



THE CITY OF COLORADO SPRINGS
and the
PIKES PEAK RURAL TRANSPORTATION AUTHORITY



REQUEST FOR PROPOSAL

R16-T065 NS

Date issued: July 25, 2016

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES
PASEO BRIDGE REPLACEMENT**

**THE CITY OF COLORADO SPRINGS
CITY ENGINEERING**

PRE-PROPOSAL CONFERENCE

A Pre-Proposal Conference is scheduled for this solicitation at 2:00 P.M. August 3, 2016.

PROPOSALS ARE DUE NO LATER THAN

AUGUST 19, 2016 AT 3:00 P.M.

Contact

Nicole Spindler
Contracting Specialist
Colorado Springs, CO 80903-2599
(719) 385-5265
FAX (719) 475-8477
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SECTION I

1.0 PROPOSAL INFORMATION

Section I provides general information to potential Offerors on subjects such as where to submit proposals, number of copies, amendments, proprietary information designation, and other similar administrative elements. The Request for Proposal will be issued on or about July 25, 2016.

GENERAL INFORMATION

The City of Colorado Springs is using the [Rocky Mountain E-Purchasing System](#) for soliciting bids and proposals from vendors. This system will provide you with convenient online access to all bid information for City of Colorado Springs as well as numerous other local agencies throughout Colorado. To receive email alerts of open bids in your field please register with [Rocky Mountain E-Purchasing System](#) and complete your online registration. If you are currently registered as a vendor with them, you do not need to register again. The City is no longer using the City website for solicitation and City Contracting no longer maintains a bidders' list.

The City of Colorado Springs encourages participation of small, disadvantaged and/or women-owned business enterprises in regard to this notice.

1.1 SUBMISSION OF PROPOSAL

- a. **Sealed offers** are to be submitted to:
 Nicole Spindler
 Contracting Specialist
 30 S. Nevada Avenue, Suite 201
 Colorado Springs, CO 80903

*******NO LATE OFFERS WILL BE ACCEPTED*******

- b. **Date/Time:** Proposals shall be received on or before **3:00 pm, August 19, 2016.**
- c. **Identification of Proposal:**
 Proposals shall be submitted in a sealed envelope(s) or container(s) with the solicitation number, date for submission of offer and the Offeror's name clearly marked on the outside of the envelope(s) or container(s).

RFP No. R16-T065 NS CMGC Paseo Bridge Replacement
Due Date: August 19, 2016 - 3:00 P.M.
Company: _____
- d. Any offer that is submitted without being properly marked may be opened for identification prior to the deadline for receipt of proposal and then resealed.

1.2 PRE-PROPOSAL CONFERENCE

A pre-proposal conference is scheduled for **August 3, 2:00 P.M.**, City of Colorado Springs Co., 30 S Nevada Ave., Conference Room 201, Colorado Springs, CO 80903. This meeting is not mandatory however all prime contractors are urged to attend. Please note: Valid photo identification is required for entry into the City Administration Building.

1.3 NUMBER OF COPIES

Offerors shall submit one unbound original set, one electronic copy on CD or jump drive, and five (5) copies of the proposal documents. This will greatly facilitate the evaluation process. The proposal shall remain the property of the City of Colorado Springs. The unbound original copy shall be clearly marked 'ORIGINAL'.

1.4 SPECIAL TERMS AND CONDITIONS

The following special terms and conditions shall govern the preparation and submission of proposals and any contract that may ensue. Please note the following definitions of terms as used herein:

- a. The term "Request for Proposal (RFP)" means a solicitation of a formal sealed proposal following submission of which changes in proposals and/or prices are allowed, and the offer deemed by The City of Colorado to be most advantageous in terms of criteria as designated in the Request for proposal is accepted. In this solicitation "RFP" is synonymous with "Bid".
- b. The term "Offeror" means the person, firm, or corporation which submits a formal sealed proposal and which may or may not be successful in being awarded the contract. In this solicitation "Offeror" is synonymous with the term "Bidder".
- c. The term "Contractor" or "Consultant" means the Offeror who is awarded the contract to provide the products or services specified.
- d. The term "Statutory" means requirements of Colorado law.

1.5 PROPOSAL INFORMATION

- a. All questions regarding proposal preparation, the selection process, specifications, and interpretations of the terms and conditions of the RFP shall be submitted in writing no later than **nine (9) calendar** days prior to the deadline for submission of offers.
- b. Following the award of a contract, responses to this solicitation may be subject to release as public information unless the response or specific parts of the response can be shown to be exempt from public information. Offerors are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information. The City of Colorado Springs assumes no obligation or responsibility for asserting legal arguments on behalf of potential Offerors.

1.6 RFP OBJECTIVE

The objective of this RFP is to provide sufficient information to enable qualified Offerors to submit written proposals to the City of Colorado Springs. The RFP is not a contractual offer or commitment to purchase products or services.

All information must be legible. Any and all corrections and or erasures must be initialed. Each proposal shall be accompanied by a transmittal letter signed in ink by an authorized representative of the Offeror. The contents of the proposal submitted by the successful Offeror may become part of any contract awarded as a result of this solicitation.

1.7 CONFIDENTIAL OR PROPRIETARY INFORMATION

If an Offeror believes that parts of an offer are confidential, then the Offeror must so specify. The Offeror must stamp in bold letters the term CONFIDENTIAL on that part of the offer which the Offeror believes to be confidential. The Offeror must submit in writing specific detailed reasons, including any relevant legal authority, stating why the Offeror believes the material to be confidential. Vague and general claims as to confidentiality will not be accepted. The City of Colorado Springs will be the sole judge as to whether a claim is general and/or vague in nature. All offers and parts of offers, which are not marked as confidential, will be automatically considered public information after the contract is awarded. The successful offer may be considered public information even though parts are marked confidential.

1.8 AMENDMENTS

Amendments to this RFP may be issued at any time prior to the time set for receipt of proposals. The Offerors are required to acknowledge receipt of any Amendments (addenda) issued to this RFP by returning a signed copy of each amendment issued. Signed copies must be received on or before the time set for receipt of offers (see 1.1 above).

The City of Colorado Springs will post all addenda on the [Rocky Mountain E-Purchasing System](#). It is the Offeror's responsibility to check the web-site for posted addenda or contact the Contracting Specialist listed to confirm the number of Amendments which have been issued.

1.9 WITHDRAWAL OR MODIFICATION OF OFFERS

Any Offeror may modify or withdraw an offer in writing at any time prior to the deadline for submission of an offer (see 1.1 above).

1.19 SUBSTANTIVE PROPOSALS

The contractor shall certify (a) that contractor's proposal is genuine and is not made in the interest of, or on behalf of, an undisclosed person, firm, or corporation; (b) that contractor has not directly or indirectly induced or solicited any other contractors to put in a false or sham bid; (c) that contractor has not solicited or induced any other person, firm, or corporation to refrain or abstain from proposing a bid; and (d) that contractor has not sought by collusion to obtain for themselves any advantage over any other contractors or over the City of Colorado Springs; and (e) contractor shall not violate or cause any person to violate, the Colorado Code of Ethics (C.R.S. 24-18-101 et. seq.).

1.20 OFFEROR'S QUALIFICATIONS

Each Offeror may additionally be required to show that they have satisfactorily provided products and performed similar work with companies, organizations or municipalities in the past and that no claims of any kind are pending against such work. No proposal will be accepted from an Offeror who is engaged on any work, which would impair their ability to perform or finance this work. All such work shall be revealed in the Proposal.

No proposal will be accepted from, nor will a contract be awarded to, any Offeror who is in arrears to the City of Colorado Springs, Colorado, upon any debt or contract, or who is in default, as surety or otherwise, upon any obligation to the City or is deemed to be irresponsible or unreliable by the City of Colorado Springs.

1.21 NON-COLORADO CORPORATIONS

Unless waived by the City of Colorado Springs, before or at the time that the contract is awarded to a corporation outside the State of Colorado, such corporation shall obtain authorization to do business in the State of Colorado, designate a place of business herein, and appoint an agent for service of process.

Such corporation must furnish the City of Colorado Springs with a certificate from the Secretary of the State of Colorado to the effect that a certificate of authority to do business in the State of Colorado has been issued by that office and is still valid. There shall also be procured from the Colorado Secretary of State a certified copy of the designation of place of business and appointment of agent for service of process, or a letter from the Colorado Secretary of State that such designation of place of business and agent for service of process has been made.

1.22 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 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.

Forms and instructions can be downloaded at <https://coloradosprings.gov/cat/government/tax-information/sales-tax>. 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

1.23 CONTRACT AWARD

The signature of offeror indicates that within ten (10) from acceptance of its offer, it will execute a Contract with the City of Colorado Springs and if indicated in this solicitation, furnish a project Specific Certificate of Insurance naming the City of Colorado Springs as Additional insured. Signature of Offeror constitutes agreement to furnish Performance, Labor, and Materials Payment Maintenance Bonds and any other documents required by the Specifications or Contract Documents.

After completion of the initial phase, (purchase order award) it will be the City's intent to negotiate a final CMGC contract with the selected GC that incorporates all required CDOT/Federal Clauses, DBE, and Davis Bacon Wage Rates for the actual construction phase.

1.24 TYPE OF CONTRACT

The intent of this Request for Proposal is to award a fixed unit price contract. Contract prices shall remain firm and fixed throughout the contract performance period.

1.25 PROCUREMENT RULES AND REGULATIONS

All formal Requests for Proposals 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 Contracting web-site www.coloradosprings.gov/contracting. Any discrepancies or conflicting statements, decisions regarding bidding irregularities, clauses or specifications will be rectified utilizing the City's Procurement Rules and Regulations. It is the Offeror's responsibility to advise the Contracting Specialist listed in these solicitation documents of any potential discrepancies, conflicting statements, clauses or specifications prior to the Proposal deadline

1.26 PREPARATION OF OFFER

- a. Offerors are expected to examine the drawings, specifications, solicitation 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 an offeror from their responsibility to know what is contained in this request for proposal, or site conditions affecting the work.
- b. 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 offerors in preparing its RFP.
- c. All items, (unless the invitation specifically states otherwise) including any additive or deductive alternates on the cost proposal, **must** be completely filled out or the RFP will be determined non-responsive and ineligible for consideration for award.
- d. The offeror declares that the person or persons signing this RFP is/are authorized to sign on behalf of the firm listed and to fully bind the offeror to all the requirements of the solicitation.
- e. The offeror certifies that no person or firm other than the offeror or as otherwise indicated has any interest whatsoever in this RFP/offer or the Contract that may be entered into as a result of this RFP/offer and that in all respects the offer is legal and firm, submitted in good faith without collusion or fraud.
- f. By submitting a proposal 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 proposal. Offerors are expected to review the City's Procurement Rules and Regulations which will be used when determining an offeror 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. Offerors are responsible for including profit and overhead associated with the project when determining their unit prices.

1.27 ESTIMATED QUANTITIES

If the cost proposal herein contains estimated quantities this provision is applicable. The quantities listed for each of the items in the cost proposal are only estimated quantities. Contractors are required to provide a firm unit cost for each item specified. The actual quantities ordered may fluctuate up or down. The unit prices proposed by each proposer 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 solicitation 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 cost proposal. All unit prices shall include all necessary overhead and profit. Items not listed in the cost proposal such as overhead, profit, mobilization, de-mobilization, bonding, etc. shall be distributed throughout the proposer's unit prices for the items listed in the cost proposal.

1.28 LATE PROPOSALS

Proposals received in the office designated in 1.1 above, after the exact time are considered "late proposals", and will not be accepted. Offerors are solely responsible for insuring their proposals arrive on time to the place specified in the Request for Proposal.

The City of Colorado Springs will not consider a late proposal unless:

- a. There is conclusive evidence that the proposal was submitted to the office designated in 1.1 above, on time and was mishandled by the City of Colorado Springs (i.e. lost or misplaced) City Contracting personnel responsible for handling/receiving proposals. Mishandling by other units or offices of the City of Colorado Springs does not constitute City Contracting personnel.
- b. Or – it was the only proposal received.

1.29 ADDITIONAL BOND REQUIREMENTS (FOR CONSTRUCTION PHASE)

Performance, Labor and Materials Payment, and Maintenance Bonds

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

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

1.30 F.O.B. DESTINATION

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

1.31 TERMS, CONDITIONS AND SPECIAL PROVISIONS

Bidders are advised to pay special attention to Section IV, Terms and Conditions, and Schedule D, General Provisions. These schedules may contain requirements that will have an impact on all potential offerors, such as Liquidated Damages, Indemnification, type of contract, and delivery schedule for the construction phase.

1.32 FISCAL OBLIGATIONS OF CITY

This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide

funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

1.33 EQUAL EMPLOYMENT OPPORTUNITY

In connection with this procurement, the contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status or disability. The contractor will take affirmative action to ensure that all applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, age, marital status or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

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

1.34 PERIOD OF PERFORMANCE

The performance period for this contract is to be proposed by the Offeror and provided in a schedule format with your proposal.

1.35 NOTICE TO PROCEED

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

SECTION II

2.1 PROPOSAL FORMAT

It is very important that submittals be clear, concise, and in the recommended format so they may be evaluated in an objective manner by the City's Selection Team.

1. Five (5) Hard Copies of the Technical and Price Proposals– Including: Introductory Letter; Project Team/Capability of the Contractor; Approach to the Project; Project Innovations; Resume Appendix; Appendix F; Appendix G; and Surety Company Bonding Information. The Technical and Price Proposals should be bound together.
2. Color is allowed
3. Page Sizes 8 ½ "x 11" or 11" x 17" (Maximum of 3) – (Refer to No. 14 of Format Requirements for further details).
4. One (1") Margins - (Exceptions: Contractor Name/Logo and Page Headers/Footers may be within margin)
5. 10 Pt Font - Minimum - (The minimum font size is 10 point font or greater everywhere in the proposals including graphics, unless the graphics are a duplication from another source and the source is referenced.)
6. Related Experience Chart and Project Organization Chart are required
7. Bind on 11" Left Side
8. Tab the Sections for easy reference of Selection Team members – The Technical Proposal -Sections are: the Introductory Letter; and each of the evaluation criteria. The Price Proposal Sections are: Appendix F; Appendix G; and the Surety Company bonding Letter. If you limit information on tabs to Section Identification, Project Number, Project Location/Description, Contractor Name/Logo, and/or photographs, the tab pages will not count towards the page maximum.)
9. Front and Back Cover Pages are allowed – (Information on the front cover page is not restricted. Cover pages will not count towards the page maximum.)
10. Appendix F is required – (Appendix F will not count towards the page maximum.)
11. Appendix G is required – (Appendix G will not count towards the page maximum.)
12. Surety Company Bonding Letter is required – (Bonding Letter will not count towards the page maximum.)
 - a. A one-point penalty may be assessed by the selection team for each applicable violation of the above (#1 through #13) format requirements for a maximum 15-point penalty.
13. Ten (10) – Page Maximum – (The Technical Proposal has a maximum page limit of ten pages. There is no page limit on the Price Proposal)
14. Two pages per resume maximum and will not count towards the ten page Technical Proposal maximum. Resumes must be in a separate Appendix and not part of the body of the proposal.
15. Any additional Appendixes provided by the proposer but not requested by the City will not be reviewed by the Selection Team.

A page is defined as a single-sided 8.5" x 11" or 11" x 17" sheet that contains text, pictures, table's graphs, charts, plan sheets, or any other graphics. There is a limit of up to three 11" x 17" sheets which does not apply to Appendix F, Appendix G, or the Surety Company Bonding Letter.

The Introductory Letter, Tab Pages (see No. 9 above), Appendix F, Appendix G, Surety Company Bonding Letter and Cover Pages will not count towards the page maximum.

Any Technical Proposal that exceeds the ten-page maximum or two page resume may be assessed a three-point penalty per page over the limit.

2.2 COVER LETTER

In one page, express your interest in the project, state qualifications to do the work, and recount any summary information on the project team or your company that may be useful or informative to the City.

Include the mailing and e-mail addresses and phone number of the primary contact person for this Contractor selection process in the Introductory Letter.

2.3 PROPOSAL CERTIFICATION

Use Appendix A

2.4 PROJECT TEAM/CAPABILITY OF THE CONTRACTOR

The Selection Team will consider how well the qualifications and experience of the members of the Project Team relate to the specific project. The following information should be provided. Only qualifications of the prime contractor will be evaluated in this section.

- a. Project Team members chart including personnel that will be involved in the design phase and construction personnel.
 - i. Discuss the qualifications of the following individuals:
 - ii. Provide Resumes and three references for the Project Manager and Superintendent in an appendix to the technical proposal (The resumes are limited to 2 pages max per person and will not count towards the ten page Technical Proposal maximum)
- b. Provide a spreadsheet list of similar projects that your firm has completed during the last five years. The heading of the spreadsheet should include the following (Project Organization Chart and Related Experience Charts. Note: Columns may be combined in order to meet the font size and margin requirements.)
 - i. Name of Contractor Project Manager
 - ii. Year (Award of Contract and Completion Date)
 - iii. Project Name
 - iv. Project Location
 - v. Project Description
 - vi. Construction Award Cost
 - vii. Cost Performance – initial bid, final cost, reasons for change
 - viii. Client
 - ix. Reference Contact and Telephone Number

Describe methods, approaches, and innovations implemented, including risks taken, on previous projects that will help your firm achieve success with the current project key issues.

2.5 PROJECT APPROACH

Proposing teams should state their approach to the project with the project goals in mind. The Selection Team will evaluate each Proposer's approach to the project in meeting these goals, including any specific commitments made by their team that will assist in achieving these goals. Commitments that are stated by the Contractor in the Technical Proposal, either during the design phase or the construction phase, will be considered as proposed course of action. Please provide the following information:

- a. Construction Phasing and Sequencing – Describe your approach to Construction Sequencing and Phasing based on the conceptual design provided.
- b. Discuss your approach to Maintenance of Traffic (MOT) and Maintaining Pedestrian Access– Phasing plan or approach for sidewalk removals and additions. (Consider pedestrian movements). Describe your phasing approach for culvert removal and replacement, utility relocations, and pavement removal replacement, milling and overlay on Paseo Rd. (11x17 sheets may be used to graphically depict or show phasing and your approach – each sheet will count as 1 sheet of the 10 page limit)
- c. Discuss your approach to meeting the Project Schedule – Provide any thoughts to accelerate the project schedule or critical activities that will impact the construction
 - i. schedule. This can be based on the information provided unique to this project and/or from previous experience.
- d. Public Information approach – Describe your approach and commitments to engage in keeping the City, public, businesses and other stakeholders informed on the project. Identify if this would be subcontracted or self-performed.
- e. Identify other Resources and Capabilities – Describe additional resources and capabilities that the Contractor would be willing to bring into the design process and how these resources and capabilities would be beneficial in achieving project goals.
- f. Describe your overall approach and specific commitments by your team to the project in achieving the project goals.
- g. Explain any other areas where your team's approach will benefit the project.

2.6 PROJECT INNOVATIONS

In conjunction with your team's approach to the project, your team may have some innovative ideas that may or may not meet the technical information provided that could increase the likelihood for success

with this project. (For example, modifying Technical Specifications, proposed material changes, early lead items or activities that could accelerate the overall schedule, phasing approaches, pedestrian access, and structure type). The Selection Team will consider how well your innovative ideas help balance the goals of the project. Tell us which innovations improve quality and/or reduce cost and/or schedule. Please discuss these further as follows:

- a. Describe specific innovations to this project that may enhance the ability to meet or exceed project goals.
- b. Include the amount of time and money saved if the innovation were to be implemented.
- c. Identify which innovations meet the technical information provided and which do not.
- d. Phasing plan or approach for culvert removal and replacement. (Consider maintenance of traffic)

2.7 CONTRACTOR PRICE PROPOSAL, APPENDIX “F”

The Selection Team will evaluate each Contractor’s Price Proposal, total amount bid only for items listed, Appendix F. This is not intended to be the total cost of the project.

The City of Colorado Springs seeks the best solution that can be delivered for the budget available. The Contractor selected for this project will become a partner in creating the most innovative solution that benefits the public within the limitation of available funds. Contractors who honor the trust placed in them and perform well will likely be invited to partner again.

Price will be rated on a modified curve. All price proposals will be granted the maximum score of fifteen (15) points that are between the average price and one standard deviation below the average price. A deduction of points will be assessed for price proposals below 1 standard deviation below the average price and for price proposals above the average price. The following table demonstrates this reduction:

STDEV = Standard Deviation	Percent Reduction	Points Scored
3 STDEV below average	60%	6
2 STDEV below average	30%	10.5
1 STDEV below average	0%	15
Average	0%	15
1 STDEV above average	40%	9
2 STDEV above average	80%	3
3 STDEV above average	100%	0

The scores between the values in the table will be calculated using linear interpolation. If the number of bids received is 3 or less, the engineers estimate will be used as an independent bid to compute the standard deviation. If the standard deviation is less than 5% of the average of all bids, then price no longer is a discriminator and it will be dropped as a selection criteria. If the standard deviation is between 5% and 10% of the average of all bids, then the percent reduction is reduced by half.

Enter a unit price for each Bid item noted in Appendix F.

2.8 APPROACH TO PRICE PROPOSAL, APPENDIX “G”

Contractors will complete all of the “price components” in Appendix G for each of the Bid items to arrive at the Unit Price. Unit Prices for the bid items included in the Price Proposal will be held by the Contractor for their Final Bid amount. The sum of the price components will equal the total Unit Price Bid. Unit Prices shall reflect the approach and commitments proposed by the Contractor as described in Section 2.5 Project Approach. The Contractor shall note that some of the Bid Items include a baseline “indexed” cost for raw materials. The purpose of this is to allow for changes (increase or decrease) in unit prices based on future changes in raw materials. In approach to price we are looking for reasonable prices that can be demonstrated in your past performance; therefore, document your price proposal with current historical data from similar projects you have delivered.

In your responses consider addressing how project specific issues will affect unit prices.

- a. Schedule – (Delayed or Early RFC)
- b. Daytime versus night-time work
- c. Segmenting the work
- d. Traffic control shifts and phasing

- e. Substantial Changes in Quantities – what % increase / decrease would affect unit price

2.9 EXCEPTIONS

Please note that all Offerors must complete and return with their proposal, Appendix B, Exceptions Form.

2.10 INSURANCE REQUIREMENTS

Please note that all Offerors must complete and return with their proposal, Appendix C, Minimum Insurance Requirements.

SECTION III

3.1 EVALUATION CRITERIA

The following criteria *listed* will be used in the evaluation of proposals.

3.1.1 PROJECT TEAM/CAPABILITY OF THE CONTRACTOR

See Section II - Item 2.4 (Max of 30 points available)

3.1.2 PROJECT APPROACH

See Section II - Item 2.5 (Max of 20 points available)

3.1.3 PROJECT INNOVATIONS

See Section II, 2.6 (Max of 15 points available)

3.1.4 CONTRACTOR PRICE PROPOSAL, APPENDIX "F"

See Section II - Item 2.7 (Max of 15 points available)

3.1.5 APPROACH TO PRICE PROPOSAL, APPENDIX "G"

See Section II - Item 2.8 (Max of 20 points available)

3.2. SELECTION COMMITTEE

A selection committee will screen all proposals. Proposals will be ranked according to evaluation criteria, as outlined in the Request for Proposal. Through this process, the City will determine which proposals are acceptable or unacceptable. The City will notify, in writing, the participating firms whose proposals are deemed to be unacceptable. Those firms offering proposals deemed to be acceptable by the City will be evaluated by the selection committee. The selection committee may determine it necessary to require oral presentations or interviews with the "short listed" Offerors considered to be in the competitive range.

If oral presentations or interviews are conducted, they will also be scored.

The Selection Team may use the interview as an extension of the Proposal evaluation for clarification of the information provided in the Proposal or to obtain additional information from the contractor. The City may elect to "Short-List" for Interviews. The Selection Team will meet to determine which companies will interview by the "Consent" of the Selection Team (see below "Selecting by Consent" Process). If the Selection Team determines interviews are necessary, the Selection Team members will develop the format of the interviews in the Selection Team meeting. The Selection Team may provide all or part of the interview questions in advance. For any question(s) not provided in advance, the contractors will be given topics on the question.

"Selecting by Consent" Process

The interviews (if needed) will be performed using the "Selecting by Consent" (SBC). The SBC process is a scoring process that aids the Selection Team in developing the final ranking of contractors through a collaborative process.

In this process each segment and question of the interview is weighted in advance during the Selection Team Meeting. After the interviews are conducted, the Selection Team scores each segment and question by consent. Consent is defined as the willingness of all Selection Team members to accept a decision reached by a collaborative process. The final selection ranking of the contractor is based on the final scores developed by the Selection Team using the contractor *Interview Scores*.

3.3 AWARD OF CONTRACT

The City reserves the right to award this contract not necessarily to the Offeror with the most advantageous price, but to the firm that demonstrates the best ability to fulfill the requirements of this Request for Proposal. The City will select the most qualified firm that was proven to understand the needs and scope of the study. A contract prepared by the City will then be negotiated with the successful firm. In the event a contract cannot be negotiated with the top ranked firm, the City may enter into negotiations with the second highest ranked firm or the City may decide to call for new proposals. Immediately after the notice of award, the contractor will begin planning in conjunction with the City of Colorado Springs staff (to be designated by the City) to insure fulfillment of all its obligations. The contractor may be expected to attend regular meetings as required by the City to assist in the preparation for startup.

3.4 REQUESTS FOR CLARIFICATION

The Proposer shall provide accurate and complete information to the City. If information is not complete, the City will either declare the Proposal non-responsive or notify the Proposer, who may be allowed to participate further in the procurement if all information required is provided within the timeframe established by the City. Any insufficient and/or incomplete proposals will be returned directly to the Proposer by the City with notations

of the insufficiencies or omissions and with a request for clarifications and/or submittal of corrected, supplemental, or missing documents. If a response is not provided, the Proposal may be declared non-responsive.

The City may waive technical irregularities in the form of the Proposal of the Proposer that do not alter the quality or quantity of the information provided.

THE CITY MAY, AT ITS SOLE DISCRETION, REQUEST CLARIFICATIONS AND/OR SUPPLEMENTAL INFORMATION FROM PROPOSERS DURING THE PROPOSAL EVALUATION AND SHORT-LIST PROCESS.

SECTION IV
CONTRACT TERMS AND CONDITIONS

4.0 CONTRACT TERMS AND CONDITIONS

In addition to the contract terms and conditions listed below, the City's sample contract, see Exhibit 1, contains contract terms and conditions.

4.1 CONTRACTOR'S CONDUCT

The contractor shall not display signs, or other advertising matter of any kind within or outside of the City limits of Colorado Springs area without the prior written permission of the City.

The contractor shall ensure that the contractor's personnel are courteous to the public, patrons, and all other persons.

All employees or other personnel of the contractor working on City property shall be of lawful working age. The contractor shall comply with all federal, state, and local labor and employment laws; and all personnel of the contractor shall be competent to do the work assigned to them by the contractor.

4.2 INTEGRATION

Any resultant contract will be a completely integrated contract and contain the entire agreement between the parties. Prior written or oral agreements, if any, shall be deemed of no effect and shall not be binding upon either party, unless incorporated by reference into the resultant contract. That contract may not be amended except in writing signed by all parties to the contract.

4.3 CITY/PPRTA JOINT CONTRACT TERMS AND CONDITIONS

PPRTA Funding Special Provision: Joint Contracts - City of Colorado Springs and the Pikes Peak Rural Transportation Authority (PPRTA).

This contract is a joint contract between the Contractor, the City of Colorado Springs, and the Pikes Peak Rural Transportation Authority. The Parties therefore Agree to the following:

1. This PPRTA Funding Special Provision shall supersede any contrary provision of this Contract.
2. The Contractor acknowledges and understands that this contract is funded in whole or in part by the PPRTA and administered by the City. Both the City and the PPRTA are Parties to this Contract.
3. The Contractor acknowledges and understands that all payments under this contract shall be made to the contractor by the PPRTA. PPRTA funding obligations shall be paid by PPRTA warrants. In the event there is Joint City / PPRTA funding, then payment to the Contractor by the PPRTA shall consist of Warrants from the City and Warrants from the PPRTA. The Contractor agrees to accept all payments made or proffered by the PPRTA under this Contract.
4. All bonds under this Contract shall include the City of Colorado Springs and the PPRTA as Obligees.
5. All insurance policies provided by the Contractor pursuant to this contract except Workers Compensation Insurance shall name both the City of Colorado Springs and the PPRTA as additional insureds. All insurance policies provided by any sub-contractor for any work pursuant to contracts with the Contractor, except Workers Compensation Insurance, shall also name both the City of Colorado Springs and the PPRTA as additional insureds.
6. 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 Home Rule City and the Resolutions, Rules and Regulations of the PPRTA. Court venue and jurisdiction shall exclusively be in the Colorado District Court for El Paso County, Colorado. The Parties agree that this contract shall be deemed to have been made in, and the place of performance 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.

7. Appropriation and availability of funds: In accord with the Colorado Constitution, Article X, Section 20, and the City Charter, performance of the City's obligations under this Contract is expressly subject to appropriation of funds by the City Council for this contract and the availability of those appropriated funds for expenditure. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the City's obligations under this Contract, or appropriated funds may not be expended due to Constitutional or City Charter spending limitations, then the City and the PPRTA may terminate this Agreement without compensation to the Contractor. Performance of the PPRTA's obligations under this Contract are expressly subject to appropriation of funds by the PPRTA and the availability of those funds for the payment of obligations incurred under this contract. Further, in the event that PPRTA funds are not appropriated in whole or in part sufficient for performance of the PPRTA's obligations under this Contract, or appropriated funds may not be expended legal limitations on non-availability, then the City and the PPRTA may terminate this Contract without compensation to the Contractor.
8. Indemnification: The Contractor agrees that the Contractor shall indemnify, defend and hold harmless the City, its officers, employees and agents, and the PPRTA, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, cause or causes of action, or any liability whatsoever resulting from, or arising out of, or in connection with the Contractor's negligent acts, errors or omissions under this Contract.
9. Warranties: All warranties provided by Contractor under or pursuant to this Contract to the City shall also apply to the PPRTA.
10. Final Payment: Final payment under this Contract shall be made in accord with the terms of this Contract, except that final payment shall be made by the PPRTA, and the making and acceptance of final payment shall constitute a waiver of all claims by the Contractor against the City and the PPRTA.
11. Termination or default of Contract: In all contract provisions giving the City the right to terminate, for convenience or otherwise, or giving the City rights in the event of default by the contractor, the term City shall include the PPRTA.
12. Change Orders:
 - a) The Contractor agrees and acknowledges as a part of this Contract that no change order or other form or order or directive may be issued by the City which requires additional compensable work to be performed, which work causes the aggregate amount payable under this Contract to exceed the 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.
 - b) The Contractor further agrees and acknowledges as a part of this Contract that no change order or other form or order or directive which requires additional compensable work to be performed under this Contract shall be issued by the City unless City or PPRTA 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 additional compensable work performed under this Contract, including but not limited to emergency work, and expressly waives any rights to additional compensation, whether by law or equity, unless, prior to commencing the additional work, the Contractor was given a written change order describing the additional compensable work to be performed, and setting forth the amount of compensation to be paid, which change order was signed by the authorized City representative. It is the Contractor's sole responsibility to know, determine, and ascertain the authority of the City representative signing any change order under this Contract.
 - c) Any budget changes or significant changes to the design, requirements or scope of the Contract shall require the approval of the City and the PPRTA.

SCHEDULE D GENERAL PROVISIONS**ARTICLE I. GENERAL PROVISIONS**

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

SECTION 100 DEFINITIONS AND TERMS

Also see Procurement Rules 1-103 Terms Defined

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

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

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

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

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

City City of Colorado Springs, Colorado.

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

Contract The executed written agreement between the City and the Contractor setting forth the obligations of the parties 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.

Due Date and Time The scheduled date and time for the receipt of bids, and opening thereof.

Engineer The City Engineer of Colorado Springs or, their designated representative.

Notice 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:

Pre-award The Contracting Specialist listed in the Invitation for Bid, City of Colorado Springs, Procurement and Contracts, 30 South Nevada Ave., Room 201, Colorado Springs, CO 80903.

Post award The Project Manager listed in the Invitation for Bid, City of Colorado Springs, City Engineering, 30 South Nevada Ave., Room 403, Colorado Springs, CO 80903.

Notice to the Contractor will be to the Chief representative of the Contractor at the site of the project in person; or by registered mail to the place stated in the papers prepared by the Contractor to accompany their proposal as the address of their permanent place of business; or as to the Surety on the performance bond by registered mail to the Surety at the home office of such surety.

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

Project Engineer/Manager The individual representing the City responsible for managing and oversight of the Contract.

Project The entire improvement proposed by the City to be constructed in whole or in part pursuant to the Contract.

Proposal Form or Bid Proposal The contract document prepared by the City upon which the bidder shall submit their bid.

Subcontractor A person, firm, or corporation, other than the Contractor, supplying labor or materials, or both, or equipment furnished at the site of the project under an Agreement with the Contractor.

Surety The person, firm, or corporation that has executed as surety the Contractor's Bid, Performance, Payment and Maintenance Bonds.

SECTION 101 PROSPECTIVE BIDDERS

101.00 PROCUREMENT RULES AND REGULATIONS

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

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

101.01 ADVERTISEMENT FOR BIDS

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

All interested bidders may register via www.rockymountainbidsystem.com to receive notification of bids posted on the web-site. A paid registration allows bidders to be automatically notified when a formal solicitation is advertised for the service or commodity they registered to provide.

101.02 INVITATION FOR BIDS - CONTENT

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

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

101.03 INTERPRETATION OF QUANTITIES IN PROPOSAL FORM

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

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

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

101.04 INTERPRETATION OF PLANS AND SPECIFICATIONS

Any change to proposal forms, plans, or specifications prior to the opening of proposals will be issued by the City to all holders of proposal forms. Certain individuals are named in the project specifications that have authority to

provide information, clarification or interpretation to bidders prior to opening of proposals. Information obtained from persons other than those named individuals is invalid and shall not be used for bidding purposes.

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

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

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

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

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

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

101.06 COMBINATION OR CONDITIONAL PROPOSALS

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

101.07 ANTI-COLLUSION AFFIDAVIT

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

101.08 MATERIAL GUARANTY

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

101.09 EQUAL OPPORTUNITY

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

SECTION 102 CONTRACT DOCUMENT INTERPRETATION

102.00 INTENT OF CONTRACT DOCUMENTS

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

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

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

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

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

102.01 SPECIAL PROVISIONS, SPECIAL SPECIFICATIONS

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

102.02 ORDER OF PRECEDENCE

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

- (a) Terms and Conditions
- (b) Proposal Requirements
- (c) Contract Form
- (d) Provisions
 - 1. Special Provisions
 - 2. General Provisions
- (e) Plans
 - 1. Detailed Plans
 - 2. Standard Drawings

Calculated dimensions will govern over scaled dimensions.
- (f) Special Specifications
- (g) Standard Specifications

102.03 STANDARD MANUFACTURER

Wherever the terms "standard", "recognized" or "reputable" manufacturers are used, they shall be construed as meaning manufacturers who have been engaged in the business of fabricating materials, equipment, or supplies of the nature called for by the Specifications for a reasonable period of time prior to the date set for opening of bids, and who can demonstrate to the satisfaction of the City that said manufacturer has successfully installed equipment, materials, or supplies of the type proposed to be furnished in at least three instances and that the performance of such materials, equipment, or supplies for a period of over twelve months prior to the date fixed for opening bids shall, prima facie, be deemed to have been engaged in such business for a reasonable length of time.

102.04 "OR EQUAL" CLAUSE

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

102.05 TIME OF ESSENCE

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

102.06 PARTIAL WAIVER OR WAIVER BY ACQUIESCENCE

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

SECTION 103 COMPLIANCE WITH LAWS

103.00 LAWS AND REGULATIONS

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

103.01 PUBLIC IMPROVEMENT ASSESSMENT

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

103.02 ALL LEGAL PROVISIONS INCLUDED

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

103.03 SEVERABILITY

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

103.04 FOREIGN ENTITY

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

103.05 LICENSES AND PERMITS

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

103.06 EMPLOYMENT OF ILLEGAL ALIENS

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

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

SECTION 104 AWARD AND EXECUTION OF CONTRACT**104.00 AWARD**

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

104.01 CONTRACT EXECUTED

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

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

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

104.02 VERBAL AGREEMENTS

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

104.03 CONTRACT SECURITY

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

104.04 BOND FORMS

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

104.05 INDEPENDENT CONTRACTOR

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

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

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

105.01 SCHEDULE

The Contractor shall be responsible for planning, scheduling, and reporting the progress of the work to ensure timely completion of the work as called for in the Contract Documents. The Contractor shall prepare a Project

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

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

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

(a) **Methods Statement.** A Methods Statement shall be prepared for the prominent features listed in the Contract Documents, and for any feature not listed in the Contract Documents that the Contractor considers a controlling factor for timely completion. The Methods Statement shall be a detailed narrative describing each feature and all work necessary to complete the feature. The Methods Statement shall be submitted with the Contractor's schedule. The following format is required:

1. **Feature:** Name of the feature;
2. **Responsibility:** Contractor, subcontractor, supplier, utility, etc. responsible for the feature;
3. **Procedures:** Procedures to be used to complete the work. The procedure to be used shall include general information regarding methods such as forming, excavation, pouring, heating and curing, backfill and embankment, trenching, protecting the work, etc. When separate or different procedures are to be employed by the Contractor due to seasonal or project phasing requirements, such differing procedures shall be described in the procedure statement;
4. **Production Rates:** The planned quantity of work per day for each feature;
5. **Labor Force:** The labor force planned to do the work;
6. **Equipment:** The number, types, and capacities of equipment planned to do the work;
7. **Work Times:** The planned time for the work to include:
 - (a) number of work days per week
 - (b) number of shifts per day
 - (c) number of hours per shift

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

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

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

Construction activity duration shall not exceed 15 calendar days unless approved by the Project Engineer. Series of activities that have aggregate durations of five calendar days or less may be grouped in a single activity. For example, "form, reinforce, and pour pier" could be defined as a single activity rather than three. Single activities

or a series of grouped activities of at least 1 calendar day duration may also need to be included in the Project Schedule as determined by the Project Engineer (e.g. same activities but noted separately by location).

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

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

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

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

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

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

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

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

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

- (d) **Project Coordination.** The Contractor shall be responsible to coordinate and schedule their work to include utility work anticipated. Various City and private utility agencies may be working to install and/or inspect their utilities within the project area. Reasonable delays should be expected for utility lowering, relocations and placement. These delays shall not be reason for granting any monetary change or performance time alteration to the contract. As a minimum, the Contractor's Project Schedule shall reflect coordination with the following:

1. City of Colorado Springs City Engineering Division
2. City of Colorado Springs Traffic Engineering Division
3. Colorado Springs Utilities (water, wastewater, gas, electric)
4. City of Colorado Springs Parks, Recreation and Cultural Services Department
5. Private Utility and Telecommunication Companies

(e) Contractor Early Finish or Voluntary Acceleration. Early finish or voluntary acceleration of the schedule by the Contractor is acceptable provided:

1. At the time the Contractor submits the Project Schedule indicating an early finish or voluntary acceleration, the City is notified in writing of actions on the City's part necessary to accommodate the change(s).
2. The City agrees to such change(s) in writing.
3. The City is compensated by the Contractor for any inconvenience or expense associated with the change(s).
4. There is no increased Contract cost.

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

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

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

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

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

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

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

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

105.02 SCHEDULE OF VALUES

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

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

105.03 SURVEYS

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

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

105.04 TAXATION

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

105.05 ASSIGNMENT OF CONTRACT

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

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

105.06 SUBCONTRACTS

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

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

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

- (a) Name, address, and telephone number of the subcontractor

- (b) Branch of work covered
- (c) Total price of subcontract
- (d) Date of subcontract

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

105.07 OTHER CONTRACTS

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

SECTION 106 CONSTRUCTION SITE

106.00 LANDS TO BE USED FOR WORK

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

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

106.01 STORAGE OF MATERIALS

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

106.02 LOADING OF STRUCTURES

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

106.03 SANITARY PROVISIONS

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

106.04 ACCIDENT PREVENTION

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

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

Excavated materials shall be placed a safe distance from the sides of the trench. Heavy equipment shall not be used or placed near the sides of the trench unless the trench is adequately braced. If the Engineer or any City Safety Officer or their designated representatives become aware of failure to comply with applicable safety regulations, the Engineer or City Safety Officer or their designated representatives may inform the contractor who shall take immediate steps to remedy the noncompliance. The Engineer or City Safety Officer or their designated representatives shall give written notification to the contractor directing them to correct the unsafe acts or

conditions. If the contractor fails to comply with such a notification, the Engineer or City Safety Officer or their designated representatives may issue a "stop work" order in accordance with Section 108.06 of the General Provisions of this contract, and work shall only be resumed after adequate corrective actions have been taken to comply with the safety deficiencies the Contractor has been notified of. Stoppage of work because of noncompliance with prescribed accident precaution measures shall not be subject to claim for changed condition or changes in work, nor for extension of completion time.

106.05 PROTECTION OF THE PUBLIC WORKS AND PROPERTY

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

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

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

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

106.06 PUBLIC ROADS

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

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

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

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

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

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

106.07 PROTECTION OF EXISTING CURBS, GUTTERS AND DRIVEWAYS

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

106.08 PROTECTING AND REMOVING PLANTINGS

The Contractor shall protect all existing trees, shrubs and other plantings from above ground and root structure damage during the construction activities. Plantings which are considered to be slightly damaged shall be properly pruned and sealed according to accepted nursery practices. Unnecessary damage to plants or trees will subject the Contractor to cash penalties as determined by the Engineer. Where plantings are in conflict with new

work, as determined by the City Forester (plantings in the public right-of-way) or by the inspector or owner (plantings on private property), the Contractor shall at his expense remove the planting. The Contractor shall coordinate with the City Forester prior to working in the vicinity of plantings in the public right of way.

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

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

106.09 PUBLIC CONVENIENCE AND SAFETY

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

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

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

106.10 COORDINATION WITH PROPERTY OWNERS

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

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

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

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

106.11 FAILURE TO MAINTAIN SAFE SITE

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

106.12 EROSION AND DRAINAGE CONTROL

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

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

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

106.13 POLLUTION

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

106.14 TEMPORARY CONSTRUCTION

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

106.15 TEMPORARY WATER SUPPLY

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

106.16 TEMPORARY ELECTRIC LIGHT AND POWER

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

106.17 TEMPORARY HEAT

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

106.18 TEMPORARY ENCLOSURES

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

106.19 CLEAN-UP

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

SECTION 107 INSURANCE AND INDEMNITY
107.00 CONTRACTOR'S INSURANCE

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

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

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

(b) General Liability Insurance.

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

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

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

The limits of liability shall not be less than:

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

(c) Automobile Liability Insurance.

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

(d) Professional Liability.

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

(e) Pollution Liability.

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

(f) Umbrella/Excess Liability.

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

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

(g) Deductible or Self-Insured Retention.

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

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

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

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

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

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

107.01 BUILDER'S RISK INSURANCE.

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

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

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

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

107.02 INDEMNIFICATION

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

107.03 THIRD PARTY LIABILITY

It is specifically agreed between the parties executing this contract that this contract is not intended by any of the provisions to create in the public or any member thereof any third party beneficiary rights whatsoever, or to

authorize anyone not a party to this contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this contract.

107.04 RISK INSURANCE

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

SECTION 108 ROYALTIES, PATENT INFRINGEMENTS, SPECIAL LICENSES AND PERMITS

108.00 ROYALTIES AND PATENTS

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

108.01 PERMITS, LICENSES AND REGULATIONS

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

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

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

SECTION 109 WORK PROVISIONS AND RULES

109.00 COMMENCEMENT AND COMPLETION OF WORK

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

109.01 FAILURE TO COMPLETE WORK ON TIME, LIQUIDATED DAMAGES

If the Contractor fails to fully perform and complete the work in conformity to the provisions and conditions of the contract within the specified time limit set forth in the contract, including any extensions granted hereto, the Contractor shall pay to the City for each calendar day of delay until such time the contract is complete, liquidated damages at the applicable daily rate below. The amounts shown are considered to be liquidated damages to

reimburse the City for the additional cost of construction engineering and contract administration services and in no case are considered a penalty.

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

109.02 WORK IN BAD WEATHER

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

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

109.03 EXCUSABLE DELAYS

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

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

109.04 COMPENSATION FOR COMPENSABLE DELAYS

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

(a) These categories represent the only costs that are recoverable by the Contractor. All other costs or categories of costs are not recoverable:

1. Actual wages and benefits, including FICA, paid for additional non-salaried labor;
2. Costs for additional bond, insurance and tax;
3. Increased costs for materials;
4. Equipment costs calculated in accordance with the current edition of the Rental Rate Blue Book of Rental Rates for Construction Equipment for Contractor owned equipment and based on invoice costs for rented equipment;
5. Costs of extended job site overhead;
6. Subcontractor's claims (the same level of detail as specified herein is required for all subcontractors' claims)
7. An additional 10 percent will be added to the total of items (1), (2), (3), (4), (5), and (6) as compensation for items for which no specific allowance is provided, including profit and home office overhead.

(b) In adjustment for costs as allowed above, the City will have no liability for the following items of damages or expense:

1. Profit in excess of that provided in (a) above;
2. Loss of profit;
3. Additional cost of labor inefficiencies in excess of that provided in (a) above;
4. Home office overhead in excess of that provided in (a) above;

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

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

109.05 EMERGENCY WORK

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

109.06 RESERVED

109.07 AUTHORITY OF THE ENGINEER

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

The Engineer has authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the Contract or for the convenience of the City. The Project Engineer/Manager may order the Contractor, by giving fifteen (15) days written notice, to suspend, delay, or interrupt all or any portion of the work required by the Contract for a period of up to 10 ten calendar days at no additional cost to the City. The Engineer may immediately stop the work when it is determined that the public's safety and welfare is in jeopardy.

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

109.08 DUTIES OF THE INSPECTOR

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

109.09 CONSTRUCTION OBSERVATION AND INSPECTION

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

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

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

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

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

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

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

109.10 CONTRACTOR COOPERATION

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

(a) Discrepancies: If the Contractor, as the work progresses, finds any discrepancies between the Plans and physical conditions or any errors in the Plans or layout as given by the stakes or instructions, it shall be the Contractor's duty to inform the Engineer in writing and the Engineer shall address such discrepancy in a reasonable period of time. Any work done after such discovery until authorized will be done at the Contractor's risk.

(b) Workmen, Methods and Equipment: Permission from the Engineer to use any particular methods, equipment or appliances shall not be so construed as to relieve the Contractor from furnishing other equipment or appliances or adopting other methods when those in use prove unsatisfactory to the Engineer, or as to bind the Engineer to accept work which does not comply with the contract.

109.11 CONTRACTOR'S RESPONSIBILITY FOR WORK

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

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

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

109.12 PROTECTION OF UTILITIES

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

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

It is the Contractor's responsibility to complete required work and to schedule inspections during normal working hours. The Contractor is responsible for contacting each affected utility for their inspectors' working hours. The Contractor is responsible to request an inspection two (2) working days in advance of the inspection. In the case

of an overtime inspection, the request must be in writing. All overtime costs for inspection by City Utilities shall be the Contractor's expense. The City will not entertain any requests for time extensions for delays caused by the Contractor's failure to properly notify the affected utility of a required inspection or the Contractor's failure to complete the required work by the time of the scheduled inspection.

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

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

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

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

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

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

(a) Existing Utilities

1. Existing Gas Lines: As of April 1, 1983, Federal law requires anyone who uncovers a gas line to report it to the gas company and allow it to be inspected by the gas company personnel before it is backfilled. The Gas Department is to be notified prior to any excavation around gas lines. A Gas Department inspector is to be notified and present on site prior to construction activities around gas lines.
2. Existing Sewer Mains and Services: All relocation, replacement protection shown on the plans or determined necessary by the inspector shall be performed according to the latest Wastewater Department Standard Specifications. Minimum 48 hours' notice must be given to the Wastewater Department prior to any related work.
3. The Contractor shall adjust sanitary sewer manhole rims to an elevation acceptable to the City Wastewater Department. The Contractor shall contact the City Wastewater Department twenty-four (24) hours prior to manhole rim adjustments.
4. Existing Water Mains and Services: All relocation, replacement or protection shown on the plans or determined necessary by the inspector shall be performed according to the latest Water Department Standard Specifications and the Water Service Standard Specifications. Minimum 48-hour notice must be given to the Water Department prior to any related work. The Water Department reserves the right to schedule any operations at their discretion and to provide for any requirements determined necessary to

perform the work. The Contractor shall coordinate with the Water Department and receive their approval prior to performance of the work.

(b) Utility Support Systems:

1. If required by the contract documents, or requested by the Engineer, the Contractor shall submit shop drawings for the method of temporary support for all existing utilities during construction. The temporary support details for existing utilities shall be submitted for review and approval prior to performance of the work. Shop drawings must bear the seal of a Professional Engineer registered in the State of Colorado, unless so waived by the City.
2. Regardless of City approved shop drawings, the Contractor shall be responsible for the satisfactory support of the utility system and any damages that may occur to the utility involved.

(c) Electric Utility Installation:

1. Any electric facilities unless otherwise noted are to be relocated or modified by the City of Colorado Springs Electric Department. The Contractor shall coordinate the work with the Electric Department and the Electric Department's Contractor.
2. Light Pole Installation or Relocation:
 - a. The Contractor is responsible for coordinating with CSU Electric, removing existing light pole foundations, constructing new light pole foundations, installing new conduits, and installing lighting junction boxes. The Contractor is responsible for coordinating with CSU Electric for the de-energizing and removal of existing light poles.
 - b. Colorado Springs Utilities (CSU) Electric Division will remove the existing light standards, reset the light standards upon completion of the new foundations, conduit and junction boxes, pulling wire, and beginning operations of the lighting within the project limits. The Contractor is responsible for scheduling and coordination with CSU crews for reinstallation and re-energizing completed light poles.

(d) Gas Utilities: The Contractor is responsible for coordinating with CSU Gas for the relocation of existing Gas lines. Colorado Springs Utilities Gas Division will relocate the existing gas lines as necessary to install project improvements within the project limits. The Contractor is responsible for scheduling and coordination with CSU crews.

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

(f) Cablevision: The television utilities are to be relocated by Cablevision. The Contractor shall coordinate the work with Cablevision.

109.13 LABOR

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

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

109.14 EMPLOYMENT OF LABOR

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

109.15 EQUAL EMPLOYMENT OPPORTUNITY

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

- (a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, sex, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, sex, color or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion,

or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship.

(b) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(c) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color or national origin.

109.16 FEDERAL FUNDS

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

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

109.17 SUPERINTENDENCE

The Contractor shall give the work the constant attention necessary to facilitate the progress thereof and shall cooperate with the Engineer and with other Contractors or utility company employees in every way possible. The Contractor shall have at all times, on the work, as Contractor's agent, a competent superintendent capable of reading and thoroughly understanding the Plans and Specifications, and who shall have the necessary authority to receive and promptly execute the instructions and orders from the Engineer or the Engineer's authorized representative. Such superintendent shall be furnished irrespective of the amount of work sublet. The Contractor shall supply the Engineer with a list of phone numbers at which the Contractor, his superintendent and foreman can be reached at any time. The assigned Superintendent must adhere to the cooperation requirements specified in Section 108.08 and is subject to removal if so ordered in writing by the Engineer/Project Manager.

109.18 PREPARATION

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

109.19 STAKING WORK

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

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

109.20 DEVIATION ALLOWED

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

109.21 RIGHT-OF-WAY

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

109.22 SHOP DRAWINGS AND SUBMITTALS

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

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

109.23 RECORD DRAWINGS

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

(a) Drawings:

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

(b) Specifications and Addenda:

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

109.24 MATERIALS

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

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

109.25 MATERIAL INSPECTION AT PLANT

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

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

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

109.26 HANDLING MATERIALS

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

109.27 CITY FURNISHED MATERIALS

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

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

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

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

109.28 BUY AMERICA REQUIREMENTS

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

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

109.29 TESTING OF MATERIALS

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

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

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

(a) Requirements for Independent Testing Consultants.

1. Comply with "Recommended Requirements for Independent Laboratory Qualifications", latest edition, published by the personnel, facilities, equipment and other qualification data, including; Report of inspection of facilities made by the American Council of Independent Laboratories, and basic requirements of ASTM E-329, "Standards of Recommended Practice for Inspection and Testing Agencies for Concrete, Steel, and Bituminous Materials as Used in Construction", latest edition.
2. Submit to the City for prior approval, the name and address of the proposed testing laboratory with description of personnel, facilities, equipment and other qualification data. Certificate of calibration of applicable testing equipment made by an accredited calibrated agency within 12 months prior to submittal date.

(b) Test Reports

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

(c) Contractor Responsibilities

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

109.30 DIFFERING SITE CONDITIONS

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

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

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

109.31 CHANGED CONDITIONS

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

During the progress of the work, the City may find it advisable, and it shall have the right to omit portions of the work and to increase or decrease any items as may be deemed necessary or desirable without changing the unit prices in the proposal, provided such increase or decrease does not exceed fifteen percent (15%) of the total monetary value of the original contract. If the material or labor involved in such a change is not included in the unit prices of the contract, but forms an inseparable part of the work to be done under this contract, and the delay involved in asking for the advertising for bids and the letting of a new contract therefore might result in damage, injury, or impairment of the plant, work system or other property belonging to the City, the City may, in its discretion, declare an emergency and require the Contractor to proceed with such alterations and additions. The Contractor will not, however, be required to perform such extra work and furnish such extra materials without a written Change Order from the Engineer. The parties hereto shall agree upon any sum to be paid for said work in advance of performing it. The Contractor shall make no claims for extra work unless the work was performed as authorized by a properly executed Change Order. Additional compensation or credit for work covered by a Change Order must be determined by one or a combination of the following methods:

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

109.32 CHANGES IN THE WORK

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

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

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

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

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

109.33 PROTESTS

If the Contractor considers any work demanded of him to be outside the requirements of the contract, or considers any decision, record or ruling of the Project Engineer, the inspectors, or Project Manager to be unfair, he shall upon such work being demanded or such decision, record or ruling being made, proceed without delay to perform the work or to conform to the decision, record or ruling, and, within five (5) days of receiving said decision, record or ruling request that such decision, record or ruling be provided in writing, if not already provided. The Contractor shall then within ten (10) days after receipt of the written instructions or decisions, file a written formal protest with the Project Engineer, stating clearly and in detail the basis of his objection. Except for

such protests or objections as are made of record in the manner herein specified and within the limit stated, the written records, rulings, instructions, or decisions of the Project Engineer shall be final and conclusive. Instructions and decisions of the Project Engineer contained in letters transmitting drawings to the Contractor shall be considered as written instructions or decisions subject to protest or objections as herein provided. In the event of a formal protest, the formal protest shall be presented to the City Engineer and the City Contracting Manager; their decision shall be considered final and conclusive for the City of Colorado Springs. Nothing in this section precludes a Contractor from pursuing any other remedies afforded by the laws of the State of Colorado once the remedies afforded under this contract have been complied with and exhausted.

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

109.34 REMOVAL AND SUSPENSION FOR DEFECTIVE WORK

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

109.35 CLEANING UP AND FINAL INSPECTION

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

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

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

109.36 CUTTING AND PATCHING

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

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

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

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

109.37 FINAL TESTS

After completion of the work, the Contractor shall make any and all tests required by the Specifications or by Municipal, State or Federal regulations, and where so provided in said regulations shall furnish the City with certificates of inspection by the Municipal, State or Federal regulation bodies. The Contractor shall also make all

tests required by the National Board of Fire Underwriters for the purpose of determining insurance rates or other protection of the City or the public.

109.38 CORRECTION OF WORK AFTER FINAL PAYMENT

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

109.39 PERSONAL LIABILITY OF PUBLIC EMPLOYEES

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

109.40 NO WAIVER OF LEGAL RIGHTS

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

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

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

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

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

(a) All work shall be constructed in compliance with standard construction codes, and all materials and workmanship must be guaranteed for a period of two years from the date of final acceptance. The Contractor guarantee period (two-year warranty period) will not begin until the contract is 100 percent complete, as determined by the Engineer. Acceptance of the 100 percent complete contract shall be requested in writing by the Contractor. Any item requiring repair and/or replacement prior to expiration of the two-year warranty period shall be guaranteed for a period of one-year after the date of said correction or repair or for the remainder of the two-year warranty period, whichever is longer.

(b) In placing orders for equipment, the Contractor shall purchase same only under a written guarantee from the respective manufacturers that the equipment supplied will function satisfactorily as an integral part of the completed project in accordance with the Plans and Specifications. Furthermore, the Contractor shall require that the manufacturer agree in writing at the time order of equipment is placed that manufacturer will be responsible for the proper functioning of the equipment in cooperation with the Contractor, and that whenever necessary during the installation period or tuning up period following construction period, the manufacturer will supply without additional cost to the City, such superintendence and mechanical labor and any adjustments and additional parts and labor needed to make the equipment function satisfactorily, even if the same was not shown on approved shop drawings.

109.41 ACCEPTANCE

(a) Partial Acceptance. If, during the prosecution of the project, the Contractor satisfactorily completes a unit or portion of the project, such as a structure, an interchange, or a section of road or pavement that can be used advantageously for traffic, the Engineer may make final inspection of that unit. If the Engineer finds that the unit has been satisfactorily completed in compliance with the Contract, the Contractor may be relieved of further responsibility for that unit except as otherwise provided in these general provisions. Partial acceptance shall not void or alter any of the terms of the Contract.

(b) Final Acceptance. Upon notice from the Contractor of presumptive completion of the entire project, the Engineer will make an inspection. If the work provided for by the Contract has been satisfactorily completed, that

inspection shall constitute the final inspection and the Engineer will notify the Contractor in writing of final acceptance indicating the date on which the project was inspected and accepted.

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

SECTION 110 PAYMENTS AND ACCEPTANCE OF WORK

110.00 PAYMENTS AND RETAINAGE

Payments will be made, and required retainage withheld if applicable, in accordance with this section as the work progresses at the end of each month or as soon thereafter as practicable in compliance with Title 24, Article 91, Section 103 and Section 110, Colorado Revised Statutes, on statements made and approved by the Engineer. In preparing statements, only completed work will be taken into consideration. No payment will be made for materials in storage and/or delivered to the site, unless otherwise approved by the City.

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

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

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

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

subsection (2) regarding payments by the contractor to the subcontractor. If the subcontractor fails to make such payments in the required manner, the subcontractor shall pay those suppliers, sub-subcontractors, and laborers interest in the same manner set forth in this subsection (2) regarding payments by the contractor to the subcontractor.

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

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

110.01 CORRECTION OF WORK BEFORE FINAL PAYMENT

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

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

110.02 PAYMENTS WITHHELD PRIOR TO FINAL ACCEPTANCE OF WORK

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

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

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

110.03 ACCEPTANCE OF FINAL PAYMENT

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

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

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

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

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

SECTION 111 TERMINATION OF CONTRACT

111.00 THE CITY'S RIGHT TO TERMINATE CONTRACT

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

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

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

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

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

111.01 COMPLETION OF CONTRACTS IN DEFAULT

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

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

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

111.02 REMOVAL OF EQUIPMENT

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

SECTION V

EXHIBITS

Exhibit 1	Sample Contract
Exhibit 2	Scope of Work

APPENDICES

Appendix A	Proposal Certification
Appendix B	Exceptions
Appendix C	Minimum Insurance Requirements
Appendix D	CM/GC Introduction
Appendix E	CMGC Process for Construction
Appendix F	RFP Contractor Price Proposal
Appendix G	Approach to Price Proposal
Appendix H	Paseo Bridge Score Sheet
Appendix I	Index of Drawings



THE CITY OF COLORADO SPRINGS
and the
PIKES PEAK RURAL TRANSPORTATION AUTHORITY



EXHIBIT 1 SAMPLE CONTRACT
MUNICIPAL SERVICE CONTRACT CM/GC

Contract Number:		Project Name/Title	PASEO BRIDGE REPLACEMENT CMGC		
Vendor/Contractor					
Contact Name:		Telephone		Fax	
Address:					
Federal Tax ID #		Please check one:	<input type="checkbox"/> Corporation <input type="checkbox"/> Individual <input type="checkbox"/> Partnership		
City Contracting Specialist	Name & Phone# Nicole Spindler (719) 385-5265	City Dept Rep	Name & Phone# & Department Name		
NOT TO EXCEED Contract Amount:		City Account #	Acct Code (5) Fund (3) Dept (4) Project (7)		

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

COMPENSATION

For the work and services of this contract, the City of Colorado Springs agrees to pay a not-to-exceed fee of \$_____, for Task Order One (1). Additional task Orders will be added to this contract at negotiated firm fixed task order fees. The Contractor shall submit monthly statements, including a narrative progress description, for services rendered. The City shall make prompt monthly payments for work completed to the City's satisfaction. Invoices are payable net 30 days upon receipt and department approval.

WITNESSETH:

Whereas the City has heretofore prepared the necessary Contract Documents for **PASEO BRIDGE REPLACEMENT CMGC - CONTRACT MANAGEMENT-GENERAL CONTRACTOR SERVICES**, in the City of Colorado Springs; and whereas the party of the second part did on the XX day of AUGUST 2016, submit to the City their written offer and proposal (R16-T065 NS) to do the work therein described under the terms and conditions therein set forth and furnish all labor, materials, tools, equipment, transportation and services for said work in strict conformity with the accompanying Contract Documents which include:

1. CONTRACTOR SHALL PROVIDE ALL MATERIALS, LABOR, AND EQUIPMENT TO PERFORM SAID SERVICES FOR THE CITY OF COLORADO SPRINGS:

In consideration of said compensation payments, the Contractor agrees to perform all services, work, and/or provide all materials, supplies and equipment, and to carry out the provisions of this Contract in a good and workmanlike manner to the satisfaction of the City. If the performance of this Contract involves the services of others or the furnishing of equipment, supplies or materials, the Contractor agrees to pay for the same in full and at the time of payment by the City, to certify in writing to the City that said payments have been so made.

2. INSURANCE Contractor understands and agrees that Contractor shall have no right of coverage under and all 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 work 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 follows: **A CURRENT CERTIFICATE OF INSURANCE IS REQUIRED PRIOR TO COMMENCEMENT OF SERVICES LISTING THE CITY AS ADDITIONALLY INSURED.**

3. TERM OF CONTRACT. The term of this contract shall commence on ____ and shall terminate on ____ unless earlier terminated under this contract, or otherwise changed by Contract modification. The City shall have the unilateral option of extending services beyond the term of the contract, including all options, for a period not to exceed a total of six (6) months if additional time is necessary to solicit and award a new contract. Options to extend services shall be exercised upon written notification (mailed or otherwise furnished) to the contractor at least fifteen (15) days prior to the expiration date of the contract.

4. NOTICE. Any notice to the parties required under this contract shall be in writing delivered to the person designated below as Contract Coordinator at the indicated address unless otherwise designated in writing. Only postage by United States mail or in hand delivery shall be utilized.

FOR THE CITY	FOR THE CONTRACTOR
Contact: <u>City Engineering</u>	Contact: _____
Address: <u>PO Box 1575 MC 0435</u>	Address: _____
City/State: <u>Colorado Springs CO</u>	City/State: _____
Zip: <u>80901-1575</u>	Zip: _____

5. ADDITIONAL TERMS AND PROVISIONS. The following listed additional provisions are made a part of this contract and attached hereto, _____

6. COMPLIANCES. In the conduct of the said services/work or the labor, supplies, equipment or materials contemplated hereunder, the Contractor shall comply will all applicable state, federal and local law, rules and regulations, technical standards or specifications issued by the City. Contract must qualify for and obtain any required licenses prior to commencement of work.

7. INDEPENDENT CONTRACTOR. Contractor understands and agrees that the Contractor and Contractor's employees, agents, servants or other personnel are not City employees. Contractor shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefit to Contractor or any of Contractor's employees, agents, servants or other personnel performing the service or work or supplying equipment or materials specified herein, whether it be of a direct or indirect nature. Further in that regard, it is expressly understood and agreed that for such purposes neither Contractor nor 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.

8. NON-DISCRIMINATION. Contractor will not discriminate against any employee or applicant for employment because of race, color, sex, national origin, religion, age, handicap or veteran status. Contractor will, where appropriate or required, take affirmative action to ensure that applicants are employed, and that employees are treated, during employment, without regard to their race, color, sex, or national origin. Contractor will cooperate with the City in using Contractor's best efforts to ensure that Disadvantaged Business Enterprises are afforded the maximum opportunity to compete for subcontracts or work under this contract.

9. HOLD HARMLESS. Contractor shall indemnify, defend and hold harmless the City, its officers, agents and employees from and against any and all loss, damages, injuries, claims, cause or causes of action, or any liability of any kind whatsoever resulting from, or arising out of or in connection with the services/work or equipment/materials provided by Contractor pursuant to this contract.

10. ASSIGNMENT. Contractor shall not assign or otherwise transfer this contract of any right or obligations therein without first receiving prior written consent of the City.

11. FISCAL OBLIGATIONS OF CITY

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

12. CHANGE ORDERS. The funds appropriated for this contract are equal to or exceed the awarded contract amount. The Contractor and the City agree and acknowledge as a part of this contract, that no change order or other form or order or directive may be issued by the City which requires additional compensable work to be performed, which work causes the aggregate amount payable under the contract to exceed the amount appropriated for this contract as listed above, unless the Contractor has been given a written assurance by the City that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in this contract. The Contractor and the City further agree and acknowledge as a part of this contract that no change order or other form or order or directive which requires additional compensable work to be performed under this contract shall be issued by the City unless funds are available to pay such additional costs, and regardless of any remedy-granting provision included within this contract, the Contractor shall not be entitled to any additional compensation 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 was given a written change order describing the additional compensable work to be performed, and setting forth the amount of compensation to be paid, which change order was signed by the authorized City representative. It is the Contractor's sole responsibility to know, determine, and ascertain the authority of the City representative signing any change order under this contract.

13. CONTRACT INTERPRETATION. No amendment or modification of this contract shall be valid unless expressed in writing and executed by the parties hereto in the same manner as the execution of this contract. The laws of the State of Colorado shall govern this contract. This is a completely integrated contract and contains the entire contract of the parties, and any prior written or oral contracts which are different from the terms, conditions and provisions of this contract shall be of no effect and shall not be binding upon either party. Any judicial action under the terms of this contract shall be exclusively in the District Court for El Paso County, Colorado.

14. COMPLIANCE WITH IMMIGRATION AND CONTROL ACT. Contractor certifies that Contractor has complied with the United States Immigration 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.

15. TERMINATION OF CONTRACT.

- A. In the event of default by the Contractor, the City may give ten (10) days written notice to the Contractor of the City's intent to terminate the contract. Contractor shall have ten (10) days from notification to remedy the conditions constituting the default. Failure to cure may result in immediate termination for default.
- B. The City may terminate the contract at any time it is found that reason beyond the control of either the City or Contractor make it impossible or against the City's interest to complete the contract. The City may also terminate this contract at any time if it is found that the Contractor has violated any term or condition of this contract or that Contractor has failed to maintain worker's compensation insurance or other insurances provided for in this contract. In such case the Contractor shall have no claims against the City except for the value of the work performed up to the date the contract is terminated.
- C. In the event that this contract is terminated in accordance with the section, the City may take possession of any work and may complete any work by whatever means the City may select.

- D. The City may terminate performance of this contract in whole, or from time to time, in part if the City determines that a termination is in the City's interest. The Contractor after receipt of a Notice of Termination shall stop work as specified under the contract, place no further subcontracts or orders for materials terminate all subcontracts to the extent they relate to the termination, assign title and interest of all work and material used in the work.
- E. If the contract is terminated for convenience, The City will conduct an audit of the Contractor's costs to determine reasonable costs expended to date of termination, or the City may determine the contractor's costs based on the schedule of values or exact cost of any bid item (s) completed and accepted. The Contractor will not be reimbursed for any anticipated profit. The cost that is most advantageous to the City will be used for determining final payment to Contractor.

16. DELIVERY AND TAXES. The City may cancel this contract or any portion thereof if delivery is not made when and as specified, time being the essence of 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. The contractor shall pay all sales and use taxes required to be paid to the State of Colorado on the work covered by this contract. The Contractor shall execute and deliver and shall cause his subcontractors to execute and deliver to the City, certificates as required, to permit the City to make application for refunds of said sales and use taxes as applicable. The City is a municipal corporation and therefore, not subject to state and local sales tax, use tax or federal excise taxes.

17. BOOKS OF ACCOUNT AND AUDITING. The Contractor shall make available to the City if requested, true and complete records, which support billing statements, reports, performance indices, and all other related documentation. The City's authorized representatives shall have access during reasonable hours to all records, which are deemed appropriate to auditing billing statements, reports, performance indices, and all other related documentation. The Contractor agrees that it will keep and preserve for at least seven years all documents related to the Contract which are routinely prepared, collected or compiled by the Contractor during the performance of this contract. The City's Auditor and the Auditor's authorized representatives shall have the right at any time to audit all of the related documentation. The Contractor shall make all documentation available for examination at the Auditor's request at either the Auditor's or Contractor's offices, and without expense to the City.

18. GRATUITIES

- A. The right of the Contractor to proceed or otherwise perform this Contract, and this Contract may be terminated if the Mayor, his designee, and/or the City 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 any thing 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 contract. Further, if the Contractor is terminated under this provision, or violates this provision but is not terminated, the Contractor shall be subject to debarment under the City's Procurement Regulations. The rights and remedies of 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."

19. PAYMENTS

The City shall 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. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the City if

- A. The amount due on the deliveries warrants it; or
- B. The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

20. SUB-CONTRACTORS, OUT-SIDE ASSOCIATES, AND OTHER CONTRACTORS

- A. Any Sub-Contractor, 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 delegated Project Manager or Representative's written consent before making any substitution of these sub-Contractors, associates, or other Contractors.

- B. The Contractor shall include a flow down clause in all of its sub-contracts, agreements with outside associates, and agreements with other Contractors. The flow down clause shall cause all of the terms and conditions of this Contract, including all of the applicable parts of this Contract document, to be incorporated in all subcontracts, agreements with outside associates, and agreements with other Contractors. The flow down clause shall provide clearly that there is no privity of contract between the City and the Contractor's Sub-Contractors, outside associates, and other Contractors.

21. INSPECTION 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 shall 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.
- E. If any of the services do not conform to contract requirements, the City may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When defects in services cannot be correct 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 and reduced value of the services performed.
- F. If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the City may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service or (2) terminate the contract for default.

22. ILLEGAL IMMIGRATION ACT

Contractor certifies that Contractor has complied with the United States Immigration 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.

CONTRACT SIGNATURE PAGE

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

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

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

THE CITY OF COLORADO SPRINGS, COLORADO:	
JOHN W. SUTHERS, MAYOR	DATE

SECOND PARTY:	
Corporate Name	
Signature	Date
Title	
Witness	

PIKES PEAK RURAL TRANSPORTATION AUTHORITY (PPRTA):
APPROVAL SIGNATURE

EXHIBIT 2 SCOPE OF WORK

Project Overview

Information listed below is a Scope of Work for the Contractor, which is to be used within the framework of the Constructability Reviews and will be the basis for the Design Contract with the Contractor.

This project will replace the existing concrete box culvert under Paseo Road between N Franklin Street and E Jefferson Street with a longer and larger drainage structure. The project will include removing and replacing portions of sidewalks along Paseo Road at the CBC, constructing adjacent channel modifications including a drop structure, and pavement reconstruction of Paseo Road at the crossing.

Scope of Work – The Contractor will be part of the design team. As part of the design team, the Contractor will provide input on schedule, phasing, constructability, materials availability, costs, etc. throughout the design projects. Tasks shall include:

1. At the Request for Proposal stage (concept), Final Design stage (60%), and Finished Design (100%) the contractor will provide the City of Colorado Springs with:
 - a. The cost model for estimating project costs and duration and the project broken down into independent phases. The cost model will serve as a basis for all estimates on the project including the development of the proposed GMP at the end of design, Finished Design. The cost model will be the basis for discussion of cost between the engineer and the contractor and should influence the development of the engineers estimated cost. Cost should influence design decisions and the contractor is expected to inform the team of cost increases/decreases that occur in design.
 - b. The Contractor's Project Manager should prepare three levels of budgeting, estimating and pricing appropriate to established levels of design, and should continue to refine cost estimates as the project progresses through the design phases with input provided to the project team on clarifications needed to reduce risk and allowances for contingencies.
 - c. A work breakdown structure for the project developed in accordance with industry best practices. The latest edition of Practice Standard for Work Breakdown Structures is a universal standard for preparing work breakdown structures. Each task in the work breakdown structure should meet the following requirements:
 - The task can be performed by a crew type.
 - The quantity of work in the task can be measured with a single unit of measure, such as cubic yards or square feet.
 - The task has a predictable duration, but not necessarily fixed.
 - The following should be provided for each task in the work breakdown structure:
 - The quantity estimate.
 - The cost estimate.
 - The duration.
 - The scope of work for each task.
 - A preliminary schedule for the project.
 - The project overhead needed to complete the construction project.

Total hours estimated for three pricing efforts 80 hours

2. Attend an initial project workshop and Risk Assessment discussion. The workshop will be conducted in Colorado Springs and may include a project walk thru. Includes the following tasks:

- b. Introduction to the project and the project stakeholders
- c. Project status, goals, objectives, funding, etc.
- d. Presentation of project elements
- e. Review phasing options for construction
- f. Development of alternative phasing concepts
- g. Question and answer session

Total hours estimated 20 hours – includes travel and 2 contractor personnel

3. Attend the following project review meetings:

- a. Field review meetings in Colorado Springs – Assume 1 meetings at 8 hours total

- b. Review of 60% plans and comment resolution meeting. – Assume 16 hours total
- c. Review of 90% plans and comment resolution meeting. – Assume 16 hours total
- d. Interim Review Status Meetings – Assume 2 meetings at 8 hours total.

Total hours estimated 48 hours.

4. The Contractor will provide value engineering recommendations and offer cost savings suggestions, and best value recommendations.

- a. VE investigation and preparation – Assume 16 hours total.

Total Hours Estimated for Contractor Constructability Reviews is 164 hours.

After completion of the initial four phases (purchase order award), it will be the City's intent to negotiate a final CMGC contract with the selected GC that incorporates all required CDOT/Federal Clauses, DBE, and Davis Bacon wage rates for the actual construction phase.

APPENDIX A PROPOSAL CERTIFICATION

Check or Mark the space after each number to indicate compliance.

1. _____ Address of Offeror’s Principal Place of Business:

Does Offeror have an established office or facility in Colorado Springs?

Yes _____ No _____

If yes, indicate address below if different than Principal Place of Business.

Colorado Springs Facility - Year established _____

Address of Colorado Springs Facility:

Percent of Work to be Performed from Principal Place of Business? _____

Percent of Work to be Performed from Colorado Springs Facility? _____

2. _____ Indicate your ability to provide a certificate of insurance evidencing the required coverage types and limits specified in Minimum Insurance Requirements Exhibit. (The certificate of insurance must reflect the City of Colorado Springs as an Additional Insured, as applicable.)

Indicate your ability to comply with the following requirements:

The City shall be added as an Additional Insured to all liability policies:

Yes _____ No _____

Your property and liability insurance company is licensed to do business in Colorado:

Yes _____ No _____

Provide the name of your property and liability insurance company here:

Name: _____

Your property and liability insurance company has an AM best rating of not less than B+ and/or VII:

Yes _____ No _____

Worker's Compensation Insurance is carried for all employees and covers work done in Colorado.

Yes _____ No _____

3. n/a Provide one (1) copy of current financial statements (if required). Enclose financial information in a separate envelope; do not bind with the other proposal copies. If review of the information is to be restricted to the City's financial officer, it must be marked accordingly.

4. _____ Provide the completed and signed proposal. (Proposals must be identified as specified in this RFP document). All required Exhibits are attached.

By signing below, the Offeror certifies that no person or firm other than the Offeror or as otherwise indicated has any interest whatsoever in this offer or any Contract that may be entered into as a result of this offer and that in all respects the offer is legal and firm, submitted in good faith without collusion or fraud.

Offeror has appointed _____ as the Offeror's representative and contact for all questions or clarifications in regard to this Offeror.

Telephone: (____) _____

Email: _____

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

(Name of Company) (Signature)

(Address) Date

(City, State and Zip) (Telephone Number)

(Name typed/Printed) (Title)

(E-Mail 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_____ DATED:_____

AMENDMENT #2_____ DATED:_____

AMENDMENT #3_____ DATED:_____

Please Note the attached Representations and Certifications must be initialed by Offeror in the spaces provided and returned with this certification.

REPRESENTATIONS AND CERTIFICATIONS

Appendix A Continued

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 proposal.

 Initials for 1
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.
- c) The Offeror must disclose with the signing of this proposal, 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.
- d) 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.
- e) 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.
- f) The Offeror shall cooperate fully with the City or any agency investigating a possible violation on behalf of the City. If any violation is determined, the Offeror will properly compensate the City.
- g) The Offeror agrees to incorporate the substance of this clause (after substituting “Contractor” for “Offeror”) in all subcontracts under this offer.

 Initials for 2
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:

Offeror shall not:

Knowingly employ or contract with an illegal alien to perform work under this Agreement; or
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.

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.

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.

If Offeror obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Provider shall:

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

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:

The subcontractor provides information which establishes that the subcontractor has not knowingly employed or contracted with an illegal alien, and

The Offeror will not employ the illegal aliens in the performance of any City contract.

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.

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.

Initials for 3

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

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

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

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

CONTRACTOR PERSONNEL

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 proposal 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 proposal, 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

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 proposal.
- 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 proposal based on my company's capabilities to provide quality products and/or services on time.

Initials for 9

OFFEROR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS:

The Offeror certifies to the best of its knowledge and belief, that (i) the Offeror and/or any of its Principals

Are (), Are not () presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

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 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.

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.

The certification in paragraph 1. above, is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City Contracts Specialist may terminate the contract resulting from this solicitation for default. Termination for default may result in additional charges being levied for the costs incurred by the City to initiate activities to replace the awarded Contractor.

 Initials for 10

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.

 Initials for 11

Name of Company:

Federal Tax ID Number:

DUNS Number:

Principle Place of Business:

 Signature of Authorized Representative

Printed Name:

Title:

Date:

APPENDIX B EXCEPTIONS

Print the words "no exceptions"(here)_____ if there are no exceptions taken to any of the terms, conditions, or specifications of these proposal documents or contract.

If there are exceptions taken to any of the terms, conditions, or specifications of the proposal document or contract, they must be clearly stated on a separate sheet of paper attached to this sheet and returned with your proposal.

Note: All potential Offerors are hereby advised that exceptions taken may be considered during the evaluation phase which may effect the final scoring of proposals. Offerors stipulating that the City must use their contract or agreement may be determined non-responsive and their Proposal determined unacceptable.

Company Name: _____

Return this form with your Proposal.

APPENDIX C MINIMUM INSURANCE REQUIREMENTS

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.	<input checked="" type="checkbox"/>	Workers’ Compensation and Employers Liability as required by statute. Employers Liability coverage is to be carried for a minimum limit of \$100,000.
2.	<input checked="" type="checkbox"/>	Automobile Liability covering any auto (including owned, hired, and non-owned autos) with a minimum of \$1,000,000 each accident combined single limit.
3.	<input checked="" type="checkbox"/>	Commercial General Liability for limits not less than \$1,000,000 combined single limit for bodily injury and property damage for each occurrence. Coverage shall include blanket contractual, broad form property damage, products and completed operations and contractors protective endorsements.
4.	<input type="checkbox"/>	<p>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.</p> <ul style="list-style-type: none"> 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.
5.	<input type="checkbox"/>	<p>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.</p> <ul style="list-style-type: none"> 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.
6.	<input type="checkbox"/>	Excess Liability for limits not less than \$1,000,000 combined single limit for bodily injury and property damage for each occurrence.
7.	<input type="checkbox"/>	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.
8.	<input type="checkbox"/>	Professional Liability Insurance covering any damages caused by an error, omission or any negligent Acts with limits of not less than \$1,000,000 per occurrence and in the aggregate. The coverage shall have an extended reporting period of 2 years following the date of substantial completion of the project for reporting of

	claims.
9.	Pollution Legal Liability Insurance for limits of not less than \$1,000,000 for sudden and accidental incidents including on-site clean-up for new conditions, third party liability for bodily injury and property damage at on-site and off-site locations, and third party clean-up for new and pre-existing conditions.

Except for workers' compensation and employer's liability insurance, the **City of Colorado Springs and PPRTA 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 D

CM/GC INTRODUCTION & PROJECT TECHNICAL INFORMATION

CM/GC is a contracting method that involves the contractor in the design process. The intent is to form a partnership with City of Colorado Springs (the owner), the designer working for City of Colorado Springs (WSP | Parsons Brinckerhoff), and you as the contractor. The focus is on a partnership in which we minimize risk, improve construction schedule, try new innovations, and live within the budget. An important role of the contractor is to help acquire information to reduce project risk. We anticipate that your involvement will help reduce errors in design, improve constructability and meet budget goals.

The CM/GC team relies on the expertise of the contractor to deliver a better product in less time and at a lower cost than design-bid-build construction processes. The team relies on the contractor to bring the following expertise to the project during the design phase:

- The skills and knowledge to estimate the quantities of materials, labor, and equipment needed to construct the project.
- The skills and knowledge to determine the tasks (work breakdown structure) needed to complete the project and estimate the costs, duration, and sequence of these tasks.
- An understanding of the availability, cost, and capacities of materials, labor, and equipment.
- The skills and knowledge to identify potential risks (including cost risks) and methods to mitigate them during the design process.
- Constructability.

At project start up the contractor, designer, and owner will participate in a project kick-off session where roles and responsibilities are established. This sets clear expectations for all team members. This is followed by a risk assessment workshop where risks are identified and prioritized. The highest priority risks will be assigned an owner and the owner will be responsible for developing a risk mitigation strategy. The contractor is responsible for tracking risk. Where possible, risk should be reduced or eliminated. If this is not possible, a mitigation strategy with contingency funding is required for high priority risks. This is part of the Guaranteed Maximum Price (GMP) and included in negotiations at bid opening and before construction.

Contractor input is a key part of the team's success. The team should apply a formal evaluation process that evaluates identified alternative solutions against established criteria. The evaluation criteria should be established before alternatives are considered and should include consideration of cost, schedule, and quality. It is not expected that all contractor suggestions can be applied, but it is expected that they are evaluated and considered in a timely process. Alternatively the Value Engineering process can be applied to identify and select which contractor suggestions to apply.

During the design process the contractor will work with the designer to:

- Reduce risk
- Continuously update cost
- Achieve a guaranteed maximum price at the end of design.
- Assumptions are documented
- Updates are with open book prices

When the project plans and specifications are complete, the contractor should prepare and submit a Guaranteed Maximum Price (GMP).

Because this approach minimizes risk, the construction costs are expected to be less than with conventional Design-Bid-Build projects. Should you win the award for this contract, your role will be to help manage the budget and propose solutions that will help achieve the goal of staying within budget. This will include a careful design that avoids the need for change orders. If this project cannot be delivered within the allocated budget, the City of Colorado Springs has the option to reduce scope or default to Bid Build at the end of the design process. Early phasing may be considered for early procurement of long lead items or for long lead tasks that can be completed and turned over to another contractor should negotiations for final construction fail. Early phases must be independent and severable from the final construction and are not a guarantee of selection for final construction. Final construction will not begin until design is substantially complete.

Project Introduction

Project Goals

- Maximize the improvements within the construction Budget of \$550,000.
- Minimize inconvenience to the neighborhood and gold course by minimizing construction impacts, time and delays and substantially complete the project construction by November 2016.
- Maximize innovation to provide increased quality and performance within the project budget.
- Key project elements affecting the balance of these goals include the project schedule, reducing the impacts to neighborhood access, pedestrian movements, project staging areas, providing innovative approaches, and improving overall constructability.

Project Key Issues

Constructability & Construction Sequencing

The replacement of the Paseo Bridge will include removing and replacing the existing Concrete Box Culvert with a longer and larger structure, modifying the drainage channel including installing a new drop structure, removing and replacing portions of sidewalks adjacent to the project area, pavement reconstruction of Paseo Road to facilitate the CBC and utility work. In order to achieve this requirement, the contractor must be able to review the existing conceptual design and provide a general sequence of construction to include:

- Subsurface improvements/avoidance (drainage and utilities)
- Sidewalk removals and replacement
- Site work Elements, including drainage structure construction/decorative steel railings and channel modifications
- Pavement replacement

Maintenance of Traffic (MOT) and Pedestrian Requirements

It is required to minimize the traffic impacts Paseo Road and minimize impacts to users of the Patty Jewet Golf Course as much as possible. The City will consider closing Paseo Road at the culvert crossing to traffic to facilitate construction and to reduce the overall schedule.

The contractor should provide a preliminary phasing and detour plan showing how motorized and non-motorized access can be maintained and overall impacts reduced during the reconstruction of the various elements of the project. Innovative approaches to minimize impacts and constructability issues are to be considered in design.

Schedule

Work is to be substantially completed by November 2016.

Public Involvement

The contractor will be expected to designate a public involvement liaison to work with the City of Colorado Springs Public Information Officer (PIO), neighbors, business owners and other stakeholders during design and construction. This will include notifying the public of the project, schedule, and construction impacts.

Project Technical Information

The City of Colorado Springs and the Design Team will follow the City of Colorado Springs Design Process, and will follow City Standard Specifications and Standard Drawings except as noted below. The Contractor shall assume that the concept plans and specifications for the project are preliminary and therefore are subject to change during final design. Critical components of the final design, requiring extensive input from the Contractor, for this project are as follows:

Dual 8'x 4' Precast Concrete Box Culvert

The existing box culvert under Paseo Road will be removed and replaced with a larger structure as part of this project. The new box culverts shall: be constructed with a minimum of 1 foot of clearance below the finished grade; each of the dual boxes shall have a span of 8 feet to minimize velocities and flow depths; and have a rise of 4 feet to facilitate maintenance, inspection and the passage of debris. The culvert shall be precast in order to expedite construction time. The fabrication of the culvert shall conform to the Load and Resistance Factor Design (LRFD) Bridge Design Manual. The installation of the culvert shall conform to the Colorado Department of Transportation (CDOT) 2012 Standard Plan No. M-603-3. Bedding and foundation design will be determined during Final Design. Excavation and Backfill will not be paid for in accordance with Section 206 of the M Standard. Refer to the Excavation and Backfill item below for measurement and payment of earthwork items.

APPENDIX F includes a pay item for “Dual 8’x4’ Precast Concrete Box Culvert”. The contractor’s bid price per linear foot for this item shall include all labor, material, transportation, and equipment required to construct this item in accordance with the Standard Plan and Specifications.

Structural Concrete

Construction of wing walls, concrete apron, head walls, cutoff walls, and toe walls will be required at the upstream and downstream ends of the new culvert. It is expected that the tops of the wing wall footings will be below the bottom of the riprap. The construction of wing walls, toe walls, cutoff walls and headwalls shall generally conform to CDOT 2012 Standard Plans M-601-20 and M-603-3. These items will be paid for on a neat line structural concrete volume basis. Materials and construction for structural concrete shall conform to the City of Colorado Springs Standard Specifications except that the minimum 28 day compressive strength shall be 4,500 PSI.

APPENDIX F includes a pay item for “Structural Concrete” that will serve as the basis of payment for wing walls, head walls, toe walls and cutoff walls. The contractor’s bid price per cubic yard for this item shall include all labor, material, transportation, and equipment required to construct the various wall items in accordance with the Standard Plan and Specifications.

Earthwork, Excavate and Export

Excavation, backfill and grading will be required in the construction of the project. Earthwork measured and paid under this item includes excavation and grading associated with construction of the proposed box culvert, wing walls, toe walls and cut off walls, apron, sidewalks, curb and gutter, and riprap, and will be paid based on the engineer estimated plan quantity for excavation of the quantity of earthwork that the plan indicates is in excess of the quantity that can be used as backfill or proposed embankment. All non-suitable or excess material shall be exported by the contractor to a suitable disposal site. Earthwork shall conform to the Standard Specifications.

APPENDIX F includes a pay item for “Earthwork Excavate and Export” that will serve as the basis of payment for this item. The contractor’s bid price per cubic yard for this item shall include all labor, material, transportation, equipment and disposal fee required to accomplish this item in accordance with the Standard Specifications.

Riprap Apron Outlet Protection

Riprap will be required in the construction of the project. The riprap measured and paid for under this item includes the riprap apron at the downstream end of the culvert, will conform to Urban Drainage Standards and Specifications, and will be paid based on a volume basis. The unit price for the riprap shall include all costs associated with the rock, geotextile fabric, water control, dewatering, and backfill.

APPENDIX F includes a pay item for “Riprap Outlet Protection” that shall serve as the bases of payment for this item. The contractor’s bid price per cubic yard for his item shall include all labor, materials, transportation, equipment, and disposal fees required to accomplish this item in accordance with the Standard Specifications.

10’ D-10-R Inlets

The proposed drainage inlets on Paseo Road near the proposed drainage structure will conform to the City Standard D-10-R inlet details for “on-grade conditions”. The depth of the 10’ long (L) inlets required for this project is expected to be between 4 and 6 feet. The unit price for the inlets shall include all costs associated with the inlet, excavation, water control, dewatering, bedding and backfill.

APPENDIX F includes a pay item for “10’ D-10-R Inlets” that will serve as the basis of payment for the inlets. The contractor’s bid price per each for this item shall include all labor, material, transportation, and equipment required to construct the inlets in accordance with the applicable City Standards.

Constructability Reviews

The contractor will be expected to provide constructability reviews and input on the project throughout the design process. This is described in Appendix C – this Scope and pricing will be used to develop the Design Contract with the selected contractor from this RFP.

Appendix F includes pay items for “Constructability Review, Hour”. The Price Proposal will need to consider the per hour cost the Contractor will be reimbursed to provide this service. A general scope description is contained in Appendix C. The estimate for this item will be the basis for the “Design Contract”. Total hours budgeted for this work item will be negotiated with the selected contractor.

Utilities

Known utilities are indicated on the preliminary design plans. The overhead electric line located on the north side of Paseo Road is anticipated to be protected in place. There is an electric line that is attached to the existing culvert on the south side of Paseo Road that is anticipated to be relocated. Additionally, there is a sanitary sewer line that runs through the proposed channel grading that might be impacted. It is desired to minimize utility impacts during final design. The contractor will be required to coordinate their construction activities with protecting the existing utilities in place.

Traffic Control

The contractor will be required to provide traffic control for construction of the project. Traffic control will be measured and paid separate from the items included in the Price Proposal required with the contractor's proposal in response to the current RFP.

Subcontractor Selection

The City of Colorado Springs does not desire that the Contractor select subcontractors during the RFP process but provide an approach on how subcontractors will be selected during the design and estimating process. There is no specified DBE goal for this project, however, as always, contractors are encouraged to utilize services of Disadvantaged Business Enterprises whenever reasonable feasible.

Value Engineering

Contractor will be required to provide cost savings recommendations, suggestions and design alternatives.

APPENDIX E**CM/GC PROCESS FOR CONSTRUCTION (PROCESS DESCRIPTION)****Designer and Contractor Design Project**

The selected contractor will be awarded a consulting contract, prepared and administered by the City. The cost of the contract will be based upon a final negotiated Scope, and total hour and applied unit rate for "Constructability Review" submitted as part of the price proposal. The requirements are identified in further detail in Appendix C. The Consulting Contract is attached for information and the City intends to execute this contract with the selected Contractor. These requirements can include, but are not limited to:

- Constructability Reviews of the Design
- Assistance in shaping the project scope of work to the available budget
- Assistance in improving project schedule
- Provide cost estimates of elements of the work as the design is developed
- Design reviews to ensure that the package is complete and without ambiguity
- Finding design errors

Contractor Submits Bid for Project (Early Procurement)

The contractor may be asked to procure long lead materials such as retaining wall panels, site fixtures and other materials that may be in short supply or require longer than desired lead times from purchase to delivery. The City may also procure through the contractor such services as pavement cores, pipe videos, potholes, or other investigations to facilitate the design. The City may choose to exercise this option if the early procurement saves significant construction time, money, or avoids potential delays once the project begins, etc.

If the City elects to use this early procurement option, it proceeds as follows:

- The contractor will prepare a "bid" to supply the item(s) including all other costs associated with the procurement (such as transportation, storage, etc.). The bid is only for purchased items and should not include mobilization for construction or other unrelated costs.
- The contractor will submit the "bid" to the City. The City will secure an independent cost estimate for the item(s). Upon opening the contractor's "bid" the City will determine the acceptability of the "bid" by comparing it to the independent cost estimate and the engineers estimate.

Contractor Submits Bid for Project (Early Construction Contract)

If time and/or money can be saved by allowing the contractor to start initial work prior to the completion of the total design package, the City may ask the contractor to prepare a lump sum or unit cost bid for a portion of the work.

If the City elects to use this contracting option, it proceeds as follows:

- The City and the contractor will agree upon a scope of work to accomplish in this phase of the contract. The agreement may take the form of a set of plans or it may consist of something less formal such as sketches, drawings, or written descriptions. Both parties must agree that the scope of work is clear and unambiguous.
- The contractor will prepare a "bid" to perform the agreed to scope of work. The contractor will use the unit prices submitted as part of this RFP for required items unless one or more of the risk factors identified in the Appendix F has changed. The contractor shall provide additional bid unit prices for any items required, but not identified in APPENDIX F and G.
- The contractor will submit the "bid" to the City of Colorado Springs Project Manager. The City will secure an independent cost estimate for the work. Upon opening the contractor's "bid" the City will determine the acceptability of the "bid" by comparing it to the independent cost estimate and the engineers estimate.
- The City personnel reviewing these costs may include: the project manager, members of the design team, and/or an estimating consultant if hired.
- If the prices are acceptable, the City will prepare a construction contract for this portion of the work. If a previous construction contract had been entered into, this work will be added to that contract by change order.
- If the prices are not acceptable, the City may enter into negotiations with the contractor. The City of Colorado Springs has the option to accept a negotiated price or to terminate the CM/GC process and procure the construction project or by some other method.

- If the City terminates the CM/GC process, the CM/GC Contractor is precluded from bidding on the project.

Contractor Submits Bid for Project (Design is Complete)

When the City, the designer, and the contractor agree that the project has been designed to a sufficient level of detail to allow the contractor to accurately bid the project, the following procedure will be used:

- The designer will produce a set of plans and specifications showing all work to be accomplished. The plans will also show all work accomplished under any previous Early Construction packages.
- The contractor will prepare a “bid” to perform the work shown. The contractor will use the unit prices submitted as part of the RFP unless one or more of the risk factors identified has changed.
- The contractor will submit the “bid” to the City. The City will secure an independent cost estimate for the work. Upon opening the contractor’s “bid” the City will determine the acceptability of the “bid” by comparing it to independent cost estimate.
- The City personnel reviewing these costs may include: the project manager, members of the design team, and/or an estimating consultant if hired.
- If the prices are acceptable, the City will prepare a construction contract for this portion of the work. If a previous construction contract had been entered into, this work will be added to that contract by change order.
- If the prices are not acceptable, the City may enter into negotiations with the contractor. The City of Colorado Springs has the option to accept a negotiated price or to terminate the CM/GC process and procure the construction project or by some other method.

Contractor Builds Project

From this point forward, the work proceeds in the manner as a design-bid-build project.

**APPENDIX F
RFP CONTRACTOR PRICE PROPOSAL**

Company: _____
Name: _____
Date: _____

Item No.	Description	Estimated Quantity	Unit	Unit Price	Amount
1	Dual 8' x 4' Precast Concrete Box Culverts	150	LF		
2	Structural Concrete	60	CY		
3	Earthwork, Excavate and Export	600	CY		
4	Riprap Apron Outlet Protection	50	CY		
5	10' Modified D-10-R Inlets	2	EA		
6	Constructability Review	164	HR		
				TOTAL	

APPENDIX G
APPROACH TO PRICE PROPOSAL

Price Components	Labor	Equipment	Material	Trucking	Other *	Overhead	Profit	Total Price Per LF
Dollar Amount								
Percent								

* Description is required

Number 1: Dual 8' Span x 4' Rise Precast Concrete Box Culvert

Technical Requirements: Refer to RFP Technical Information

Assume: (list any assumptions)

Contractor will be held to unit price shown in APPENDIX F unless justification is listed below. Each item must be filled out or the proposal will be considered non-responsive.

- Identify risks that would increase the unit price**
- Identify mitigation that would decrease the unit price**
- Identify amount of quantity change that would justify a change in unit price**
- Identify assumptions used to create unit cost**
- What will you do in the design process to help identify & minimize risk?**

APPENDIX G

Approach to Price Proposal

Price Components	Labor	Equipment	Material	Trucking	Other *	Overhead	Profit	Total Price Per CY
Dollar Amount								
Percent								

* Description is required

Number 5: Structural Concrete

Technical Requirements: Refer to RFP Technical Information

Assume: (list any assumptions)

Contractor will be held to unit price shown in Appendix F unless justification is listed below. Each item must be filled out or the proposal will be considered non-responsive.

- Identify risks that would increase the unit price**
- Identify mitigation that would decrease the unit price**
- Identify amount of quantity change that would justify a change in unit price**
- Identify assumptions used to create unit cost**
- What will you do in the design process to help identify & minimize risk?**

APPENDIX G

Approach to Price Proposal

Price Components	Labor	Equipment	Material	Trucking	Other *	Overhead	Profit	Total Price Per CY
Dollar Amount								
Percent								

* Description is required

Number 3: Earthwork, Excavate and Export

Technical Requirements: Refer to RFP Technical Information

Assume: (list any assumptions)

Contractor will be held to unit price shown in APPENDIX F unless justification is listed below. Each item must be filled out or the proposal will be considered non-responsive.

- Identify risks that would increase the unit price**
- Identify mitigation that would decrease the unit price**
- Identify amount of quantity change that would justify a change in unit price**
- Identify assumptions used to create unit cost**
- What will you do in the design process to help identify & minimize risk?**

APPENDIX G

Approach to Price Proposal

Price Components	Labor	Equipment	Material	Trucking	Other *	Overhead	Profit	Total Price Per CY
Dollar Amount								
Percent								

* Description is required

Number 4: _____ Riprap Outlet Protection _____

Technical Requirements: Refer to RFP Technical Information

Assume: (list any assumptions)

Contractor will be held to unit price shown in Appendix F unless justification is listed below. Each item must be filled out or the proposal will be considered non-responsive.

- Identify risks that would increase the unit price**
- Identify mitigation that would decrease the unit price**
- Identify amount of quantity change that would justify a change in unit price**
- Identify assumptions used to create unit cost**
- What will you do in the design process to help identify & minimize risk?**

APPENDIX G

Approach to Price Proposal

Price Components	Labor	Equipment	Material	Trucking	Other *	Overhead	Profit	Total Price Per EA
Dollar Amount								
Percent								

* Description is required

Number 8: 10' D-10-R Inlets

Technical Requirements: Refer to RFP Technical Information

Assume: (list any assumptions)

Contractor will be held to unit price shown in Appendix F unless justification is listed below. Each item must be filled out or the proposal will be considered non-responsive.

- Identify risks that would increase the unit price**
- Identify mitigation that would decrease the unit price**
- Identify amount of quantity change that would justify a change in unit price**
- Identify assumptions used to create unit cost**
- What will you do in the design process to help identify & minimize risk?**

APPENDIX G

Approach to Price Proposal

Price Components	Labor	Equipment	Material	Trucking	Other *	Overhead	Profit	Total Price Per HR
Dollar Amount								
Percent								

* Description is required

Number 11: _____ Constructability Reviews _____

Technical Requirements: Refer to RFP Technical Information

Assume: (list any assumptions)

Contractor will be held to unit price shown in Appendix F unless justification is listed below. Each item must be filled out or the proposal will be considered non-responsive.

- Identify risks that would increase the unit price**
- Identify mitigation that would decrease the unit price**
- Identify amount of quantity change that would justify a change in unit price**
- Identify assumptions used to create unit cost**
- What will you do in the design process to help identify & minimize risk?**

APPENDIX H
PASEO BRIDGE SCORE SHEET

EVALUATION CRITERIA	Max Points Available	Contractors Score
3.1.1 PROJECT TEAM/CAPABILITY OF THE CONTRACTOR	30	
3.1.2 PROJECT APPROACH	20	
3.1.3 PROJECT INNOVATIONS	15	
3.1.4 CONTRACTOR PRICE PROPOSAL, APPENDIX "F"	15	
3.1.5 APPROACH TO PRICE PROPOSAL, APPENDIX "G"	20	
TOTAL	100	

APPENDIX I
INDEX OF DRAWINGS

Paseo Bridge Replacement Concept Design
Paseo Bridge Replacement Concept Design – Profile

APPENDIX J**DAVIS BACON MINIMUM WAGES**

JANUARY 08, 2016

**U.S. DEPT. OF LABOR DAVIS BACON MINIMUM WAGES
COLORADO HIGHWAY CONSTRUCTION
GENERAL DECISION NUMBER - CO160018****NOTICE**

This is a standard special provision that revises or modifies CDOT's *Standard Specifications for Road and Bridge Construction*. It has gone through a formal review and approval process and has been issued by CDOT's Project Development Branch with formal instructions for its use on CDOT construction projects. It is to be used as written without change. Do not use modified versions of this special provision on CDOT construction projects, and do not use this special provision on CDOT projects in a manner other than that specified in the instructions, unless such use is first approved by the Standards and Specification Unit of the Project Development Branch. The instructions for use on CDOT construction projects appear below.

Other agencies which use the *Standard Specifications for Road and Bridge Construction* to administer construction projects may use this special provision as appropriate and at their own risk.

Instructions for use on CDOT construction projects:

Use this standard special provision on all federal-aid projects with contracts exceeding \$2000, except for non-ARRA projects on roadways classified as local roads or rural minor collectors, which are exempt. Projects on local roads, rural minor collectors, and enhancement projects funded with ARRA funds are not exempt.

Decision Nos. CO160018 dated January 08, 2016 supersedes Decision Nos. CO150018 dated January 02, 2015. When work within a project is located in two or more counties and the minimum wages and fringe benefits are different for one or more job classifications, the higher minimum wages and fringe benefits shall apply throughout the project.		Modifications			ID
		<u>MOD Number</u> 0	<u>Date</u> 01/08/16	<u>Page Number(s)</u> 1	0
General Decision No. CO160018 applies to the following counties: El Paso, Pueblo, and Teller counties.					
General Decision No. CO160018 The wage and fringe benefits listed below reflect collectively bargained rates.					
CO DE	CLASSIFICATION	Basic Hourly Rate	Fringe Benefits	Last Mod	
	ELECTRICIAN:				
1199	El Paso, Teller	30.00	14.95		
1200	Pueblo	27.10	11.81	0	
	POWER EQUIPMENT OPERATOR:				
	Drill Rig Caisson				
1201	Smaller than Watson 2500 and similar	24.73	9.15		
1202	Watson 2500 similar or larger	25.04	9.15		
	Crane				
1203	50 tons and under	24.88	9.15		
1204	51 - 90 tons	25.04	9.15		
1205	91 - 140 tons	25.19	9.15		
General Decision No. CO160018 The wage and fringe benefits listed below do not reflect collectively bargained rates.					
	CARPENTER:				
1206	Excludes Form Work	24.15	6.25		
	Form Work Only				
1207	El Paso, Teller	19.06	5.84		
1208	Pueblo	19.00	5.88		
	CEMENT MASON/CONCRETE FINISHER:				
1209	El Paso, Teller	17.36	3.00		
1210	Pueblo	17.74	3.00		

General Decision No. CO160018				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
CO DE	CLASSIFICATION	Basic Hourly Rate	Fringe Benefits	Last Mod
1211	FENCE ERECTOR	13.02	3.20	
1212	GUARDRAIL INSTALLER	12.89	3.20	
	HIGHWAY/PARKING LOT STRIPING:			
1213	Painter	12.62	3.21	
	IRONWORKER:			
	Reinforcing (Excludes Guardrail Installation)			
1214	El Paso, Teller	20.49	1.65	
1215	Pueblo	16.69	5.45	
1216	Structural (Excludes Guardrail Installation)	18.22	6.01	
	LABORER:			
1217	Asphalt Raker	17.54	3.16	
1218	Asphalt Shoveler	21.21	4.25	
1219	Asphalt Spreader	18.58	4.65	
	Common or General			
1220	El Paso	17.05	3.69	
1221	Pueblo	16.29	4.25	
1222	Teller	16.88	3.61	
1223	Concrete Saw (Hand Held)	16.29	6.14	
1224	Landscape and Irrigation	12.26	3.16	
1225	Mason Tender - Cement/Concrete	16.29	4.25	
1226	Pipelayer	18.72	3.24	
1227	Traffic Control (Flagger)	9.55	3.05	
1228	Traffic Control (Sets Up/Moves Barrels, Cones, Installs signs, Arrow Boards and Place Stationary Flags), (Excludes Flaggers)	12.43	3.22	
1229	PAINTER (Spray Only)	16.99	2.87	

General Decision No. CO160018

The wage and fringe benefits listed below do not reflect collectively bargained rates.

CO DE	CLASSIFICATION	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR:			
1230	Asphalt Laydown	22.67	8.72	
1231	Asphalt Paver	21.50	3.50	
	Asphalt Roller			
1232	El Paso	24.42	6.96	
1233	Pueblo	23.67	9.22	
1813	Teller	24.42	6.96	
1234	Asphalt Spreader	22.67	8.72	
	Backhoe/Trackhoe			
1235	El Paso	23.31	5.61	
1236	Pueblo	21.82	8.22	
1237	Teller	23.32	5.50	
1238	Bobcat/Skid Loader	15.37	4.28	
1239	Boom	22.67	8.72	
	Broom/Sweeper			
1240	El Paso, Teller	23.43	8.04	
1241	Pueblo	23.47	9.22	
	Bulldozer			
1242	El Paso	26.56	7.40	
1243	Pueblo, Teller	26.11	6.92	
1244	Drill	17.59	3.45	
1245	Forklift	15.91	4.68	
	Grader/Blade			
1246	El Paso	22.83	8.72	
1247	Pueblo	23.25	6.98	
1248	Teller	23.22	8.72	
1249	Guardrail/Post Driver	16.07	4.41	

General Decision No. CO160018

The wage and fringe benefits listed below do not reflect collectively bargained rates.

CO DE	CLASSIFICATION	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't.):			
	Loader (Front End)			
1250	El Paso	23.61	7.79	
1251	Pueblo	21.67	8.22	
1252	Teller	23.50	7.64	
	Mechanic			
1253	El Paso	22.35	6.36	
1254	Pueblo	24.02	8.43	
1255	Teller	22.16	6.17	
	Oiler			
1256	El Paso	23.29	7.48	
1257	Pueblo	23.13	7.01	
1258	Teller	22.68	7.11	
	Roller/Compactor (Dirt and Grade Compaction)			
1259	El Paso	16.70	3.30	
1260	Pueblo, Teller	18.43	4.62	
1261	Rotomill	16.22	4.41	
1262	Scraper	24.28	4.83	
	Screed			
1263	El Paso, Teller	25.22	5.74	
1264	Pueblo	23.67	9.22	
1265	Tractor	13.13	2.95	

General Decision No. CO160018				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
CO DE	CLASSIFICATION	Basic Hourly Rate	Fringe Benefits	Last Mod
	TRUCK DRIVER:			
	Distributor			
1266	El Paso, Teller	17.98	3.97	
1267	Pueblo	18.35	3.85	
	Dump Truck			
1268	El Paso, Teller	16.85	4.83	
1269	Pueblo	16.87	4.79	
1270	Lowboy Truck	17.25	5.27	
1271	Mechanic	26.69	3.50	
1272	Multi-Purpose Specialty & Hoisting Truck	17.27	3.71	
1273	Pickup and Pilot Car	13.93	3.68	
1274	Semi/Trailer Truck	16.00	2.60	
1275	Truck Mounted Attenuator	12.43	3.22	
	Water Truck			
1276	El Paso	17.24	4.15	
1277	Pueblo	20.93	4.98	
1278	Teller	17.31	4.07	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program.

If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

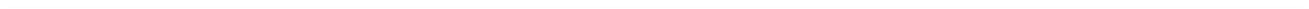
4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION NO. CO160018

APPENDIX J CDOT REQUIRED FORMS

CDOT Form 605
CDOT Form 606
CDOT Form 621
CDOT Form 714
CDOT Form 1413
CDOT Form 1273

Follow this page



COLORADO DEPARTMENT OF TRANSPORTATION
CONTRACTORS PERFORMANCE CAPABILITY STATEMENT

PROJ# M240-155 CODE 19811
Project #

1. List names of partnerships or joint ventures none

2. List decreases in the contractors fiscal or workmanship qualifications compared to the last prequalification statement submitted to CDOT. (Attach additional sheets if necessary.)

a. Key personnel changes none

b. Key equipment changes none

c. Fiscal capability changes (legal actions, etc.) none

d. Other changes that may effect the contractors ability to perform work. none

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

Contractor's firm or company name	By	Date
	Title	
2nd Contractor's firm or company name (if joint venture)	By	Date
	Title	

<p>COLORADO DEPARTMENT OF TRANSPORTATION ANTI-COLLUSION AFFIDAVIT</p>	<p>PROJECT NO.</p> <hr/> <p>LOCATION</p>
----------------------------------------------------------------------------------	------------------------------------------

I hereby attest that I am the person responsible within my firm for the final decision as to the price(s) and amount of this bid or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on behalf of my firm.

I further attest that:

1. The price(s) and amount of this bid have been arrived at independently, without consultation, communication or agreement for the purpose or with the effect of restricting competition with any other firm or person who is a bidder or potential prime bidder.
- 2A. Neither the price(s) nor the amount of this bid have been disclosed to any other firm or person who is a bidder or potential prime bidder on this project, and will not be so disclosed prior to bid opening.
- 2B. Neither the prices nor the amount of the bid of any other firm or person who is a bidder or potential prime bidder on this project have been disclosed to me or my firm.
- 3A. No attempt has been made to solicit, cause or induce any firm or person who is a bidder or potential prime bidder to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid or other form of complementary bid.
- 3B. No agreement has been promised or solicited for any other firm or person who is a bidder or potential prime bidder on this project to submit an intentionally high, noncompetitive or other form of complementary bid on this project.
4. The bid of my firm is made in good faith and not pursuant to any consultation, communication, agreement or discussion with, or inducement or solicitation by or from any firm or person to submit any intentionally high, noncompetitive or other form of complementary bid.
5. My firm has not offered or entered into a subcontract or agreement regarding the purchase or sale of materials or services from any firm or person, or offered, promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by any firm or person to refrain from bidding or to submit any intentionally high, noncompetitive or other form of complementary bid or agreeing or promising to do so on this project.
6. My firm has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any other project, in consideration for my firm's submitting any intentionally high, noncompetitive or other form of complementary bid, or agreeing or promising to do so, on this project.
7. I have made a diligent inquiry of all members, officers, employees, and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's bid on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, or other conduct inconsistent with any of the statements and representations made in this affidavit.
8. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as a fraudulent concealment from the Colorado Department of Transportation, of the true facts relating to submission of bids for this contract.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Contractor's firm or company name	By	Date
	Title	
2nd contractor's firm or company name. (If joint venture.)	By	Date
	Title	

Sworn to before me this _____ day of, _____ 20____

Notary Public	
My commission expires	
NOTE: This document must be signed in ink.	

**COLORADO DEPARTMENT OF TRANSPORTATION
ASSIGNMENT OF ANTITRUST CLAIMS**

PROJ# M240-156 CDOT 19811 PROJECT No.

Contractor and Colorado Department of Transportation (CDOT) recognize that in actual economic practice antitrust violations ultimately impact on CDOT. Therefore, for good cause and as consideration for executing this contract and for receiving payments hereunder:

1. Contractor hereby irrevocably assigns to CDOT any and all claims it may now have or which may hereafter accrue to it under federal or state antitrust laws in connection with the particular project, goods or services purchased or acquired by CDOT pursuant to this contract.
2. Contractor hereby expressly agrees:
 - a. That, upon becoming aware that a third party has commenced a civil action asserting on Contractor's behalf an antitrust claim which has been assigned to CDOT hereunder, Contractor shall immediately advise in writing:
 - (1) Such third party that the antitrust claim has been assigned to CDOT, and
 - (2) CDOT that such civil action is pending and of the date on which, in accordance with subparagraph a. (1) above, Contractor notified such third party that the antitrust claim had been assigned to CDOT;
 - b. To take no action which will in any way diminish the value of the claims or rights assigned or dedicated to CDOT hereunder; and
 - c. Promptly to pay over to CDOT its proper share of any payment under an antitrust claim brought on Contractor's behalf by any third party and which claim has been assigned to CDOT hereunder.
3. Further, Contractor agrees that in the event it hires one or more subcontractors to perform any of its duties under the contract, Contractor shall require that each such subcontractor:
 - a. Irrevocably assign to CDOT (as a third party beneficiary) any and all claims that such subcontractor may have or which may thereafter accrue to the subcontractor under federal or state antitrust laws in connection with any goods or services provided by the subcontractor in carrying out the subcontractor's obligations to Contractor;
 - b. Upon becoming aware that a third party has commenced a civil action on the subcontractor's behalf asserting an antitrust claim which has been assigned to CDOT hereunder, shall immediately advise in writing:
 - (1) Such third party that the antitrust claim has been assigned to CDOT, and
 - (2) Contractor and CDOT that such civil action is pending and of the date on which, in accordance with subparagraph b. (1) above, the subcontractor notified such third party that the antitrust claim had been assigned to CDOT;
 - c. Take no action which will in any way diminish the value of the claims or rights assigned or dedicated to CDOT hereunder; and
 - d. Promptly pay over to CDOT its proper share of any payment under an antitrust claim brought on the subcontractor's behalf by any third party and which claim has been assigned or dedicated to CDOT pursuant hereto.

I, acting in my capacity as officer of a bidder (bidders if a joint venture) do agree to the above assignment of antitrust claims.

Contractor's firm or company name	By	Date
	Title	
2nd contractor's firm or company name. (If joint venture.)	By	Date
	Title	

COLORADO DEPARTMENT OF TRANSPORTATION BIDDERS LIST DATA and UNDERUTILIZED DBE (UDBE) BID CONDITIONS ASSURANCE	Project No.:
	Location:

Prime Contractor Instructions: This form has two sections, both must be completed and submitted with your Proposal. Complete **Section I** to list **all** subcontract/subconsultant/supplier quotes received (non-DBE **and** DBE contractors, consultants and suppliers). Complete **Section II** to report only Underutilized DBE (UDBE) participation percentages which qualify under the Contract goal specification for this Project. **Please review CDOT Form #715 instructions before completing Section II.** Attach additional sheets as necessary.

POLICY
 It is the policy of the Colorado Department of Transportation that underutilized disadvantaged business enterprises have equal opportunity to participate on projects financed with federal, state or local entity funds. Consistent with 49 Code of Federal Regulations (CFR) Part 26.11, the Bidders List data provided by the Contractors will provide CDOT as accurate data as possible about the universe of DBE and non-DBE firms actively seeking work on its highway construction contracts, for use in setting overall DBE goals.

SECTION I: CDOT BIDDERS LIST INFORMATION (Non-DBEs and DBEs)

- 1) Are all subcontract/subconsultant/supplier bids (quotes) received by your firm for this Project listed below? **Yes**
 No
- 2) **If No, your Proposal is Non-Responsive**
- 3) The most recent CDOT Bidders List will be posted online at: www.dot.state.co.us/EEO/DBEProgramPage.htm

NAME OF FIRM SUBMITTING BID/QUOTE	CERTIFIED DBE FIRM?	WORK ITEM(S) DESCRIPTION	FIRM BEING USED?
1.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
2.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
3.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
4.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
5.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
6.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
7.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
8.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
9.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
10.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
11.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
12.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
13.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe

NAME OF FIRM SUBMITTING BID/QUOTE	CERTIFIED DBE FIRM?	WORK ITEM(S) DESCRIPTION	FIRM BEING USED?
14.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
15.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
16.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
17.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
18.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
19.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe
20.	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe

SECTION II: UNDERUTILIZED DBE (UDBE) PARTICIPATION COMMITMENT

- 1) Total eligible Underutilized DBE (UDBE) percentage amount from **Box A** below: . %
- 2) Will your company's Underutilized DBE (UDBE) participation commitment meet the Contract goal? Yes No
- 3) List the UDBE firms, committed work items, and eligible UDBE percentage of your bid committed to each.

UDBE FIRM NAME	CERTIFICATION NUMBER	COMMITTED WORK ITEM(S)	% COMMITMENT TOWARD DBE GOAL*
1.			. %
2.			. %
3.			. %
4.			. %
5.			. %

BOX A: TOTAL ELIGIBLE UDBE PERCENTAGE AMOUNT (Round to nearest hundredth) → . %

* Detailed instructions on how to calculate DBE commitment amounts are available on CDOT Form #715 and in the "Counting DBE Participation Toward Contract Goals and CDOT's annual DBE goal" section of the "DBE – Definitions and Requirements" in the *Design Build Standard Special Provisions for Contracts of Less than \$40,000,000 and/or Design and Construction Time of Less than Two Years.*

I understand that I must submit a completed CDOT Form #715 CERTIFICATION OF UNDERUTILIZED DBE PARTICIPATION for each firm listed in **Section II** of this form to the Transportation Department by 4:00 pm on the **fifth** Work Day after the Proposal Due Date. **The actual amounts submitted on each CDOT Form #715 must equal or exceed the DBE percentage commitments documented on this form. In addition, if my company does not meet the DBE/UDBE goal for this Project, I must submit a completed CDOT Form #718 DBE GOOD FAITH EFFORT DOCUMENTATION WITH MY PROPOSAL IN ORDER FOR MY PROPOSAL TO BE RESPONSIVE.**

I understand my obligation to abide by the **Policy** stated above **Section I**. I shall not discriminate on the basis of race, color, age, sex, national origin, or handicap in the bidding process or the performance of contracts.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE IN THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Company Name:	Date: / /
Company Officer Signature:	Title:

October 31, 2013

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

NOTICE

This is a standard special provision that revises or modifies CDOT's *Standard Specifications for Road and Bridge Construction*. It has gone through a formal review and approval process and has been issued by CDOT's Project Development Branch with formal instructions for its use on CDOT construction projects. It is to be used as written without change. Do not use modified versions of this special provision on CDOT construction projects, and do not use this special provision on CDOT projects in a manner other than that specified in the instructions unless such use is first approved by the Standards and Specifications Unit of the Project Development Branch. The instructions for use on CDOT construction projects appear below.

Other agencies which use the *Standard Specifications for Road and Bridge Construction* to administer construction projects may use this special provision as appropriate and at their own risk.

Instructions for use on CDOT construction projects:

Use this standard special provision on federal aid projects.

October 31, 2013

1

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

Attached is Form FHWA 1273 titled *Required Contract Provisions Federal-Aid Construction Contracts*. As described in Section I. General, the provisions of Form FHWA 1273 apply to all work performed under the Contract and are to be included in all subcontracts with the following modification:

For TAP (Transportation Alternatives Program) funded Recreational Trails projects, Section I (4) regarding convict labor and all of Section IV of the FHWA 1273 do not apply.

October 31, 2013

2

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's

immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the

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provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

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d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

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a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt.

Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm>

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or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or

the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable

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predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to

journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As

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used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

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evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more

places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA

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approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering

into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of

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Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

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**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the

use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.