firm Fixed Price contract and so long as there are no changes in the scope of work as provided in subsection A-C below, Contractor must deliver the project for the agreed price. Compensation for changes in the scope of work, limited to subsections A –C, shall, at the City’s sole discretion, be provided by the following method(s): (1) Unit prices previously approved; (2) allowing additional compensation on a time and materials method, not to exceed an agreed-to amount; (3) an agreed Firm Fixed Price. Compensation for work completed on a time and material basis is limited to the following:

(a) Labor (including foreman and additional supervision, if necessary);
(b) Materials necessary for incorporation into the Project:
(c) Rental cost of construction plant and equipment used for work:
(d) Power and fuel required for operation of power equipment necessary to perform work;
(e) Contractor shall provide to the City physical evidence of all costs, including, but limited to, payroll, invoices, vouchers, estimates, bills, accounting records, or other relevant records. Contractor agrees that its failure to provide evidence of a claimed cost shall be a waiver of such cost(s) and the City shall be released and forever discharged from any claim of any kind whatsoever, loss, damages, and request for equitable adjustment, or demand related thereto. Contractor further agrees that, at the City’s discretion, a fixed fee, not to exceed 15% of the costs of work shall be added
to such costs as compensation for the cost of management, oversight, estimating, all overhead (direct and indirect), insurance, benefits, bond, profit, tools, health, safety, environmental, and any other expenses.

Execution of the Contract by the Contractor is a representation, by the Contractor, that the Contract Documents are sufficient to have enabled the Contractor to determine the Contract Sum or the Not to Exceed amount (as applicable), and to enter into the Contract, and that the Contract Documents are sufficient to enable the Contractor to construct the Work outlined therein, and otherwise to fulfill all its obligations under the Contract and the Contract Documents, including, but not limited to, the Contractor's obligation to construct the Work for an amount not in excess of the Contract Sum or the Not to Exceed amount (as applicable, and in accordance with the Project Schedule and on or before the respective date of completion for the Work. The Contractor further acknowledges and declares that it has visited and visually examined the site, examined all physical, legal, and other conditions (exclusive of hidden conditions in the existing structure and subsurface conditions) affecting the Work and is familiar with all of the visible conditions thereon and thereunder affecting the same. In connection therewith, the Contractor specifically represents and warrants to the City that it has, by careful examination, satisfied itself as to: (i) the condition, nature, location, layout and character of the Work and the site, including, without limitation, the surface conditions of the site and all structures and obstructions thereon and thereunder, and all visible surface and water conditions of the site and the surrounding area; (ii) the nature, location, and character of the general area in which the Project is located, including, without limitation, its climatic conditions, available labor supply and labor costs; and (iii) the quality, quantity and cost of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents.

In connection with the foregoing, and having carefully examined all Contract Documents, as aforesaid, and having visited the site, the Contractor acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities, or conflicts in the Contract Documents and that if it becomes aware of any such discrepancies, omissions, ambiguities, or conflicts, it will promptly notify the Project Manager of such fact.

Further, the Contractor recognizes the extra degree of care required under the applicable site construction circumstances with respect to safety, protection of pedestrians, cleanliness of the site, health and other laws, and protection of existing utilities, adjacent streets, and property. In arriving at the Contract Sum or the Not to Exceed amount (as applicable), and the Period of Performance, the Contractor has, as an experienced and prudent the Contractor, exercised its best judgment and or expertise to include the impact of such circumstances upon the
Contract Sum the Not to Exceed amount (as applicable), and the Period of Performance.

The Contractor shall take field measurements, verify field and any other existing conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. The Contractor shall satisfy itself as to the accuracy of all-grades, elevations, dimensions and locations. In all cases of interconnection of its Work with existing or other work, it shall reasonably verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor’s failure to so reasonably verify all such grades elevations, locations or dimensions shall be promptly rectified by the Contractor without any additional cost to the City.

Subject to the terms and provisions of this section, if, and to the extent circumstances arise, which in spite of its reasonable efforts to examine the site as provided above, were unknown and not anticipated by the Contractor, the Contractor shall follow the procedures and processes set forth herein and, if applicable, the Dispute Resolution provisions of this Contract. Contractor agrees that its failure to follow the processes set forth herein and the Dispute Resolution process shall forever waive, release, and discharge the City from any claim of any kind whatsoever, damages, losses, lawsuits, or demands known or unknown. Additionally, the terms “detail” or “particularity” mean specificity, providing the exact basis and reason therefor with citations to the Contract or Contract Documents. Vague or ambiguous references such as “other matters” or “other costs” shall not be permitted and are not subject to any compensation method whatsoever.

(a) Differing Site Conditions or Changed Conditions: A differing site condition or changed condition means subsurface, latent, or unknown physical site conditions that are materially different than that which is indicated in the Contract Documents which is not ordinarily encountered and generally recognized in the work provided for in the Contract, and which Contractor, in spite of conducting field measurements and verifying existing conditions, were not discoverable by the Contractor.

Contractor understands the City must be permitted the opportunity to timely investigate all differing site/changed condition matters; document conditions as they existed on the site at the time; take measurements, photographs, witness statements and the like; negotiate a compromise resolution with the Contractor and/or subcontractors; and avoid the cost, expense and delay of formal litigation.

Upon discovering a differing site condition, the Contractor shall not disturb the conditions and immediately contact the Project Manager. Within five days of discovering the condition, the Contractor shall provide written notice
to the Project Manager of the condition. The written notice shall describe the condition with particularity; provide the precise material difference of the condition from the Contract, design plans, and/or other Contract Documents; describe, in detail, how the condition is not a condition that would be ordinarily encountered and generally recognized in the work provided for in the Contract; and provide a detailed explanation, including all accounting and other evidence supporting, Contractor's losses, costs, delays, and changes in time required for performing the work. Contractor agrees that any claim, loss, damage, delay, or change in time that is not supported by evidence shall be disallowed. Contractor waives and forever releases and discharges the City from any claim of whatsoever kind, loss, damages, demand, and/or request for equitable adjustment whether known or unknown by disturbing the condition before notifying the Project Manager and by failing to provide timely detailed written notice as required herein. Any issue which is not provided for, in detail, in the written notice shall also be waived and the City shall be forever released and discharged from any claim whatsoever, loss, damage, or request for equitable adjustment, or demand arising therefrom.

After Contractor fully complies with the provisions in this section and after receiving the written notice, the Project Manager shall promptly investigate the condition and determine whether such condition materially differs from that indicated in the Contract Documents and whether it is a condition that would not ordinarily be encountered and generally recognized in the work provided for in the Contract. If the Project Manager determines the condition is a "differing site condition," then a Change Order shall be issued describing the differing site condition and compensation method agreed to by the parties. By signing the Change Order, Contractor agrees the City shall be released and fully discharged from any claim whatsoever, loss, damage, request for equitable adjustment, or demand arising from the matters described in the Change Order. The parties shall also sign a document which describes in detail each condition and each claim, loss, damage, delay, or change in time related to that particular condition which was agreed to and fully resolved as well as any condition and each claim loss, damage, delay, or change in time related to that particular condition which is disputed.

If the Contractor disputes, disagrees with, or otherwise considers unfair any decision or ruling by the City, then Contractor shall, within 10 Calendar Days, provide the City with written notice of the dispute as set forth in the dispute section of this Contract and shall follow the dispute resolution process provided therein.
(b) Defective or Deficient Construction Plans or Documents: A defective or deficient construction plan or document means a material error, mistake, oversight, or omission in the design plans or documents providing the specifications depicting the general and detail features of the work to be performed of which Contractor, in spite of the Contractor's obligations to carefully examine the Contract Documents, had no knowledge.

Upon discovering a defect or deficiency, the Contractor shall immediately contact the Project Manager. Within five days of initially advising the Project Manager of the defect or deficiency, the Contractor shall provide written notice to the Project Manager. The written notice shall describe the defect or deficiency with particularity explaining why it is a material defect or deficiency; provide precise detail explaining why the defect or deficiency is not something Contractor should know how to do or why the defect or deficiency is not a condition that would be ordinarily encountered and generally recognized in the work provided for in the Contract; and provide a detailed explanation, including all accounting and other evidence supporting, Contractor's losses, costs, delays, and changes in time required for performing the work. Contractor agrees that any claim, loss, damage, delay, or change in time that is not supported by evidence shall be disallowed. Contractor agrees that it shall waive and forever release and discharge the City from any claim of whatsoever kind, loss, damages, demand, and/or request for equitable adjustment whether known or unknown by failing to immediately notifying the Project Manager and by failing to provide timely detailed written notice as required herein. Any issue which is not provided for in the written notice shall also be waived and the City shall be forever released ad discharged from any claim whatsoever, loss, damage, or request for equitable adjustment, or demand arising therefrom.

After Contractor fully complies with the provisions in this section and after receiving the written notice, the Project Manager shall promptly investigate the condition and determine whether such matter is a “defective or deficient design plan or document” as defined herein. If the Project Manager determines the matter is a “defective or deficient design plan or document,” then a Change Order shall be issued describing the defective or deficient design plan or document, the correction and compensation method agreed to by the parties. By signing the Change Order, Contractor agrees the City shall be released and fully discharged from any claim whatsoever, loss, damage, request for equitable adjustment, or demand arising from the matters described in the change order. The parties shall also sign Form A of this Contract which describes in detail each condition and each claim, loss, damage, delay, or change in time related to that particular condition which was agreed to and fully resolved as well as any condition and each
claim loss, damage, delay, or change in time related to that particular condition which is disputed.

If Contractor disputes, disagrees with, or otherwise considers unfair any decision or ruling by the City, then Contractor shall, within 10 Calendar Days, provide the City with written notice of the dispute as set forth in the Dispute Resolution section of this Contract and shall follow the dispute resolution process provided therein.

(c) Changes in Work and Additional/Extra Work (fixed price contract): When additional information through excavation, testing, site investigation, differing site conditions, or otherwise is obtained the City shall have the right to alter, change the location, re-design, change the work, add to the work, accelerate work, or reduce work, change the method or manner of performance, change services, and/or change materials described in the Contract (collectively “Changed Work”).

If the City changes work, then a Change Order shall be issued by the Project Manager. Contractor shall not be required to perform any Changed Work without a Change Order issued by the Project Manager. Such Changed Work shall be performed under the terms set forth in the original Contract and compensated as agreed in this section of the Contract.

If Contractor disputes any Changed Work or compensation method for such Changed Work requested by the City or set forth in a Change Order, Contractor shall, without delay, perform such work. Within 10 Calendar Days of receiving the Change Order, Contractor shall provide the City with written notice of the dispute as set forth in the Dispute Resolution section of this Contract and shall follow the dispute resolution process provided therein. Contractor further agrees that any issue not provided for, in detail, in the written notice shall also be waived and the City shall be forever released ad discharged from any claim whatsoever, loss, damage, or request for equitable adjustment, or demand arising therefrom. Any matter resolved through the Dispute Resolution process shall be set forth in Form A of this Contract which describes in detail each Changed Work, including the compensation method, which was agreed to and fully resolved. By signing Form A, Contractor agrees that the City shall be released and fully discharged from any claim whatsoever, loss, damage, request for equitable adjustment, or demand arising from the matters described in Form A.

If Contractor does not dispute any Changed Work or the compensation method for such work, then Contractor shall sign the Change Order and agrees that the City shall be released and fully discharged from any claim whatsoever, loss, damage, request for equitable adjustment, or demand arising from the matters described in the Change Order.
Contractor agrees that the Project Manager shall have the authority to make minor changes in the work which do not involve additional costs and are not inconsistent with the purpose and scope of the work.

If the City finds it necessary or advisable, the City may omit, increase, or decrease any items as it may deem necessary or desirable without changing the unit prices in the proposal, provided such increase or decrease does not exceed 15% of the total monetary value of the original Contract. If material or labor involved in such 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 bids or proposals 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 Contractor to proceed with such alterations and additions. The Contract shall not be required to perform such work or furnish extra materials without a Change Order issued by the Project Manager.

107.28 DISPUTE RESOLUTION
Mindful of the high cost of litigation, not only in dollars, but also in time and energy, the parties intend to and do hereby establish the following out-of-court alternate dispute resolution procedure to be followed in the event any dispute, claim of any kind, loss, damage, demand, request for equitable adjustment, or controversy should arise out of, or relating to this Contract or relating to any Change Order or other changes or addendums to this Contract. During the dispute resolution procedure provided in this section, Contract shall continue to perform the work as provided for in this Contract as modified by any Change Order or Contract amendment. Nothing in this section precludes the parties from pursuing any other remedy afforded by the laws of the State of Colorado once the remedies afforded under this Contract have been complied with and exhausted.

(a) Disputes Arising from Change Orders: If Contractor disputes, disagrees with, or considers any decision, order, ruling, demand, request, directive, Change Order, or Contract amendment, related to the Change Orders provision of this Contract, and issued by the City, whether verbally or in writing, then Contractor shall:
1. Within 10 days of the City issuing any written or verbal decision, order, ruling, demand, request, directive, Change Order, or Contract amendment, Contractor shall provide written notice to the Project Manager identifying, with specific detail, each disputed matter. Any Unanticipated Circumstance dispute or matter of any kind or nature whatsoever, which Contractor does not identify in detail shall be waived and the City is released and fully discharged from any claim whatsoever, loss, damage, request for equitable adjustment, or demand arising from
any matter not explicitly set forth in the written notice and described in detail;

2. Contractor shall provide to the City all evidence of any claim of whatsoever kind, loss, damages, delay cost, or other costs, including, but not limited to payroll reports, daily logs, invoices, accounting file, receipts, email, or other relevant record or document. Any item claimed by Contractor shall be supported by verifiable evidence described herein. If Contractor requires additional time to obtain or compile such evidence, then the Contractor shall have an additional 30 days, but must identify the exact document(s) or other evidence needed, where it is maintained, and explain why it is not available. The City shall not be responsible for any delay or other damage arising from Contractor’s request for additional time to obtain documents. Any item unsupported by verifiable evidence shall be waived and Contractor agrees to release and fully discharge the City from any claim of whatsoever kind, loss, damage, request for equitable adjustment, or demand related to such unsupported item.

3. Upon receipt of Contractor's written notice, the Project Manager will investigate the disputed matter(s) and issue a written decision, ruling, order, and/or directive to Contractor. If Contractor does not dispute the Project Manager’s decision, ruling, order, or directive, or a compromise has been reached, then Contractor shall sign Form A. If Contractor disputes or disagrees with the Project Manager’s Ruling, then within 20 days of receiving the Project Manager’s decision, ruling, order, and/or directive, Contractor must file with the City a written request for review to the City Engineer or City’s Manager of the Procurement Services Division. The written request for review shall (a) state in detail the exact issue raised to the Project Manager and the issue(s) related to those matters raised to be reviewed by the City Engineer or Procurement Services Manager; (b) provide an analysis, detailing the basis, reason therefor and the how and why Contractor disagrees with the Project Manager’s decision, ruling, order, or directive; and (c) attach all evidence supporting Contractor’s dispute. If Contractor fails to provide a timely written request for review to the City Engineer or Procurement Services Manager, then Contractor agrees that it waives, releases, and forever discharges the City from any claim of whatsoever kind, loss, damage, request for equitable adjustment, or demand arising from or related to the Project Manager’s decision, ruling, order, or directive.

4. The City Engineer’s or Procurement Services Manager’s decision shall be final and conclusive for the City of Colorado Springs. If Contractor disputes, disagrees with, or considers such decision unfair, then Contractor shall be free to pursue any other remedy afforded by the laws of the State of Colorado. If Contractor does not dispute the City
Engineer’s or Procurement Services Manager’s decision, ruling, order, or directive or a compromise is reached, then Contractor shall sign Form A.

5. Contractor shall pay the City reasonable attorney’s fees and costs associated with its failure to comply with any part of this alternate dispute process.

(b) All Other Claims: If a dispute, disagreement, or controversy of any kind, other than those covered in the Change Orders section of this Contract, arises from or is related to the Contract, shall be resolved under the Disputes section in the Contract.

107.29 **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 Project Manager made under the provisions of this paragraph, the Project Manager 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 Project Manager shall have the right and authority to order all construction to cease or material to be removed, until arrangements satisfactory to the Project Manager are made by the Contractor for resumption of the work in compliance with the provisions of the Contract.

The Contractor shall promptly remove from the premises all materials and work rejected by the Project Manager as failing to meet Contract requirements, whether incorporated in the work or not, and the Contractor shall promptly replace and reexecute 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 rejected 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.

107.30 **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. If not completed by Contractor, 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 Project Manager, 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 Project Manager, who at the same time will make his final inspection of the work. The Project Manager will not approve the final estimate of any portion of the work until after the final inspection is made and the work is found to be satisfactory.

107.31 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.

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

107.32 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 applicable regulatory 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.

107.33 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.

107.34 NO WAIVER OF LEGAL RIGHTS
Upon written notice that the Contractor considers all work complete, the Project Manager will make a pre-final inspection with the Contractor and will 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 Project Manager 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 will be promptly issued a Certificate of Completion by the Project Manager 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.

The Contractor shall be liable to the City for latent defects, fraud, or such 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 Contract warrants to the City that the Work will conform to the requirements of the Contract Documents and will be free from defects in workmanship and materials. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved or authorized by the Project Manager, shall be considered defective. If any defect in the work in violation of the foregoing warranty arises, Contractor shall, upon receipt of written notice of such defect, promptly furnish, at no cost to the City, design and engineering, labor, equipment, and materials necessary to correct such defect and cause the Work to comply fully with the foregoing warranty and Contract Documents. This obligation shall survive both final completion of and final payment for the Work. The City shall not be invoiced for any of costs of warranty work, and Contractor shall not be entitled to submit any claim for an increased fee arising therefrom. The Contractor guarantee period (two-year warranty period) will not begin until the Contract is 100 percent complete, as determined by the Project Manager. Acceptance of the 100 percent complete work 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 such equipment 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 an 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.

107.35 ACCEPTANCE

(a) Partial Acceptance. If, during the performance 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 Project Manager may make final inspection of that unit. If the Project Manager 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 Project Manager 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 Project Manager 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 Project Manager 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 Project Manager 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 the No Waiver of Legal Rights section of this Contract.

107.36 ASSIGNMENT OF WARRANTIES

The Contractor agrees to assign to the City at the time of substantial completion of the Work any and all manufacturer’s warranties relating to the Work. All required warranty periods shall commence at time of final completion of this Work as determined by the Project Manager. In connection therewith, the Contractor further agrees to perform the Work in such manner consistent with and so as to preserve any and all manufacturer's warranties. All manufacturer's warranties shall be
endorsed to provide that the warranty shall recommence and be reinstated in full in connection with, and on completion of, any corrective work required in connection with any item covered by such warranty. In addition to the foregoing stipulations, the Contractor shall comply with all other warranties referred to in any portions of the Contract Documents or otherwise provided by law or in equity, and where warranties overlap, the more stringent requirement shall govern.

SECTION 108  PAYMENTS AND ACCEPTANCE OF WORK
108.00  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 C.R.S. Title 24, Article 91, on statements made and approved by the Project Manager. 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 the Work performed by the Contractor under the Contract Documents will be made at the approved unit price or Firm Fixed Price price for each of the several items as listed in the 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. 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. 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 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 finds that satisfactory progress is being achieved during any period for which progress is to be made, the City may authorize payment to be made in full without withholding retainage. However, if satisfactory progress has not been made, the City may retain a maximum of five percent (5%) of the amount of the requested payment until
satisfactory progress is achieved. When the work is substantially complete, the City may retain from the remaining unpaid balance that amount the City Procurement Services Manager, at the advice of the Project Manager, considers adequate for protection of the City, suppliers, subcontractors, laborers, vendors, etc., provided that such retainage shall not exceed five percent (5%) of the amount due, and shall release to the Contractor all the remaining funds associated with completed and acceptable work.

If satisfactory progress has not been made 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 will hold five percent (5%) 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 will only pay forty-five percent (45%) of the invoice, withholding five percent (5%) of what is due until the Contractor gets back on schedule.

(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) If the Contractor is not progressing in accordance with the Project Schedule or not performing quality work in accordance with the specifications, the City Procurement Services Manager, at the advice of the Project Manager may withholding retainage up to and including five percent (5%) of the total contract amount.

(4) The Contractor shall submit to the Project Manager an itemized Application for Payment for Work completed in accordance with the schedule of values stated in the Contract Documents. The Application for Payment shall be in the form of AIA G701 and G702 (or such other form as required by the City), and supported by data substantiating the Contractor’s right to payment as the Project Manager may require, including, without limitation: (i) a partial waiver of lien executed by the Contractor covering the entire amount of the payment requested by the relevant Application for Payment conditioned only upon payment of the amount requested in the subject Application for Payment; (ii) unconditional partial waivers of lien, executed by the Contractor and each subcontractor performing work or furnishing supplies or materials for the Work, which partial waiver of lien shall be equal to the amount of all payments made by the Owner to the Contractor on behalf of such subcontractor in all preceding Applications for Payment; (iii) conditional partial waivers of lien, executed by each subcontractor for the amounts requested on the relevant Application for Payment; and (iv) such other documentation as is requested by City. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work.

The Contractor warrants that title to all work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all work for which Certificates for Payment have been previously issued and payments received from the City shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or other encumbrances adverse to the City’s interests.

108.01 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 will be made for amounts withheld because of them.

108.02 ACCEPTANCE OF FINAL PAYMENT

If the work is finally accepted by Project Manager under the terms and conditions of the Contract the entire balance found by the Project Manager to be due the Contractor, including the retained percentage, less any retention based on; (1) the Project Manager'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 Project Manager.

Upon completion of the work under the Contract and before the Contractor will receive or be paid for the Project Manager's final statement, the City Procurement Services Division shall post a notice in the Colorado Springs Gazette 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 Procurement Services Division 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 Project Manager so certifies, the City may, upon Certificate of Completion by the Project Manager, 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 payment shall constitute a waiver of all claims by the Contractor but acceptance of the work 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 and said forms have been reviewed and approved by the City Sales Tax Office.
APPENDIX G – MINIMUM INSURANCE REQUIREMENTS

The following listed minimum insurance requirements shall be carried by all contractors and consultants unless otherwise specified in the City’s solicitation package, Special Provisions or Standard Specifications.

1. X Commercial General Liability for limits not less than $1,000,000 combined single limit with $2,000,000 aggregate for bodily injury and property damage for each occurrence. Coverage shall include blanket contractual, broad form property damage, products and completed operations.

2. X Workers’ Compensation and Employers Liability as required by statute. Employers Liability coverage is to be carried for a minimum limit of $100,000.

3. X Automobile Liability covering any auto (including owned, hired, and non-owned autos) with a minimum of $1,000,000 each accident combined single limit.

4. Excess Liability for limits not less than $1,000,000 combined single limit for bodily injury and property damage for each occurrence.

5. X Builders Risk or Installation Floater Insurance: Contractor shall purchase and maintain property insurance written on a builder’s risk “all-risk” or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property.

6. X Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts with limits of not less than $2,000,000 per occurrence and in the aggregate.
   a. In the event that any professional liability insurance required by this Contract is written on a claims-made basis, Consultant warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.
   b. Policy shall contain a waiver of subrogation against the CITY.
7. Pollution Legal Liability Insurance shall apply to sudden and gradual pollution conditions resulting from the escape of release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos). If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this contract is completed. Policy limits shall be no less than $1,000,000 per loss with $2,000,000 aggregate coverage.

8. Technology Errors and Omissions Liability including Network Security and Privacy Liability not less than $3,000,000 per loss with a $3,000,000 aggregate.
   a. The policy shall provide a waiver of subrogation.
   b. The insurance shall provide coverage for liability arising from theft, dissemination and/or use of confidential information stored or transmitted in electronic form.
   c. Network Security Liability arising from the unauthorized access to, use of or tampering to gain access to your services including denial of service, unless caused by a mechanical or electrical failure
   d. Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer’s or third person’s computer, computer system, network or similar computer related property and the data, software, and programs thereon.

9. Employee Crime Coverage shall include employee dishonesty, forgery or alteration and computer fraud. If Contractor is physically located on CITY premises, third party fidelity coverage extension shall apply.
   The policy shall include coverage for all directors, officers, agents and employees of the Contractor. Coverage limit will be not less than $1,000,000 per loss.
   a. The bond or policy shall include coverage for extended theft and mysterious disappearance.
   b. The bond or policy shall not contain a condition requiring an arrest and conviction.

10. Liquor Legal Liability Insurance: If the event producer is a business that manufactures, distributes, sells, or serves alcoholic beverages, and intends to serve or sell alcoholic beverages at an event, they must also submit a Certificate of Insurance providing proof of a liquor legal liability insurance policy or properly endorsed general liability policy.
    a. If this event producer hires a vendor to serve or sell alcoholic beverages, rather than providing the alcohol themselves, they must
submit a Certificate of Insurance from the vendor providing proof of a liquor legal liability insurance policy or properly endorsed general liability policy.

b. In either case, the minimum acceptable limit of liability per claim and aggregate is $1,000,000. This requirement applies to the business or group which serves or sells the alcohol.

Except for workers’ compensation and employer’s liability insurance and Professional Liability, 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, non-renewal, or material changes to policies required under the contract.

All coverage furnished by contractor is primary, and any insurance held by the City of Colorado Springs is excess and non-contributory.

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)
APPENDIX H – QUALIFICATION STATEMENT

This statement will provide information which will enable the City to evaluate the qualifications of your firm and staff with regard to the requirements of this Invitation for Bid. Please complete this form in its entirety and submit it (in the number of copies requested) along with the other required proposal documents. If a request in the Qualification Statement is contained in the Bid, indicate the section in the Bid where that information can be found.

(PRINT)
FIRM NAME: ____________________________________________________________
ADDRESS: _____________________________________________________________
CITY STATE ZIP: ________________________________________________________
AUTHORIZED REPRESENTATIVE: ___________________________________________
TITLE: _________________________________________________________________
AUTHORIZED SIGNATURE: ________________________________________________
PHONE: _________________________ FAX: _________________________________
E-MAIL ADDRESS: ______________________________________________________

1. TYPE OF BUSINESS

<table>
<thead>
<tr>
<th>CORPORATION</th>
<th>INDIVIDUAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>PARTNERSHIP</td>
<td>JOINT VENTURE</td>
</tr>
</tbody>
</table>

OTHER: ____________________________

2. TYPE OF LICENSE & LOCATION


3. TYPE OF SERVICE TO BE PROVIDED FOR RFP: ________________________________

4. NUMBER OF YEARS IN BUSINESS: ________________________

5. ON A SEPARATE SHEET PROVIDE A BRIEF HISTORY OF YOUR FIRM, STAFF SIZE AND EXPERIENCE. SUBMIT A RESUME FOR THE PROJECT MANAGER AND EACH KEY PERSONNEL ASSIGNED TO THIS PROJECT.

6. WHAT OTHER NAME(S) HAS YOUR COMPANY OPERATED UNDER: ______________

7. HAVE YOU OR YOUR FIRM EVER FAILED TO COMPLETE ANY WORK AWARDED TO YOU? YES [ ] NO [ ] IF “YES”, EXPLAIN:

________________________________________________________________________

________________________________________________________________________

8. HAS ANY OFFICER OR PARTNER OF YOUR ORGANIZATION EVER BEEN AN OFFICER OR PARTNER OF ANOTHER ORGANIZATION THAT FAILED TO COMPLETE A CONTRACT WITHIN THE LAST FIVE (5) YEARS? YES [ ] NO [ ] IF “YES”, EXPLAIN:

________________________________________________________________________

________________________________________________________________________

9. HAS YOUR FIRM OR ANY PARTNERS OR OFFICERS EVER BEEN INVOLVED IN ANY
BANKRUPTCY ACTION?  YES  □  NO  □  IF “YES”, EXPLAIN:


10. ARE YOU PRESENTLY INVOLVED IN ANY LITIGATION WITH ANY GOVERNMENT AGENCY?  YES  □  NO  □  IF “YES”, EXPLAIN TYPE, KIND, PLAINTIFF, DEFENDANT, ETC., AND STATE THE CURRENT STATUS:


11. BANK REFERENCE:  ________________________________
ADDRESS:  ______________________________________
CONTACT:  ___________________________  PHONE:  ___________________________


12. LIST THREE (3) SIMILAR PROJECTS (LOCAL OR STATE-WIDE) FROM LAST FIVE (5) YEARS—INCLUDE LOCATION OF PROJECT, SIZE OF PROJECT (CONTRACT AMOUNT), CONTACT NAME, ADDRESS, TELEPHONE NUMBERS
NOTE: DETAILED INFORMATION ON THESE PROJECTS MAY ALSO BE REQUESTED IN THE RFP PACKAGE.
1. Location of Project:
   Size of Project:
   Contract Amount:
   Contact Name and Title:
   Contract Address:
   Contact telephone and FAX Numbers:

2. Location of Project:
   Size of Project:
   Contract Amount:
   Contact Name:
   Contact Address:
   Contact telephone and FAX Numbers:

3. Location of Project:
   Size of Project:
   Contract Amount:
   Contact Name:
   Contact Address:
   Contact telephone and FAX Numbers:

13. LIST CURRENT SIMILAR PROJECTS (LOCAL OR STATE-WIDE) UNDER CONTRACT—INCLUDE LOCATION OF PROJECT, SIZE OF PROJECT (CONTRACT AMOUNT) CONTACT NAME, ADDRESS, TELEPHONE NUMBERS.
NOTE: DETAILED INFORMATION ON THESE PROJECTS MAY ALSO BE REQUESTED IN THE RFP PACKAGE.
1. Location of Project:
   Size of Project:
   Contract Amount:
   Contact Name and Title:
   Contact Address:
   Contact telephone and FAX Numbers:
2. Location of Project:  
   Size of Project:  
   Contract Amount:  
   Contact Name and Title:  
   Contact Address:  
   Contact telephone and FAX Numbers:  

3. Location of Project:  
   Size of Project:  
   Contract Amount:  
   Contact Name and Title:  
   Contact Address:  
   Contact telephone and FAX Numbers:  

14. LIST OF SUB-CONTRACTORS TO BE USED FOR THIS PROJECT:  
    (INCLUDE NAME, ADDRESS, TELEPHONE NUMBER, TYPE OF WORK)  
   1. Name:  
      Address:  
      Telephone Number:  
      Type of Work:  
   2. Name:  
      Address:  
      Telephone Number:  
      Type of Work:  
   3. Name:  
      Address:  
      Telephone Number:  
      Type of Work:  

IF ADDITIONAL INFORMATION IS PROVIDED ON A SEPARATE SHEET FOR ANY OF THE ITEMS, CLEARLY SPECIFY WHERE IT CAN BE LOCATED IN YOUR BID PACKAGE.
APPENDIX I – REPRESENTATIONS AND CERTIFICATIONS

1. INSURANCE REQUIREMENTS

Offeror 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, Offeror 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 Offeror’s Bid.

2. ETHICS VIOLATIONS

a) The Offeror 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) Offeror certifies the Offeror has not violated or caused any person to violate, and shall not violate or cause any person to violate, the City’s Code of Ethics contained in Article 3, of Chapter 1 of the City Code and in the City’s Procurement Rules and Regulations.
c) When the Offeror has reasonable grounds to believe that a violation described in this clause may have occurred, the Offeror shall promptly report the possible violation to the City Contracts Specialist in writing.
d) The Offeror must disclose with the signing of this Bid, 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 ten percent (10%) or more in the Offeror’s firm or any of its branches.
e) In addition, the Offeror must report any conflict or apparent conflict, current or discovered during the performance of the Contract, to the City Contracts Specialist.
f) The Offeror shall not engage in providing gifts, meals or other amenities to City employees. The right of the Offeror to proceed may be terminated by written notice issued by City Contracts Specialist if Offeror 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.
g) The Offeror agrees to incorporate the substance of this clause (after substituting “Contractor” for “Offeror”) in all subcontracts under this offer.

3. ILLEGAL ALIENS
If Offeror has any employees or subcontractors, Offeror shall comply with § 8-17.5-101, et seq., 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. Offeror 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 Offeror that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

2. Offeror has verified or attempted to verify that Offeror 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. Offeror 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 Offeror 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 Offeror 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 such notice, the subcontractor does not stop employing or contracting with the illegal alien. However, the Offeror 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 Offeror will not employ the illegal aliens in the performance of any City contract.

5. Offeror 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 Offeror violates this provision, the City may terminate the contract for a breach of contract. If the Agreement is terminated, the Offeror shall be liable for actual and consequential damages.

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4. COOPERATION WITH OTHER CONTRACTORS

Other City activities/contracts may be in progress or start during the performance of this contract. The Offeror shall coordinate the work harmoniously with the other contractors.
or City personnel, if applicable.

Initials for 4

5. INTERNET USE

Should the Offeror 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 any awarded contract.

Initials for 5

6. LITIGATION

If awarded a contract, Offeror 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 Offeror 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):

- Large Business (i.e. do not qualify as a small business or non-profit)
- Nonprofit
- Small Business
- Minority Owned Business/Small Disadvantaged Business
- Woman Owned Business
- Veteran Owned Business
_______ Service-Disabled Veteran Owned Business

_______ HUBZone Business

Note: The City accepts self-certification for these categories in accordance with Small Business Administration (SBA) standards. The SBA size standards are found on the SBA website https://www.sba.gov/content/am-i-small-business-concern.

Initials for 7

8. CONTRACTOR PERSONNEL

(1) a) The Offeror 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 Offeror in all administrative matters concerning this Bid and any awarded 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 Offeror’s Bid, unless the Offeror 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 Offeror.

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. OFFEROR’S CERTIFICATION

The undersigned hereby affirms that:

a) He/She is a duly authorized agent of the Offeror;

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 City of Colorado Springs. The Offeror 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 Offeror 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 Offeror in preparing its Bid.
e) By submitting an offer the Offeror 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 Bid based on my company’s capabilities to provide quality products and/or services on time.

__________
Initials for 9

10. OFFEROR 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.
11. ACCEPTANCE OF CITY CONTRACTS SPECIALIST’S SOLE AUTHORITY FOR CHANGES

Unless otherwise specified in the Contract, the Offeror hereby agrees 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.

12. CITY CONTRACTOR SAFETY PROGRAM

The Offeror hereby agrees to adhere to a worker safety program for contractor employees on a City job site or location. By initialing below, the Offeror has reviewed the information and will abide by the City Policy which is available for review:


13. ACCEPTANCE OF CITY ENVIRONMENTALLY PREFERRED PURCHASING (EPP) POLICY

The City of Colorado Springs is committed to buying more environmentally preferable goods and services, as long as they meet performance needs, are available within a reasonable time and at a reasonable cost. The Offeror hereby acknowledges review of this policy by initialing below.


14. FRAUD, WASTE, AND ABUSE

Everyone has a duty to report any suspected unlawful act impacting the City of Colorado Springs operations and its enterprises. Anyone who becomes aware of the existence or apparent existence of fraud, waste, and abuse in City of Colorado Springs
is encouraged to report such matters to the City Auditor’s Office in writing or on the telephone hotline 385-2387 (ADTR). Written correspondence can be mailed to:

City Auditor
P.O. Box 2241
Colorado Springs CO 80901

Or via email CityAuditManagement@springsgov.com. Any of these mechanisms allow for anonymous reporting. For more information, please go to the website https://coloradosprings.gov/cityfraud.

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Initials for 14

Name of Company:

Federal Tax ID Number:

DUNS Number:

Principle Place of Business:

______________________________

Signature of Authorized Representative

Printed Name:

Title:

Date:
APPENDIX J – BID BOND
CITY OF COLORADO SPRINGS BID 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 Bid 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:

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:

FOR: (Witness) (Principals Name) 
BY: _________________________________ ITS: _________________________________
This ______ day of _____________________

(Seal)

FOR: (Witness) (Surety’s Name)
BY: _________________________________ ITS: _________________________________
This ______ Day of _____________________

(Seal)

Bond # _______________________________ This Bond (is) (is not) a SBA Guaranteed Bond.

(2) (3)