



El Paso County
Contracts and Procurement
15 East Vermijo Avenue
Colorado Springs, Colorado 80903
INVITATION FOR BID #IFB 23-042
COVER SHEET

Release Date	March 8, 2023
Solicitation Number	IFB-23-042
Solicitation Title	ANNUAL CONCRETE REPLACEMENT PROJECT (MULTI-YEAR)
Services to be performed for	El Paso County Department of Public Works- Engineering Department
Responses will be received until	3:00 P.M., MST, Wednesday, April 5, 2023 Electronically through the Rocky Mountain E- Purchasing System
For additional information please contact	Becky Schaffstein, CPPB, Lead Procurement Specialist Email: beckyschaffstein@elpasoco.com 719-520-6392
Documents included in this package	Invitation for Bid Cover Sheet General Terms and Conditions Special Terms and Conditions Scope of Work Response Submittal Requirements Attachments

The undersigned hereby affirms that (1) he/she is a duly authorized agent of the Contractor, (2) he/she has read all terms and conditions and technical specifications which were made available in conjunction with this solicitation and fully understands and accepts them unless specific variations have been expressly listed in his/her offer, (3) that the offer is being submitted on behalf of the Contractor in accordance with any terms and conditions set forth in this document, and (4) that the Contractor will accept any awards made to it as a result of the offer submitted herein for a minimum of ninety calendar days following the date of submission. Offers must contain, in blue ink, a manual signature of an authorized agent of the Contractor or a verifiable electronic time and date stamped signature in the space provided on all appropriate signature lines in this solicitation. **Typed names as signatures are not allowed.**

PRINT OR TYPE YOUR INFORMATION

Company Name: _____	Fax: _____
Address: _____	City/State/Zip: _____
Contact Person: _____	Title: _____
Email: _____	Phone: _____
Authorized Representative's Signature: _____	Date: _____
Printed Name: _____	Title: _____
Email: _____	Phone: _____

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1. **APPLICABILITY.** These General Terms and Conditions apply, but are not limited, to all bids, proposals, qualifications and quotations (hereinafter referred to as "Offers" and/or "Responses") made to El Paso County (hereinafter referred to as "County") by all prospective suppliers (herein after referred to as "Contractor s") in response but not limited to Invitation to Bid, Invitations for Bid, Requests for Proposals, Statement of Qualifications and Requests for Quotations (hereinafter referred to as "Solicitations").

2. **CONTENTS OF OFFER**

2.1 **General Conditions.** Contractors are required to submit their Offers in accordance with the following expressed conditions:

2.1.1 Contractors shall make all investigations necessary to thoroughly inform themselves regarding the plant and facilities affected by the delivery of materials and equipment as required the conditions of the Solicitation. No plea of ignorance by the Contractor of conditions that exist or that may hereafter exist as a result of failure to fulfill the requirements of the contract documents will be accepted as the basis for varying the requirements or the compensation to the Contractor.

2.1.2 Contractors are advised that all County contracts are subject to all legal requirements contained in County ordinances, the Contracts and Procurement policies and state and federal statutes. When conflicts between the Solicitation and these legal documents occur, the highest authority will prevail.

2.1.3 Contractors are required to state exactly what they intend to furnish to the County via this Solicitation and must indicate any variances to the terms, conditions, and specifications of this Solicitation no matter how slight. If variations are not stated in the Contractor 's Offer, it shall be construed that the Contractor 's Offer fully complies with all conditions identified in this Solicitation.

2.1.4 El Paso County intends and expects that the contracting processes of the County and its Contractors provide equal opportunity without regard to race, color, religion, sex, national origin, age, disability, or any other characteristic protected by law. Accordingly, the Contractor shall not discriminate on any of the foregoing grounds in the performance of the contract.

2.1.5 All Offers and other materials submitted in response to this Solicitation shall become the property of the County and will be a matter of public record. Contractors must identify, in writing, all copyrighted material, trade secrets and/or other proprietary information that it claims are exempt from disclosure under the Open Records Act.

Any Contractor claiming an exemption must identify the specific provision of the Open Records Act that provides an exemption from disclosure for each item that the Contractor claims is not subject to disclosure and must submit an additional bound copy of the Response with each exempt item clearly redacted. Any Contractor claiming an exemption must also state in its Response that the Contractor agrees to defend, indemnify, and hold harmless the County and its officers and employees from any action brought against the County for its refusal to disclose any purportedly exempt material, trade secrets and other proprietary information to any party making a request therefore.

Any Contractor who fails to include an exemption statement along with the additional redacted copy of the Response shall be deemed to have waived any right to an exemption from disclosure as provided by the Open Records Act.

2.2 Clarification and Modifications in Terms and Conditions

2.2.1 Where there appear to be variances or conflicts between the General Terms and Conditions, the Special Terms and Conditions and the specifications outlined in this Solicitation, the specifications then the Special Terms and Conditions will prevail.

2.2.2 If any Contractor contemplating submitting an Offer under this Solicitation is in doubt as to the true meaning of the specifications, the Contractor must submit a **written request** for clarification to the County's Contracts and Procurement Manager or their designee as outlined in the Special Terms and Conditions. The Contractor submitting the request shall be responsible for ensuring that the request is received by the County's buyer by the date and time listed in the Schedule of Activities for submitting question(s) or as stated in the Special Terms and Conditions.

Any official interpretation of this Solicitation must be made by the County's Contracts and Procurement Manager or their designee. The County shall not be responsible for interpretations offered by other employees of the County.

The County shall issue a written addendum if substantial changes which impact the technical submission of Offers are required. Addenda will be posted on the Rocky Mountain E-Purchasing System web site (<http://www.rockymountainbidsystem.com>) as well as El Paso County web site (<http://www.elpasoco.com>). Contractors are responsible for either revisiting one of these websites prior to the due date or contacting the Contracts and Procurement Manager or their designee named on the Cover Sheet of this Solicitation to ensure that they have any addenda which may have been issued after the initial download.

The Contractor shall certify its acknowledgment of the addendum by signing the addendum and returning it with its Offer. In the event of conflict with the original contract documents, addenda shall govern all other contract documents to the extent specified. Subsequent addenda shall govern over prior addenda only to the extent specified.

2.3 Prices Contained in Offer--Discounts, Taxes, Collusion

2.3.1 Contractors may offer a cash discount for prompt payment. Discounts may be considered in determining the lowest net cost for the evaluation of Offers; discounts for periods of less than twenty days, however, will not be considered in making the award. If the Contractor does not enter a percentage discount, it is hereby understood and agreed that the payment terms shall be net thirty days, effective on the date that the County receives an accurate invoice or accepts the products, whichever is the later date. Payment is deemed to be made on the date of the mailing of the check.

2.3.2 Contractors shall not include federal, state, or local excise or sales taxes in prices offered, as the County is exempt from payment of such taxes. Materials purchased directly by the Contractor in conjunction with this contract will, however, be subject to applicable state and local sales taxes. These taxes shall be borne by the Contractor. Under no circumstances shall Contractor be authorized to use the County's tax exemption number in acquiring such materials.

2.3.3 The Contractor, by affixing its signature to this Solicitation, certifies that its Offer is made without previous understanding, agreement, or connection either with any persons, firms or corporations making an Offer for the same items, services, or with the County. The Contractor also certifies that its Offer is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action. To ensure integrity of the County's public procurement process, all Contractors are hereby placed on notice that any and all Contractors who falsify the certifications required in conjunction with this section will be prosecuted to the fullest extent of the law.

3. PREPARATION AND SUBMISSION OF OFFER

3.1 Preparation

- 3.1.1 El Paso County will not be responsible for any expenses incurred by any Contractor in preparing and submitting its offer.
- 3.1.2 The Offer must be typed or legibly printed in ink. The use of erasable ink is not permitted. All corrections made by the Contractor must be initialed **in blue ink** by the authorized agent of the Contractor.
- 3.1.3 Offers must contain, in blue ink, a manual signature of an authorized agent of the Contractor or a verifiable electronic time and date stamped signature in the space provided on the Solicitation Cover Sheet. **Typed names as signatures are not allowed.** The original Cover Sheet of this Solicitation must be included in all Offers. If the Contractor's authorized agent fails to appropriately sign and return the original Cover Sheet of the Solicitation, its Offer shall be invalid and shall not be considered.
- 3.1.4 Prices shall be provided by the Contractor on the Solicitation's Pricing Bid Form when required in conjunction with the prescribed method of award and shall be for the unit of measure requested. Prices that are not in accordance with the measurements and descriptions requested shall be considered non-responsive and shall not be considered. Where there is a discrepancy between the unit price and the extension of prices, the unit price shall prevail.
- 3.1.5 Alternate Offers will not be considered unless expressly permitted in the Specifications Special Terms and Conditions.
- 3.1.6 The accuracy of the Offer is the sole responsibility of the Contractor. No changes in the Offer shall be allowed after the date and time that the Offers are due.

3.2 Submission

- 3.2.1 The Offer shall be submitted via the Rocky Mountain E-Purchasing System with the Contractor's name, the IFB Number, and the IFB Title. When required in conjunction with the prescribed method of award, the County's Pricing Bid Form must be used when the Contractor is submitting its Offer. The Contractor shall not alter this form (e.g., add or modify categories for posting prices offered) unless expressly permitted in an addendum duly issued by the County. No other form shall be accepted.
- 3.2.2 Offers submitted via facsimile machines, mail, or email will not be accepted unless expressly permitted in the solicitation.
- 3.2.3 Contractors which qualify their Offers by requiring alternate contractual terms and conditions as a stipulation for contract award must include such alternate terms and conditions in their Offers. The County reserves the right to declare Contractors Offers as non-responsive if any of these alternate terms and conditions are in conflict with the County's terms and conditions, or if they are not in the best interests of the County.

- 3.3 **Late Offers.** Offers received after the date and time set for the opening will not be authorized to enter into the electronic lockbox and will be deemed as non-responsive.

4. MODIFICATION OR WITHDRAWAL OF OFFERS

- 4.1. **Modifications to Offers.** Offers may only be modified in the form of a written notice on company letterhead and must be received prior to the time and date set for the Offers to be opened. Each modification submitted to the County's Contracts and Procurement Division must have the Contractor's name and return address and the applicable Solicitation number and title clearly marked and shall be submitted via Rocky Mountain E-Purchasing System. If more than one modification is submitted, the modification bearing the latest date of receipt by the County's Contracts and Procurement Division will be considered the valid modification.

4.2. Withdrawal of Offers

- 4.2.1** Offers may be withdrawn prior to the time and date set for the opening. Such requests must be made in writing on company letterhead.
- 4.2.2** In accordance with the Uniform Commercial Code, Offers may not be withdrawn after the time and date set for the opening for a period of ninety calendar days after the opening. If an Offer is withdrawn by the Contractor during this ninety-day period, the County may, at its option, suspend the Contractor from the bid list and may not accept any Offer from the Contractor for a six-month period following the withdrawal.

5. REJECTION OF OFFERS

5.1. Rejection of Offers. The County may, at its sole and absolute discretion:

- 5.1.1** Reject any and all, or parts of any or all, Offers submitted by prospective Contractor s;
- 5.1.2** Re-advertise this Solicitation;
- 5.1.3** Postpone or cancel the process;
- 5.1.4** Waive any irregularities in the Offers received in conjunction with this Solicitation; and/or
- 5.1.5** Determine the criteria and process whereby Offers are evaluated and awarded. No damages shall be recoverable by any challenger as a result of these determinations or decisions by the County.

5.2 Rejection of a Particular Offer. The County may reject an offer under any of the following conditions:

- 5.2.1** The Contractor misstates or conceals any material fact in its Offer;
- 5.2.2** The Contractor 's Offer does not strictly conform to the law or the requirements of the Solicitation;
- 5.2.3** The Offer expressly requires or implies a conditional award that conflicts with the method of award stipulated in the Solicitation's Special Terms and Conditions and/or specifications;
- 5.2.4** The Offer does not include documents, including, but not limited to, certificates, licenses, and/or samples, which are required for submission with the Offer in conjunction with the Solicitation's Special Terms and Conditions and/or specifications; or
- 5.2.5** The Offer has not been executed by the Contractor through an authorized signature on the Specification's Cover Sheet.

5.3 Elimination from Consideration

- 5.3.1** To ensure fair consideration for all Contractor s, the County prohibits communication initiated by a Contractor or on a Contractor 's behalf regarding the Solicitation to or with any County official or employee during the submission process, except as expressly set forth in this Solicitation. In addition, the County prohibits communications initiated by a Contractor or on a Contractor 's behalf to or with any County official or employee evaluating or considering the solicitation prior to the time an award decision has been made. Prohibited communications initiated by a Contractor shall be grounds for eliminating the offending Contractor from consideration for award.

5.3.2 An Offer may not be accepted from, nor any contract be awarded to, any person or company which is in arrears to the County upon any debt or contract or which is a defaulter as surety or otherwise upon any obligation to the County.

5.3.3 An Offer may not be accepted from, nor any contract awarded to, any person or company which has failed to perform faithfully any previous contract with the County, state, or federal government, for a minimum period of three years after this previous contract was terminated for cause.

6. AWARD OF CONTRACT. El Paso County and the successful Contractor shall execute the Pikes Peak Regional Transportation Authority (PPRTA) Trade Contractor Agreement (see Attachment B) to consummate a contract between the parties. This Solicitation and the Contractor's Offer shall be attached and incorporated as part of that contract.

7. CONTRACTUAL OBLIGATIONS

7.1 Local, State and Federal Compliance Requirements. Successful Contractors shall be familiar and comply with all local, state, and federal directives, ordinances, rules, orders, and laws applicable to, and affected by, this contract including, but not limited to, Equal Employment Opportunity (EEO) regulations, Occupational Safety and Health Act (OSHA), and Title II of the Americans with Disabilities Act (ADA).

7.2 Disposition. The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this contract, including any or all of its right, title or interest therein, or its power to execute such contract to any person, company, or corporation, without prior written consent of the County.

7.3 Employees.

7.3.1 All employees of the Contractor shall be considered to be, at all times, employees of the Contractor, under its sole direction, and not employees or agents of the County. The County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable, and whose continued employment on County property is not in the best interest of the County. In accordance with the County's policy regarding the use of tobacco products, no employee of the Contractor shall be permitted to use tobacco products when performing work on County property.

7.4 Workers' Compensation Insurance. Each Contractor and subcontractor shall maintain at his own expense until completion of his work and acceptance thereof by the County, Workers' Compensation Insurance, including occupational disease provisions, covering the obligations of the Contractor or subcontractor in accordance with the provisions of the laws of the State of Colorado. The Contractor shall furnish the County with a certificate giving evidence that he is covered by the Workers' Compensation Insurance herein required, each certificate specifically stating that such insurance includes occupational disease provisions and provisions preventing cancellation without ten days' prior notice to the County in writing.

7.5 Delivery. Prices, quotes, and deliveries are to be **FOB destination, freight prepaid**, and shall require inside delivery unless otherwise specified in the Solicitation's Special Terms and Conditions. Title and risk of loss shall pass to the County upon inspection and acceptance by the County at its designated point of delivery, unless otherwise specified in the Special Terms and Conditions. In the event that the Contractor defaults on its contract or the contract is terminated for cause due to performance, the County reserves the right to re-procure the materials or services from the next lowest Contractor or from other sources during the remaining term of the terminated/defaulted contract. Under this arrangement, the County shall charge the Contractor any difference between the Contractor's price and the price to be paid to the next lowest Contractor, as well as any costs associated with the re-solicitation effort.

7.6 Material or Service Priced Incorrectly. As part of any award resulting from this process, Contractor (s) will discount all transactions as agreed. In the event the County discovers, through its contract monitoring process or formal audit process, that material or service was priced

incorrectly, Contractor(s) agree to promptly refund all overpayments and to pay all reasonable audit expenses incurred as a result of the non-compliance.

8. CONTRACT MODIFICATIONS. Terms and conditions may be added, modified, and deleted upon mutual agreement between the County and the Contractor provided that such terms and conditions remain within the scope and original intent of the Solicitation. Said terms and conditions may include, but are not limited to, additions or deletions of service levels and/or commodities and/or increases or decreases in the time limits for an existing contract. Any and all modifications must be expressed in writing through an Amendment and executed by authorized agents of the County and the Contractor prior to the enactment of such modifications.

9. TERMINATION OF CONTRACT

9.1 Failure to perform. The County may, by written notice to the successful Contractor, terminate the contract if the Contractor has been found to have failed to perform its service in a manner satisfactory to the County as per specifications, including delivery as specified. The date of termination shall be stated in the notice. The County shall be the sole judge of non-performance.

9.2 Reasons other than cause. The County may cancel the contract upon thirty days written notice for reason other than cause. This may include the County's inability to continue with the contract due to the elimination or reduction of funding.

- 1. ELECTRONIC SUBMISSION OF OFFERS:** El Paso County will only accept electronic bid Responses submitted through the Rocky Mountain E-Purchasing system. A Submittal Log will be posted after the Opening and after the County has had an opportunity to review and verify the submittals offered to the County.

The original Offer must be received before the due date and time through an electronic package transmitted through the Rocky Mountain E-Purchasing system. The Contractor shall be responsible for ensuring its Response is posted by the due date and time outlined in the solicitation document.

If the submittal arrives late, it will not be included in the electronic lockbox.

The Solicitation Opening for IFB 23-042 will take place VIA TELECONFERENCE on April 5, 2023 @ 3:00PM utilizing the call-in information below:

Participant-guest login:

1. Dial access number: 1-719-520-7660
2. Enter the participant-guest pass code: 51488#
3. Attendee Access Code: 1234#

Proposers are NOT required to participate. No in person entry to our building will be permitted.

- 2. SCHEDULE OF ACTIVITIES:** The following activities and dates tentatively outline the process to be used to solicit Contractor responses and to evaluate each Contractor Response.

March 8, 2023	Release Invitation for Bids
March 16, 2023 @ 3:00 p.m.	Recommended Pre-Bid Meeting
March 20, 2023 @ 3:00 p.m.	Deadline for Submitting Questions
April 5, 2023 @ 3:00 p.m.	Response Submission Deadline
April 2023	Issue Notice of Intent to Award

- 3. PURPOSE OF SOLICITATION:** El Paso County is issuing this Solicitation for the purpose of entering into a contract for services as specified herein from a Contractor (s) that will provide prompt and efficient service to the County for Annual Concrete Replacement Project. Although this Solicitation specifies an exact location and timeline for these services to be completed, it is understood and agreed that the County may, during the term of the contract, request additional services be performed by the successful Contractor (s) at other locations within the proximity of the Project limits. This option, if exercised, is the prerogative of the County and shall be honored by the Contractor (s) throughout the contract period. No guarantees are made that additional services will be requested.

This project is being funded by the following sources: El Paso County and Pikes Peak Region Transportation Authority (PPRTA). El Paso County and PPRTA shall have oversight.

The County of El Paso, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this solicitation, disadvantaged business enterprises (DBE) will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

4. **TERM OF CONTRACT:** The awarded contract shall commence on May 1, 2023 and shall remain in effect through April 30, 2024. Notwithstanding, it shall be understood and agreed that any required warranty period which exceeds this term shall remain in full force for the duration of the warranty period.
5. **OPTION TO RENEW FOR SUBSEQUENT YEARS (WITH PRICE ADJUSTMENT):** The prices or discounts quoted in this Solicitation shall prevail for term of the contract, at which time the County and PPRTA shall have the option to renew the contract for four additional one-year periods, provided, however, that the Contractor will maintain the same prices or discounts that were awarded during the initial contract. Continuation of the contract beyond the initial period is a County and PPRTA prerogative and not a right of the Vendor. This prerogative will be exercised only when such continuation is clearly in the best interest of the County and PPRTA.

The County and PPRTA may consider an adjustment to the pricing structure outside of the option period if such adjustment would be detrimental to the Vendor. The Contractor shall submit an immediate request for such an adjustment in writing to the Contracts and Procurement Division and must include detailed justification for the requested adjustment outside of the option period. This consideration is a County and PPRTA prerogative and there is no guarantee that the request will be accepted outside of the option period. The County and PPRTA reserves the right to accept, reject or negotiate any price adjustments submitted by the Contractor and/or to terminate the contract with the Contractor based on such price adjustments.

6. **RESPONSE TO QUESTIONS:** Questions which arise during the Response preparation period regarding issues around this Solicitation, purchasing and/or award should be directed electronically, via the Rocky Mountain E-Purchasing system, to Becky Schaffstein, CPPB, Lead Procurement Specialist, Contracts and Procurement Division, El Paso County. The Contractor submitting the question(s) shall be responsible for ensuring that the question(s) is received by the date and time listed above in the schedule of activities for submitting the question(s).

Any official interpretation of this Solicitation must be made by an agent of the County's Contracts and Procurement Division who is authorized to act on behalf of the County. The County shall not be responsible for interpretations offered by employees of the County who are not agents of the County's Contracts and Procurement Division.

7. **SOLICITATION DOCUMENTS:** El Paso County officially distributes solicitation documents through the Rocky Mountain E-Purchasing System and the County's website. ***Copies of solicitations obtained from any other source are not considered official copies.*** Only those Contractors who obtain solicitation documents from the Rocky Mountain E-Purchasing System or El Paso County website will be in receipt of officially posted and relevant information regarding solicitations issued by El Paso County. The County cannot be held responsible for incorrect information, nor can it attest to the accuracy of information, found on websites other than the Rocky Mountain E-Purchasing System or the County's website.
8. **COMPETENCY OF CONTRACTORS - MINIMUM YEARS OF EXPERIENCE AND OPERATIONAL REQUIREMENTS:** Responses will only be considered from Contractors which have been engaged in the business of manufacturing or distributing the goods and/or performing the Work as described in this Solicitation. Contractors must be able to produce evidence that they have an established satisfactory record of performance for a minimum of five (5) years and have sufficient financial support, equipment, and organization to ensure that they can satisfactorily execute the services if awarded a contract. The term 'equipment and organization' as used herein shall be construed to mean a fully equipped and well-established company in line with the best business practices in the industry and as determined by the proper authorities of the County.

The Contractor shall submit such evidence of its qualifications including a maximum of five (5) relevant projects with similar services, timelines and/or magnitudes performed by the Contractor in the last five (5) years and relevant projects with similar services, timelines and/or magnitudes performed by the Contractor's Project Manager, Superintendent and/or Foreman(s). Similar services shall be specific to the following:

- Concrete repair including, but not limited to, curb & gutter, sidewalk, and cross pans

- Pedestrian ramp repair with emphasis on ADA compliance
- Asphalt patching, grading, and landscaping as needed

The County may consider any evidence available to it (including, but not limited to, the financial, technical, and other qualifications and abilities of the Contractor) in making the award in the best interests of the County.

- 9. METHOD OF AWARD AGGREGATE:** It is the intent of the County to award this Solicitation to the responsive, responsible Contractor who offers all items and whose pricing offers the lowest cost when all items are added in the aggregate and whose Offer will be most advantageous to the County. Notwithstanding, the County reserves the right to alter this method of award if such alteration results in a cost savings to the County.

A recommendation for award based on the lowest bid shall be made if that bid meets all the specifications as outlined in the IFB, with no unacceptable exceptions. If the lowest bidder takes exception(s) to the specifications but is within tolerance and meets the form, fit, and function of the merchandise required, as well as delivery date required, warranty, and all other IFB requirements it is considered the low bid and should be recommended for award.

However, the lowest-dollar bidder is not required to be recommended for award if it:

- Does not meet all the specifications as outlined in the IFB.
- Takes exception to any of the specifications that is not acceptable (as defined above).
- Cannot meet acceptable delivery requirements.
- Has additional costs that make the overall total cost higher than the next low bid.
- Has an unacceptable warranty limitation(s).
- Has past documented history by the requesting department/office, by reference(s) or in the Contracts and Procurement Division file of poor quality, delivery or other information that would affect the operation of the requesting department/office.

- 10. POST INTENT TO AWARD MEETING:** The Contractor may be required to attend a post intent to award meeting with the County to discuss the terms and conditions of the contract. This meeting will be coordinated by the Contracts and Procurement Division once a Notice of Intent to Award has been issued.

- 11. DEBRIEFING:** Offeror(s) not selected for award may request a debriefing on the selection process as well as discussion of the strengths and weaknesses of their firm's proposal upon the Final Notice of Award being posted on the Rocky Mountain E-Purchasing website.

A debriefing may be scheduled by contacting the Procurement Specialist listed on the Cover Sheet of this Solicitation once the Final Notice of Award has been posted.

- 12. PRICE OFFERS SHALL BE FIXED AND FIRM:** The prices offered by the Contractor shall remain fixed and firm. No changes in the Response shall be allowed after the date and time of the Solicitation opening due to error by the Contractor. Responses may not be withdrawn after the time and date set for the Solicitation opening for a period of ninety calendar days.

- 13. BID GUARANTY IS REQUIRED FOR A PERCENTAGE OF THE TOTAL PRICE:** All Responses shall be accompanied by a Bid Guaranty in the form of a Certified Check, Cashier's Check or Bid Bond, made payable to EL PASO COUNTY, in the amount that represents **5%** of the total base price. The Bid Guaranty shall be made payable to County and shall be conditioned upon the successful Contractor submitting a specified performance bond within ten **(10)** calendar days following written notice of award. Any Response which is not accompanied by a Bid Guaranty shall be considered nonresponsive and ineligible for award. In the event the selected Contractor fails or refuses to submit the performance bond within the time stated, the Bid Guaranty/Security submitted with the Response will be forfeited as liquidated damages because of such failure or default. The bid guarantees will be returned after the opening of Responses to all except the three lowest

responsible, responsive Contractors and the remaining guarantees shall be returned to these Contractors after the contract with the selected Contractor (s) is executed.

- 14. PERFORMANCE BOND BASED ON A PERCENTAGE OF THE OFFERED PRICE:** The Contractor to whom a contingent award is made shall duly execute and deliver a Performance and Payment Bond to the County in an amount that represents 100% of the price offered by the Contractor. The Contractor may deliver multiple bonds in lieu of a single bond, provided the total amount of these bonds equals the amount specified above. The bond shall be delivered to the County's Contracts and Procurement Division within ten calendar days after a Notice of Contingent Award is given to the Contractor, either verbally or in writing. If the Contractor fails to deliver the bond within this specified time frame, including any extensions which may be granted by the County, the County shall declare the Contractor in default of the contractual terms and conditions and the Contractor shall surrender its Bid Bond. In lieu of a Performance and Payment Bond, the County will accept a cash bond in the form of a certified cashier's check made payable to El Paso County.
- 15. PROOF OF REGISTRATION WITH THE COLORADO SECRETARY OF STATE:** Successful Contractors that are corporations or limited liability companies will be required to furnish a Certificate of Good Standing from the Colorado Secretary of State's Office, as proof that they are properly registered to do business in the State of Colorado, prior to finalization of award.
- 16. LOBBYING PROHIBITED:** Contractors are prohibited from directly or indirectly communicating with members of the Board of County Commissioners regarding their qualifications or any other matter related to the eventual award of a contract for the goods and/or services requested in this Solicitation. Contractors are prohibited from contacting County employees or evaluation committee members regarding their qualifications or the award of a contract unless in response to an inquiry from an employee as part of the formal evaluation process outlined in the Solicitation. Any violation of these provisions will result in the Contractor 's immediate disqualification from the selection process.
- 17. CONFLICTS WITHIN THE CONTRACT DOCUMENTS:** In the event that conflicts exist within the Contract Documents, the policies stated in the following paragraphs shall govern: A. Addenda shall supersede all other Contract Documents to the extent specified. Subsequent addenda shall supersede prior addenda only to the extent specified. B. Drawings and Specifications are intended to agree and be mutually explanatory and shall be accepted and used as a whole and not separately. Should any item be omitted from either the drawings or Specifications as specified, it shall be implied that such omissions are contained in both the drawings and the Specifications as necessary for the proper construction of the work herein specified. Should any error or disagreement between the Specifications and drawings exist or appear to exist, the Contractor shall not avail itself of such manifestly unintentional error or omission but must have it explained or adjusted by the County's project manager before proceeding with the work in question.
- 18. LOCATION OF WORK:** The work described in this Solicitation shall be performed throughout El Paso County as listed in the attachments and area maps.
- 19. LIMITATION OF OPERATIONS DURING NORMAL BUSINESS HOURS:** It is preferred that the Contractor work during daylight hours or between 7:00 AM and 5:00 PM, however night work shall be considered as approved by the Engineer or as specified in the Project Specifications. No overtime work shall be started without prior approval of the County's Project Manager or his/her designated representative.
- 20. LOCAL OFFICE SHALL BE REQUIRED:** Due to the service level required in conjunction with this Solicitation, the Contractor shall maintain an office within the Metro Colorado Springs, Colorado, area. This office shall be staffed by a competent company representative who can be contacted during normal working hours and who is authorized to discuss matters pertaining to the contract. Metro Colorado Springs consists of City of Colorado Springs and surrounding cities and counties, El Paso County, City of Pueblo and surrounding counties, City and County of Denver, Arapahoe County, Jefferson County, Adams County, Boulder County, Douglas County, City and County of Broomfield, Clear Creek County, Gilpin County, Teller County, Colorado, etc.

- 21. SUPERINTENDENT SHALL BE SUPPLIED BY CONTRACTOR:** The successful Contractor shall employ a competent superintendent who shall be the primary representative for the Contractor and all communications given to, and all decisions made by, the superintendent shall be binding to the Contractor. Notwithstanding, the superintendent shall be considered to be, at all times, an employee of the Contractor under its sole direction and not an employee or agent of the County.
- 22. CONSIGNMENT OF CONTRACT NOT ALLOWED:** Responses will only be considered from firms which are directly engaged in the business of performing the services described in this Solicitation. Accordingly, no part of this contract can be consigned to another Contractor.
- 23. SUBCONTRACTORS OF WORK SHALL BE IDENTIFIED:** As part of its Response, the Contractor shall be required to identify any and all subcontractors that will be used in the performance of the contract resulting from this Solicitation. The Contractor shall also identify the capabilities, experience, and portion of the work to be performed by the subcontractor(s). The competency of the subcontractor(s) with respect to skill, responsibility and business standing shall be considered by the County when making the award in the best interest of the County.
- 24. CURRENT PERMITS REQUIRED:** Contractor must obtain and pay for all required permits, licenses, inspection fees, etc., and will comply with all laws, ordinances, and regulations regarding construction of a traffic signal project. Damages, penalties and/or fines imposed by the County on the Contractor for failure to obtain required permits, licenses or fees shall be borne by the Contractor. Contractor shall enclose a current copy of their permits, licenses, and inspection certificates with their Response.
- 25. LABOR, MATERIALS AND EQUIPMENT TO BE SUPPLIED BY THE CONTRACTOR:** Unless otherwise provided in this Solicitation, the Contractor shall furnish all labor, materials, and equipment necessary for satisfactory contract performance. When not specifically identified in this Solicitation, such materials and equipment shall be of a suitable type and grade for the intended purpose. All materials, workmanship, and equipment shall be subject to the inspection and approval of the County's Project Manager.
- 26. LICENSES REQUIRED FOR TRADES:** Professional Contractors performing services in/for the County must show that they have been duly licensed by the municipality where the work is being performed, if required by that municipality, prior to being awarded a contract by the County.
- 27. DEFICIENCIES IN WORK TO BE CORRECTED BY CONTRACTOR:** The successful Contractor shall promptly correct all deficiencies in service and/or any service that fails to conform to the Contract Documents. All corrections shall be made immediately after such deficiencies and/or nonconformances are verbally reported to the Contractor by the County's Project Manager. The Contractor shall bear all costs of correcting such rejected services. If the Contractor fails to correct the service within the period specified in this Solicitation, the County reserves the right to place the Contractor in default of its contractual obligations, obtain the services of another Contractor and charge the Contractor for these costs, either through a deduction from the final payment over to the Contractor or through invoicing.
- 28. ADDITIONAL SERVICES MAY BE PURCHASED DURING CONTRACT PERIOD:** Although this Solicitation specifies an exact location where services are to be performed for the County, it is understood and agreed that the County may, during the term of the awarded contract, request additional services for the same or other locations within the proximity of the Project limits from the successful Contractor. This option, if exercised, is the prerogative of the County and shall be honored by the Contractor as a condition of contract award.
- 29. SALES TAX:** The County is exempt from paying State or Local Sales Taxes. Contractors should be aware of CONTRACTOR APPLICATION FOR EXEMPTION CERTIFICATE Pursuant to Statute Section 39-26.708(1)(a)(XIX) sales tax exemption for construction and building materials. State tax I.D. # 09-803308-0000, Federal tax I.D. # 84-6000764.

30. METHOD OF PAYMENT MONTHLY INVOICES: The successful Contractor (s) shall submit monthly invoices. These invoices shall be submitted to the County's Project Manager. The invoice shall reflect the appropriate information as described in the specifications.

31. ACCIDENT PREVENTION: The Contractor shall be required to take safety precautions in an effort to protect persons and County property. All Contractors and subcontractors shall conform to all OSHA, State and County regulations while performing under the terms and conditions of the awarded contract. Any fines levied by the above-mentioned authorities because of inadequate compliance with these requirements shall be borne solely by the Contractor which is responsible for same. Barricades shall be provided by the Contractor when work is performed in areas traversed by persons or when deemed necessary by the County's Project Manager.

32. PROTECTION OF PROPERTY: All existing structures, utilities, services, roads, trees, shrubbery, etc. shall be protected against damage or interrupted services at all times by the Contractor during the term of the awarded contract. The Contractor shall be held responsible for repairing or replacing any and all property which is damaged by reason of the Contractor's operation on the property to the satisfaction of the County.

33. CLEAN UP AFTER PROJECT IS COMPLETED: All unusable materials and debris shall be removed from the County premises. At completion, the successful Contractor shall thoroughly clean up all areas where work has been involved as mutually agreed with the County's Project Manager.

34. INSURANCE:

A. The Contractor agrees to procure and maintain, during the life of this Agreement, a policy, or policies of insurance against all liability, claims, demands and other obligations assumed by the Contractor, pursuant to Attachment A. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. The Contractor shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to Attachment A, by reason of its failure to procure or maintain, during the life of this Agreement, insurance in sufficient amounts, durations, or types.

B. The Contractor shall procure and maintain, during the life of this Agreement, for itself and any subconsultants, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the PPRTA and the County. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by the Contractor, pursuant to Attachment A. In the case of a claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Notwithstanding the foregoing, when the Contractor requires a subconsultant to obtain insurance coverage, the types and minimum limits of this coverage may be different than those required, as stated herein for the Contractor.

a. The certificate of insurance provided by the Contractor shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect and **shall be reviewed and approved by PPRTA and the County prior to commencement of the Agreement**. No other form of certificate shall be used. The certificate shall identify this Agreement and the coverages afforded under the policies. **The certificate of insurance must be on file with the PPRTA and the County two (2) weeks prior to commencement of the Agreement**. The completed certificate of insurance shall be named and sent to:

El Paso County
Board of County Commissioners
Attn: Contracts and Procurement Division
15 East Vermijo Avenue
Colorado Springs, Colorado 80903

- b. It is the affirmative obligation of the Contractor to notify the County's Contract Specialist, as provided in this Agreement, including e-mailing (PURCOI@elpasoco.com) a copy of the notice to the Contracts and Procurement Division, within two (2) business days of the cancellation or substantive change to any insurance policy required under this Agreement, and failure to do so shall constitute a breach of this Agreement.
- c. Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a material breach of contract upon which PPRTA and the County may immediately terminate this Agreement or, at its discretion, PPRTA and the County may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by PPRTA and the County shall be repaid by Contractor to PPRTA and the County upon demand, or the County may offset the cost of the premiums against any monies due to Contractor from PPRTA and the County.
- d. PPRTA and the County reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- e. The parties hereto understand and agree that PPRTA and the County, its officers and employees, are relying on and do not waive or intend to waive by any provision of this Agreement the monetary limitations (presently Three Hundred Eighty-Seven Thousand Dollars (\$387,000) per person, and One Million Ninety-Three Thousand Dollars (\$1,093,000) per occurrence), which amounts shall be adjusted by an amount reflecting the percentage change over a four-year period in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Denver-Boulder-Greeley, All Items, All Urban Consumers, or its successor index, or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as from time to time amended, or otherwise available to the County, its officers or employees.

35. INDEMNIFICATION: Indemnification – General. The Contractor shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the County, Board of County Commissioners, PPRTA, officials, officers, directors, and employees, from and against all liability, claims, demands, suits, actions or proceedings of any kind that are not the result of or directly related to the performance of professional services, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, which arise out of or are in any manner connected with this Agreement, including workers' compensation claims, in any way resulting from or arising from the services rendered by the Contractor, its employees, agents or subcontractors, or others for whom the Contractor is legally liable, under this Agreement; provided, however, that the Contractor need not indemnify or save harmless the County Board of County Commissioners, PPRTA, its officers, agents and employees, from damages resulting from the negligence of the County's Board of County Commissioners, PPRTA, officials, officers, directors, agents, and their insurers, and employees. The County and PPRTA cannot and by this Agreement does not agree to indemnify, hold harmless, exonerate, or assume the defense of the Contractor or any other person or entity whatsoever, for any purpose whatsoever.

Indemnification for Professional Services. The Consultant shall, to the fullest extent permitted by law, indemnify and hold harmless the County, Board of County Commissioners, PPRTA, and any of its officials, officers, directors, agents, and their insurers, and employees, from and against damages, liability, losses, costs and expenses, including reasonable attorney's fees, but only to the extent caused by or arising out of the negligent acts, errors or omissions of the Consultant, its employees, agents or subconsultants, or others for whom the Consultant is legally liable, in the performance of professional services under this Agreement. The Consultant is not obligated to indemnify or hold harmless the County for the negligent acts of the County, Board of County Commissioners, PPRTA, or any of its officials, officers, directors, agents, and employees.

Indemnification – Costs. The Contractor shall, to the extent provided by law, investigate, handle, respond to, and provide defense for and defend against, any such liability, claims or demands at the sole expense of the Contractor or, at the option of the County, PPRTA, agrees to pay the County and PPRTA or reimburse the County and PPRTA for the defense costs incurred by the County and PPRTA in connection with any such liability, claims or demands. The Contractor shall, to the extent provided by law, bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent. If it is determined by the final judgment of a court of any competent jurisdiction that such injury, loss or damage was caused in whole or in part by the act, omission or other fault of the County, Board of County Commissioners, PPRTA, officials, officers, directors, agents and employees, the County shall reimburse the Contractor for the portion of the judgment attributable to such act, omission or other fault of the County, Board of County Commissioners, PPRTA, officials, officers, directors, agents and employees.

- 36. FEDERAL STANDARDS COMPLIANCE:** All services to be purchased in conjunction with this Solicitation shall be in accordance with all governmental standards to include, but not be limited to, those issued by the Office of Safety and Health Administration (OSHA), the National Institute of Occupational Safety Hazards (NIOSH), and the National Fire Protection Association (NFPA).
- 37. VARIATIONS ALLOWED IF INDICATED:** For purposes of Response review, Contractors must indicate any variances to the Specifications, terms, and conditions, and attached Sample Agreement no matter how slight. If variations are not stated in the Contractor 's Response, it shall be construed that the Response fully complies with the Specifications, terms, and conditions, and attached Sample Agreement. Notwithstanding the above, it is hereby agreed and understood that the County reserves the right to reject these variations if they individually, or as a whole, do not meet the standards established in the Specifications.
- 38. NON-APPROPRIATION.** Pursuant to C.R.S.§ 29-1-110, as amended, the financial obligations of the County as set forth herein after the current fiscal year are contingent upon funds for the purpose being appropriated, budgeted and otherwise available. The awarded agreement will automatically terminate on January 1st of the first fiscal year for which funds are not appropriated. The County shall give the Contractor written notice of such non-appropriation.
- 39. EQUAL OPPORTUNITY:** El Paso County intends and expects that the contracting processes of the County and its Contractors provide equal opportunity without regard to gender, race, creed, ethnicity, religion, age, sex, national origin, or disability and that its Contractors make available equal opportunities to the extent third parties are engaged to provide goods and services to the County as subcontractors, Contractor s, or otherwise. Accordingly, the Contractor shall not discriminate on any of the foregoing grounds in the performance of the contract and shall make available equal opportunities to the extent third parties are engaged to provide goods and services in connection with performance of the contract (**joint ventures are encouraged**). The Contractor shall disseminate information regarding all subcontracting opportunities under this contract in a manner reasonably calculated to reach all qualified potential subcontractors who may be interested. The Contractor shall maintain records demonstrating its compliance with this article and shall make such records available to the County upon the County's request.
- 40. PURCHASE BY OTHER GOVERNMENTAL AGENCIES:** Each governmental unit which avails itself of this Solicitation will establish its own contact, place its own orders, issue its own purchase orders, be invoiced there from, and make its own payments and issue its own exemption certifications as required by the Contractor. It is understood and agreed that El Paso County is not a legally binding party to any contractual agreement made between any other governmental unit and the Contractor as a result of this Solicitation.

41. CONFIDENTIALITY: Responses to this Solicitation are considered to be working documents while they are under consideration and, as such, are not subject to official bid openings. The only information released at the public opening of Request for Proposals or Statement of Qualifications that are not cost driven, will be the names of the respondents. Only after staff makes an official recommendation of award and a contract is fully executed will Responses to this Solicitation be available as public record.

In consideration of Invitation for Bids or for Request for Quotes that are cost driven, the only information that will be released is the names of the respondents, the total cost of the bids, and the apparent responsible, responsive Contractor. Only after staff makes an official recommendation of award and a contract is fully executed will Responses to this Bid be available as public record.

Responses submitted to the County for consideration shall be subject to the Colorado Open Records Law, Section 24-72-201, et seq., C.R.S., after award is made. Any confidential information in the Contractor 's Response shall be identified as such. Should the County receive a request for the release of any information in the Contractor 's Response identified as confidential in accordance with the open records law, the County will notify the Contractor of the request and will exercise best efforts in assisting the Contractor in taking all legally available steps to resist or narrow such request. If, in the opinion of County's legal counsel, the County is nonetheless compelled to disclose any portion of such information to anyone or else stand liable for contempt or suffer censure or penalty, the County may disclose such information without liability.

42. GRATUITIES AND KICKBACKS: It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee (within six months of termination from County employment), or for any employee or former employee (within six months of termination from County employment) to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding of application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order. In the event that any gratuities or kickbacks are offered or tendered to any El Paso County employee, the proposal shall be disqualified and shall not be reinstated.

43. BUDGET: Budget will not be disclosed.

44. DEBARMENT: By submitting this Response, the Contractor warrants and certifies that they are eligible to submit a Response because they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a transaction by any Federal, State, or local department or agency. The Vendor must provide a certificate of good standing with their submittal.

45. LOGOS: The County logo is trademarked and property solely of El Paso County. Contractors do not have permission to use the County's logo on any documentation or presentation materials and to do so would be a violation of the County's trademark. El Paso County also prefers Contractor does not utilize its trademark as to not influence an evaluator's evaluation.

1. SPECIFICATIONS

El Paso County is seeking written, bids from qualified, experienced Contractors to provide all labor, materials, and equipment necessary to remove old surface drainage structures and place new surface drainage structures at various locations within El Paso County, per attached and incorporated specifications, location lists and area maps.

It is expected that the Contractor and their team members have significant experience with this type of project. It is expected that the individuals overseeing and managing this project are qualified professionals. The successful Contractor shall be considered and shall remain an independent Contractor throughout the term of any contract awarded pursuant to this Solicitation.

The successful Contractor shall be solely responsible for scheduling and coordinating work of the sub-Contractors, suppliers, and other individuals or entities performing or furnishing any of the work under direct or indirect contract with the successful Contractor.

The successful Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, and incidentals necessary for performance, start up, and completion of the services outlined in this Solicitation.

Objective

Repairing, improving, and bringing concrete facilities into ADA compliance as determined by the paving schedule (prep to pave roads) or Citizen Service Requests. These primarily include curb & gutter, sidewalks, cross pans, and pedestrian ramps, but may entail other improvements as deemed necessary.

2. REQUIRED DOCUMENTATION

Failure to provide required information may deem your submittal non-responsive. Submittals must contain, in blue ink, a manual signature of an authorized agent of the Contractor or a verifiable electronic time and date stamped signature in the space provided on all appropriate signature lines in this solicitation. **Typed names as signatures are not allowed.**

- Contractor Information Form
- Proprietary / Confidential Statement
- Subcontractor List, if applicable
- Exhibit 1 – Exception Form
- Exhibit 2 – Debarment Certification
- Exhibit 3 – Lobbying Certification
- Exhibit 4 – Non-Collusion Affidavit
- Exhibit 5 – Minimum Insurance Requirements
- Work Plan and Schedule

3. SCOPE OF WORK

The County proposes to bring into compliance concrete structures no longer functioning as intended along roadways identified for the 2023 paving season. Additionally, ongoing maintenance of Citizen Service Requests (CSR). The project will generally consist of curb & gutter, sidewalk, and pedestrian ramp repair with other repairs as needed and specified in the attached Bid Form.

Construction Management (CM) services will be provided by El Paso County or a contracted vendor on behalf of El Paso County. Materials testing for quality control will be provided by the Contractor with quality assurance only being provided by El Paso County at the discretion of the Engineer.

A. TECHNICAL REQUIREMENTS

These bid specifications incorporate the documents entitled “STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION”, Colorado Department of Transportation, State of Colorado (2022), the “Pikes Peak Region Asphalt Paving Specifications” (version 6, March 28, 2022) and the “El Paso County Engineering Criteria Manual” (October 2020) as if physically attached and bound herein. The bid specification documents also incorporate the document entitled “COLORADO STANDARD PLANS, COLORADO DEPARTMENT OF TRANSPORTATION, M&S STANDARDS PLANS LIST” (July 31, 2019), as if physically attached and bound herein.

Each Bidder / Contractor shall be responsible for procuring sufficient copies of the Colorado Department of Transportation STANDARD SPECIFICATIONS”, the “COLORADO STANDARD PLANS - M&S STANDARDS”, and the “EL PASO COUNTY ENGINEERING CRITERIA MANUAL”, for use in proposing and construction of the Project.

The Colorado Department of Transportation Standard Specifications for Road and Bridge Construction, 2022, controls construction of this Project. The Project Special Provisions supplement the Standard Specifications and take precedence over the Standard Specifications and Construction Plans. When specifications or special provisions contain both English units and SI units, the {English} units apply and are the specification requirement. All methods of procedures, materials, control or work, materials, and basis of measurements not herein covered will comply with the Standard Specifications for Road and Bridge Construction, Department of Transportation, State of Colorado, 2022.

Asphalt materials and activities shall be in accordance with the “Pikes Peak Region Asphalt Paving Specifications” unless otherwise noted in the Project Special Provisions.

Construction signage shall follow the federal “MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES”, latest edition (MUTCD).

The El Paso County Engineering Criteria Manual and the Pikes Peak Region Asphalt Paving Specifications can be downloaded from: <https://publicworks.elpasoco.com/policies-manuals/>

B. PROJECT SPECIAL PROVISIONS

NOTE: This section is attached as a separate document.

C. CDOT STANDARD SPECIAL PROVISIONS

NOTE: This section is attached as a separate document.

D. CONTRACTOR RESPONSIBILITIES

- **Project Management:** The Contractor shall identify a Project Manager who will work directly for and support the County Project Manager in the management and administration of the Project. The Contractor’s Project Manager shall be responsive on a daily basis Monday through Friday for the duration of the Project. The Contractor shall also identify an Assistant Project Manager capable of filling in for the Project Manager in the event that the Project Manager is not available due to travel, illness, or other event that will be longer than one week in length. The County Project Manager will be the primary point of contact for the County, however daily coordination and communications shall occur between the Contractor and the Project Inspector.

- **Pre-Construction Conference:** Prior to work commencing on the Project, a Pre-Construction Conference will be held at the El Paso County Department of Public Works, 3275 Akers Drive, Colorado Springs, CO, 80922. It is anticipated that the Notice to Proceed shall be issued by the Contracts & Procurement Division prior to the date of the Pre-Construction Conference.
- **Control of Works and Materials:** All methods of procedure, materials, control of work, and basis of measurement will comply with the *Standard Specifications for Road and Bridge Construction*, Department of Transportation, State of Colorado, current edition, and/or *AASHTO Standard Specifications for Transportation Materials and Methods of Sampling and Testing*, current edition, unless otherwise noted in the Standard Specifications. The Contractor shall assure that work is not done, nor equipment parked, in areas outside the construction boundaries as marked or staked by the County Engineer. The Contractor shall be required to maintain rigid control of all materials, which must comply with the specifications as stated.
- **Citizen Notification:** The Contractor shall be responsible for notifying citizens and businesses in the neighborhoods that will be directly or indirectly affected by the proposed concrete work. Notification shall be sent to the neighborhood at least 7 days before starting any construction work but not more than 30 days before starting any construction work in that neighborhood. The notification will include the extents of the concrete work, the approximate start date, the estimated time to complete the work, and the name and phone number of the Contractor's contact person. The Contractor shall provide the County Engineer or authorized representative with a copy of the proposed notification letter for review and approval prior to distribution to citizens. This is not a pay item, shall be done wholly at the Contractor's expense, and shall be taken into consideration in its bid.
- **Safety:** The Contractor shall ascertain and ensure that its personnel are equipped with and use all safety devices required to comply with Federal, State, and local regulations, including but not limited to the Occupational Health and Safety Administration (OSHA).
- **Sanitary Facility:** Contractor shall provide a sanitary facility for worker usage at each active worksite that will be used for more than one (1) consecutive workable working day. The sanitary facility will not be a pay item but will be incidental to the work and shall be taken into consideration in its bid.
- **Legal Relations & Responsibility to The Public:** The Contractor shall keep fully informed of all Federal, State, and Local laws, ordinances, and regulations and all orders and decree of Bodies or tribunals having any jurisdiction or authority, which may in any manner affect those engaged or employed on the Work or which in any way affect the conduct of Work, or Contractor's ability to perform the Work. Contractor shall at all times observe and comply with such laws, ordinances, regulations, orders and decrees; and shall protect and indemnify the County of El Paso, and their representatives, to include employees, agents, consultants, and subcontractors of each, against any claim or liability arising from or based on the violations of any such law, ordinance, regulations, order, or decree, whether by itself or its employees.
- **Labor:** The Contractor shall conform to all the provisions of the Federal, State, and Local laws and regulations relating to labor.
- **Construction Requirements:** After Work has started under a contract award, the Contractor shall maintain a sufficient work force, machinery, and materials, on site at all times to ensure a smooth progression of Work and a timely completion of the Project within the allotted time. Contractor shall be required to maintain rigid control of all materials, which must comply with the specifications as stated. Contractor shall assure that Work is not done, nor equipment parked, in areas outside the construction boundaries.

- **Right-of-Way:** A “Work in the Right-of-Way” permit is not required for work contracted directly by the County. All work is to be completed within the County right-of-way (R.O.W.). If the contractor needs to encroach on private property, they must obtain written permission directly from the property owner, prior to entering. Contractor shall supply the inspector on-site with a copy of the written permission prior to entering.
- **Surveying:** The Contractor is responsible for setting and maintaining grade. If there are problems with the existing grades, construction staking can be done by the Contractor or by El Paso County (Survey/Inspection Division). If the Contractor wants El Paso County to stake a project, the Contractor shall provide the County Engineer with a written request for staking. The written request shall provide specific information on what should be staked and when the staking is required. The Contractor shall provide the request at least 72 hours before the staking is needed. All surveying/staking for the project will be provided by the Contractor.
- **Character of Workers, Methods, & Equipment:** The Contractor shall at all times employ sufficient labor and equipment to properly perform the Work per this solicitation. All workers shall have sufficient skill and experience to properly perform the Work assigned them. All equipment, which is proposed to be used on the Work, shall be of sufficient size and in such mechanical conditions as to meet the requirement of the Work. If in the opinion of the El Paso County Engineer, employees and/or a certain type of equipment are not producing the Work required by the contract, the Contractor shall discontinue the use of said employees and/or equipment, when notified in writing.
- **Traffic Control:** The Contractor will furnish all materials and labor, including construction signing and flagging, while working in the R.O.W. and shall submit a Method of Handling Traffic (MHT) plan for approval, at least 10 working days prior to commencing work. Contractor shall provide all traffic control in accordance with the *Manual on Uniform Traffic Control Devices*. Traffic control is incidental to the work.
- **Road Closures and Detours:** Must be approved by County Engineer and or his or her designated representative at least three weeks prior to planned work. This project does not anticipate having any road closures at this time.
- **Load Restrictions & Truck Routes:** Haul routes shall be planned, prior to bidding, observing load limits on bridges or roadways, existing roadway conditions, and Federal, State, and Local governmental regulations regarding truck traffic and truck routes. The Contractor shall comply with all legal load restrictions in hauling of materials on public roads.
- **Inspections: Quality control (QC), including but not limited to, materials testing is the Contractor’s responsibility.** For bidding purposes, see REVISION OF SECTION 106 CONTROL OF MATERIALS (see attached Project Specials Provisions) for estimated schedule of the minimum required testing and associated frequencies. Type of testing and/ or frequencies may change depending on field conditions and Contractor’s means and methods but shall generally conform to CDOT’s “2021 FIELD MATERIALS MANUAL” (revised 2/3/2021) unless otherwise specified. El Paso County or its contractor will provide Construction Management (CM) services and may conduct materials testing for quality assurance purposes only.
- **Duties of the Inspector:** The Inspectors of the El Paso County Public Services Department, Engineering Division, will be authorized to inspect all work done and materials furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrications, and manufacture of the materials used.

The Inspectors are not authorized to alter or to waive any provisions of the Contract, nor to issue instructions contrary to plans and specifications or to act as foremen for the Contractor. Any changes

deemed necessary shall be made in writing by the El Paso County Engineer and presented to the Contractor.

Inspections: El Paso County will provide quality assurance inspection. Quality control is the contractor's responsibility. The County will be responsible for all product and application testing, but this does not preclude Contractor from providing internal test information to the County, at no additional charge.

- **Utilities:** The Contractor will be responsible for coordination with utility companies. This coordination shall include, but not be limited to, discussions with utility companies regarding locating utility and service lines, and work around manholes, water valves, and utility boxes. This work will not be a pay item but will be incidental to work. The Contractor, prior to commencing work on this project, shall inform the owners of utilities in the concrete drainage areas of the proposed work, together with the starting date planned. It is understood and agreed that the Contractor has considered in its bid all utility appurtenances in their present positions and that no additional compensation will be allowed for any delays, inconvenience or damages sustained by Contractor due to an interference from said appurtenances, or the operation of moving and/or repairing them.

The Contractor shall coordinate all utility removals, resets, adjustments, or other work as necessary to construct the project and maintain utility service with each affected utility company. The work described in these plans and specifications will require full cooperation between the Contractor and the utility companies in accordance with Subsection 105.10 in conducting their respective operations, so the utility work can be completed with minimum delay to all parties concerned. Also, in accordance with the plans and specifications, and as directed by the Engineer, the Contractor shall keep the utility company(s) advised of any work being done to their facility, so that the utility company(s) can coordinate their inspections for final acceptance of the work with the Engineer. No extension of the Contract Time of Performance or additional compensation will be allowed for delays resulting from the Contractor's failure to coordinate with any utility in a timely manner.

- **Estimated Quantities:** Per CDOT Standard Specification 104.02(c)2 when a major item of work is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in the major item quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed. A major item is defined to be any item having an original contract value in excess of 10 percent of the original contract amount.
- **Extra Work:** The Contractor shall perform unforeseen work whenever it is deemed necessary or desirable, by the County Engineer, in order to fully complete the work planned. Any work for which no bid price is provided in the original bid submittal shall be covered by a supplemental written request for the additional work from the County, with a written bid response from the Contractor, both of which will then be incorporated into the existing Contract through either a Contract amendment and or Contract Modification Order before such work is started. The supplemental information shall contain approximate quantities, unit prices, or lump sum price as mutually agreed to by the parties and shall be made part of the Contract.
- The County's normal workweek is currently Monday through Friday. Work can be allowed on Saturday, Sunday, and holidays with forty-eight (48) hours prior written notice with acceptable justification request and approval by the County Engineer or designated representative. Any such notice and approval shall be documented for the contract. If the Contractor provides written notice for work on Saturday, Sunday, or a holiday and the workday is approved by the County, the Contractor will be charged a workable working day unless weather or other conditions not under the Contractor's control do not permit construction operations to proceed. Once the day has been approved, a workable working day will be

charged even if the Contractor decides not to work. If weather or other conditions not under the Contractor's control do not permit work, a workable working day will not be charged.

- **Public Relation Services:** The Contractor shall identify a Public Relations Manager (PRM) for this Project, who will support the County in outreach and communications for the Project. The function can be included in the Project Managers duties.
 - a. **Proper Notification:** providing sufficient information in a timely manner to support EPC media releases. All information submitted to the County shall be approved 2 weeks prior to the work. Proper public notification of a minimum of 7-day notice to any impacted property owners before proceeding with the work including project notification signage per Project Special Provisions.
 - b. **Permission to Enter Property:** Written and documented with the project file with El Paso County before any work can commence.
- The Contractor shall be required to maintain rigid control of all materials which must comply with the specifications as stated. All materials not conforming to the requirements of the specifications at the time they are used shall be considered unacceptable.
- Unacceptable work, whether the result of poor workmanship, use of unacceptable materials, or damage through carelessness or any other cause found to exist prior to the final acceptance of the Work, shall be removed immediately by Contractor and replaced in an acceptable manner, at no additional cost to the County.
- Upon failure on the part of the Contractor to comply with any order of the County Engineer made under the provisions of this article, the County Engineer will have authority to cause unacceptable work to be remedied or removed and replaced, and unauthorized work to be removed, and to deduct the costs from any monies due or to become due to the Contractor.
- Pursuant to Subsections 102.04 and 102.05, it is recommended that bidders on this Project review the Work site and Plan details. It is not the intent of these specifications to cover each and every detail. Any problems that may arise must be promptly reported to the County and will be subject to the decision of the County. The bidder is expected to carefully examine the size and scope of the proposed work prior to submitting its bid. The Bidder certifies that it has examined the location of the proposed Work and is familiar with the drawings and the specifications and all contract documents related thereto, and the local conditions at the place where the Work is to be done. The Bidder has carefully checked all the quantities and understands that the County will not be responsible for any errors or omissions on the part of the Bidder in making this bid.
- **Authority of the Engineer:** The El Paso County Engineer or authorized delegate may undertake the inspection of the material at the source and shall have full entry at all times to those areas wherein the manufacture or production of the materials is taking place. The COUNTY may also request an on-site inspection of the bidder's facility prior to award of contract or at any reasonable time thereafter.

The El Paso County Engineer shall have the authority to suspend work wholly or in part because of the failure of the Contractor to properly perform the work in accordance with the Specifications, Provisions, and Contract, as the County Engineer deems to be in the best interest of the County and the public. All calendar days elapsing between effective dates of orders to suspend work and to resume work for suspension not the fault of the Contractor shall be excluded from the allotted time.

If the Contractor finds it impossible for reasons beyond its control to complete the work within the allotted time, it may, at any time prior to the expiration of the time allowed, make a written request to the County Engineer for an extension of time, setting forth therein the reasons Contractor believes will justify the granting of its request. If the County Engineer finds that the work is delayed because of conditions beyond the control and without fault of the Contractor, County Engineer may extend, in writing, the time for completion in an amount as conditions justify.

E. WORK PLAN AND SCHEDULE

Provide a schedule broken out by tasks for work, availability of materials, equipment & labor, etc. to maximize construction efficiency. Schedules shall include start date, key tasks, project milestones, phasing, completion date etc. and shall be as comprehensive as practicable. Schedules submitted for this bid shall assume a Notice to Proceed per the IFB Schedule of Activities. The start date will be based on the actual Notice to Proceed and approved schedule. See Revision of Section 108 in the Project Special Provisions attached in a separate document.

4. RESPONSE FORMAT

Failure to respond in the required format or failure to provide required information may deem your submittal non-responsive.

To facilitate an effective evaluation process, responses must be submitted on 8.5" x 11" inch paper, single-sided pages with a minimum font of 10, and all pages should be numbered in the following manner: page ___ of ___ pages with a maximum of twenty-five (25) pages. . All acronyms in the response must be defined.

Attachments/Exhibits included in this solicitation that require signature and/or are a required document to be returned with your Responses shall be included as an exhibit to your Responses and will not be included in the 25-page limit. Schedules, if applicable, may be submitted on 11" x 17" sheets and are counted as one page (limit of five pages).

Submittals should be prepared simply and economically providing a straightforward, concise description of the Contractor's ability to perform the requirements of this Solicitation.

ELECTRONIC SUBMISSION OF OFFERS: El Paso County will only accept electronic bid Responses submitted through the Rocky Mountain E-Purchasing system. A Submittal Log will be posted after the County has had an opportunity to review and verify the submittals offered to the County.

The original Offer must be received before the due date and time through an electronic package transmitted through the Rocky Mountain E-Purchasing system. The Contractor is responsible for ensuring its Response is posted by the due date and time outlined in the solicitation document.

If the submittal arrives late, it will not be included in the electronic lockbox.

To enable the County to conduct a uniform review of the information submitted in response to this Solicitation, Contractors must address the following information, numbered to directly correspond with the number of the Table of Contents section of the submitted Response. The County reserves the right to reject submittals that do not follow the required format. Include concise, complete information which will demonstrate that your company is uniquely qualified to provide the products and services specified in this Solicitation.

ALL signatures on required documents must be in blue ink or a verifiable electronic time and date stamped signature in ONE PDF document.

- A. Provide response without reference to El Paso County logo or company logo in **one** PDF document
- B. Submit response in a tab format that follows a clearly outlined Table of Contents that identifies all material and attachments that comprise your response by section and by page number. I.e. – Required Documentation section, etc. as outlined on the Response Submittal Requirements page
- C. Cover Letter, one-page limit. Submit a Cover Letter on official business letterhead that:
 1. Positively states your willingness to comply with all work requirements and other terms and conditions as specified in this Solicitation
 2. Provides, in brief concise terms, a summation of your submittal and identifies the points that make your company uniquely qualified for this project
 3. Is signed by an Authorized Representative of your company who has the authority to commit to the proposed work

- D. Provide documentation that satisfies the Required Document Requirements
- E. Provide the completed and signed Cover Sheet
- F. Addendum(s) Acknowledgement, if applicable
- G. Submission Form
- H. Bid Form
- I. Completed W9
- J. Universal Entity Identifier (UEI) Number
- K. Additional Attachments, if applicable
- L. Work Plan and Schedule

5. ATTACHMENTS

- 1. Bid Form
- 2. PPRTA Special Funding Provisions
- 3. Project Special Provisions
- 4. CDOT Standard Special Provisions
- 5. Subcontractor monthly statement summary
- 6. 2023 Concrete Replacement Project Area Maps

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

The following must be provided with your bid:

Bid Form: Contractor shall use the Bid Form attached to this IFB. Other forms/formats will not be accepted.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK



**INVITATION FOR BID # IFB 23-042
CONTRACTOR INFORMATION**

1. CONTRACTOR

- a. Legal Name of Company _____
- b. Business Name or DBA (if different) _____

2. LOCAL COLORADO ADDRESS (IF APPLICABLE)

- a. Street Address _____
- b. City/State/Zip _____

3. ORDER ADDRESS

- a. Street Address _____
- b. City/State/Zip _____
- c. Online (website) _____

4. PAYMENT ADDRESS

- a. Street Address _____
- b. City/State/Zip _____

5. CONTACT INFORMATION

- a. Name/Title _____
- b. Telephone Number: (_____) _____
- c. Toll Free Number: (_____) _____
- d. Fax Number: (_____) _____
- e. Email Address: _____

6. TAXPAYER IDENTIFICATION NUMBER

7. OWNERSHIP STATUS (check all that apply)

- | | |
|--|--|
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Partnership |
| <input type="checkbox"/> Governmental Agency | <input type="checkbox"/> Sole Proprietorship |
| <input type="checkbox"/> Individual | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Non-Profit | |

8. PRIMARY BUSINESS CLASSIFICATION

- | | |
|--|---|
| <input type="checkbox"/> Broker | <input type="checkbox"/> Retailer |
| <input type="checkbox"/> Distributor | <input type="checkbox"/> Service Provider |
| <input type="checkbox"/> Jobber | <input type="checkbox"/> Subcontractor (trades) |
| <input type="checkbox"/> Manufacturer | <input type="checkbox"/> Wholesaler |
| <input type="checkbox"/> Prime Contractor (trades) | <input type="checkbox"/> Other _____ |

9. OFFICERS, OWNERS, PARTNERS

- Name/Title _____
- Name/Title _____
- Name/Title _____

10. COMPANY PROFILE

- a. Date Company Was Established _____
- b. Under the Laws of What State _____
- c. Number of Employees _____
- d. Approximate Yearly Sales Volume _____

11. PRIMARY PLACE OF BUSINESS

- | | |
|-----------------------|------------------------|
| _____ Home | _____ Office/Warehouse |
| _____ Office Building | _____ Warehouse |
| _____ Office Complex | _____ Other _____ |

12. STAFF EXPERIENCE (key members of your company's staff who will be assigned to this project)

- a. Name/Position _____ Year Hired _____
 Years in Present Position _____ Years of Industry Experience _____
- b. Name/Position _____ Year Hired _____
 Years in Present Position _____ Years of Industry Experience _____
- c. Name/Position _____ Year Hired _____
 Years in Present Position _____ Years of Industry Experience _____
- d. Name/Position _____ Year Hired _____
 Years in Present Position _____ Years of Industry Experience _____
- e. Name/Position _____ Year Hired _____
 Years in Present Position _____ Years of Industry Experience _____

13. RELEVANT PROJECTS AND REFERENCES

(customers similar to El Paso County to whom services similar in size and scope have been provided)

- a. Project Name _____ Project Location _____
 Project Scope _____
 Services provided by Bidder _____
 Percentage of work by Bidder _____ Project Timeline _____ Contract Amount _____
 Company Name _____ Contact/Title _____
 Address _____ City/State /Zip _____
 Telephone (_____) _____ Email _____
- b. Project Name _____ Project Location _____
 Project Scope _____
 Services provided by Bidder _____
 Percentage of work by Bidder _____ Project Timeline _____ Contract Amount _____
 Company Name _____ Contact/Title _____
 Address _____ City/State /Zip _____
 Telephone (_____) _____ Email _____

RELEVANT PROJECTS AND REFERENCES (CONTINUED)

c. Project Name _____ Project Location _____
Project Scope _____
Services provided by Bidder _____
Percentage of work by Bidder _____ Project Timeline _____ Contract Amount _____
Company Name _____ Contact/Title _____
Address _____ City/State /Zip _____
Telephone (_____) _____ Email _____

d. Project Name _____ Project Location _____
Project Scope _____
Services provided by Bidder _____
Percentage of work by Bidder _____ Project Timeline _____ Contract Amount _____
Company Name _____ Contact/Title _____
Address _____ City/State /Zip _____
Telephone (_____) _____ Email _____

e. Project Name _____ Project Location _____
Project Scope _____
Services provided by Bidder _____
Percentage of work by Bidder _____ Project Timeline _____ Contract Amount _____
Company Name _____ Contact/Title _____
Address _____ City/State /Zip _____
Telephone (_____) _____ Email _____

14. **BONDING.** Is your company able to obtain bonding up to and including an amount equal to the estimated project cost?
___ Yes ___ No

15. **INSURANCE.** Is your company able to obtain insurance as specified in the Special Terms and Conditions of this IFB?
___ Yes ___ No

16. **PURCHASE ORDERS.** Do you accept purchase orders?
___ Yes ___ No

17. **CREDIT CARDS.** Do you accept credit cards?
___ Yes ___ No

18. **INFORMATION** (if you answer "yes" to any of the following questions, attach a separate page explaining your response clearly labeled with the corresponding question number).

a. In the past five years, has there been any change in ownership of your company?
___ Yes ___ No (if "yes," attach explanation labeled 18a)

b. In the past five years, has your company operated under any other name?
___ Yes ___ No (if "yes," attach explanation labeled 18b)

- c. Are any corporate officers, owners or partners currently connected with any other company in the same line of business?
 Yes No (if "yes," attach explanation labeled 18c)
- d. In the past five years, has your company been in bankruptcy?
 Yes No (if "yes," attach explanation labeled 18d)
- e. In the past five years, has your company been assessed and paid liquidated damages?
 Yes No (if "yes," attach explanation labeled 18e)
- f. In the past five years, has your company, or any company with which your company's officers, owners or partners are associated, been barred, disqualified, removed, or otherwise prevented from bidding on, or competing for any government project for any reason?
 Yes No (if "yes," attach explanation labeled 18f)
- g. In the past five years, has your company been denied an award of any contract based on a finding by a public agency that your company was not a responsible bidder?
 Yes No (if "yes," attach explanation labeled 18g)
- h. In the past five years, has any claim against your company concerning your company's work on a project been filed in court or arbitration?
 Yes No (if "yes," attach explanation labeled 18h)
- i. Has your company made any claim against a project owner concerning work on a project or payment for a contract and filed that claim in court or arbitration?
 Yes No (if "yes," attach explanation labeled 18i)
- j. Has your company, or any of its officers, owners, or partners, ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?
 Yes No (if "yes," attach explanation labeled 18j)
- k. Has your company, or any of its officers, owners, or partners, ever been convicted of a crime involving any federal, state, or local law related to your business dealings?
 Yes No (if "yes," attach explanation labeled 18k)
- l. Has your company, or any of its officers, owners, or partners, ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?
 Yes No (if "yes," attach explanation labeled 18l)
- m. In the past five years, has any surety company made any payments on your company's behalf as result of a default, to satisfy any claims made against a performance or payment bond issued on your company's behalf?
 Yes No (if "yes," attach explanation labeled 18m)
- n. Has your company ever been denied bond coverage by a surety company, or has there ever been a period of time when your company had no surety bond in place during a project when one was required?
 Yes No (if "yes," attach explanation labeled 18n)
- o. Have you ever had insurance terminated by a carrier?
 Yes No (if "yes," attach explanation labeled 18o)
- p. In the past five years, has any insurance carrier, for any form of insurance, refused to renew an insurance policy for your company?
 Yes No (if "yes," attach explanation labeled 18p)
- q. In the past five years, has OSHA cited and assessed penalties against your company?
 Yes No (if "yes," attach explanation labeled 18q)

19. Licenses. Does your company have current and valid licenses for the services being requested? Please provide copies.

Yes No (if "yes," attach licenses labeled 18)

20. Certification. The undersigned hereby affirms (1) that he/she is a duly authorized agent of the Contractor and (2) that the information submitted in/with this form is true and correct. Any information submitted herein that is later found to be false shall serve as grounds for disqualifying the Contractor 's Response.

- a. Printed Name: _____
- b. Printed Title: _____
- c. Company _____ Name: _____
- d. Address: _____
- e. City, State, Zip: _____
- f. Telephone: _____
- g. Fax: _____
- h. E-mail: _____
- Authorized Representative's Signature _____

Attach all requested exhibit items to the end of this document and clearly label each exhibit with the corresponding question number.

I/We acknowledge that subsequent to award of this solicitation, all of, or part of this submittal may be released to any person or company who may request it, as prescribed by the State of Colorado Open Records Act CRS 24-72-201 et seq., as amended, and that:

_____ None of this submittal is considered proprietary and/or confidential.

OR

_____ The portions/pages of this submittal identified below are proprietary and/or confidential for the reasons stated (cite the specific exemptions allowed by the Colorado Open Records Act/Government Code). **A clearly identified redacted softcopy of the original Response is required if this section is selected.**

Page:	Code:	Reason:
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

General reference to Freedom of Information Act (FOIA) or Colorado Open Records Act (CORA) is not sufficient justification. The County has the final discretion in determining whether information is subject to disclosure under CORA.

I/We acknowledge that the above statements may be subject to legal review and challenge.

Signature below indicates that applicant has read all the information provided above and agrees to comply in full. This form is considered as a section of the Invitation for Bid, IFB 22-118 and therefore, this signed document shall become consideration and fully submitted with the original package.

Authorized Representative's Signature

Date

Printed Name

Title

Company Name



INVITATION FOR BID # IFB 23-042
NO BID STATEMENT

El Paso County values your input. Your input assists us in building competitive solicitations and ensuring our solicitations are cutting edge and relevant. Please spend a few minutes to complete this form and return to the Contracts and Procurement Division.

Please send to: El Paso County
Becky Schaffstein, CPPB
IFB 23-042; Annual Concrete Replacement Project (Multi-Year)
beckyschaffstein@elpasoco.com

Specifications too "strict" (i.e. – geared toward one brand or manufacturer only, etc.). Please explain.

Specifications are unclear. Please explain.

Other. Please explain in detail.

- We are unable to meet specifications
- Insufficient time to respond to the solicitation
- Our schedule would not permit us to perform within the required time
- We are unable to meet insurance and/or bonding requirements
- We do not offer this product or service

PRINT OR TYPE YOUR INFORMATION

Company Name: _____ Fax: _____

Address: _____ City/State/Zip: _____

Contact Person: _____ Title: _____

Email: _____ Phone: _____

Authorized Representative's Signature: _____ Date: _____

Printed Name: _____ Title: _____

Email: _____ Phone: _____

ELECTRONIC SUBMISSION OF OFFERS: El Paso County will only accept electronic bid Responses submitted through the Rocky Mountain E-Purchasing system. A Submittal Log will be posted after the County has had an opportunity to review and verify the submittals offered to the County.

The original Offer must be received before the due date and time through an electronic package transmitted through the Rocky Mountain E-Purchasing system. The Contractor is responsible for ensuring its Response is posted by the due date and time outlined in the solicitation document.

If the submittal arrives late, it will not be included in the electronic lockbox.

ALL signatures on required documents must be in blue ink or a verifiable electronic time and date stamped signature

Contractor shall check (✓) to confirm that the following documentation has been submitted:

- Signed Cover Sheet from this Solicitation
- Contractor Information Form
- Proprietary / Confidential Statement
- Signed copies of any addenda issued regarding this Solicitation
- W9 Documentation / Universal Entity Identifier (UEI) Number
- Exhibit 1, 2, 3, 4, and 5
- Bid Form
- Work Plan and Schedule

Does your offer comply with all of the **terms and conditions** of this solicitation and the attached Agreement?

- Yes No If not, indicate exceptions on Exhibit 1.

Does your offer meet or exceed all of the **specifications** of this solicitation and the attached Agreement?

- Yes No If not, indicate exceptions on Exhibit 1.

Contractor's response to the following question will not be considered in awarding this Solicitation.

El Paso County actively participates in purchasing between and among government agencies to combine purchasing power and resources and to obtain lower costs of procurement for quality goods and services. As such, we hereby request that other agencies of government be permitted to avail themselves of any award resulting from this solicitation and purchase any and all items specified herein from the successful Contractor (s) at the contract price(s) established herein. Each agency would establish its own contract, issue its own orders, be invoiced therefrom, make its own payments, and issue its own exemption certificates as required by the Contractor. It is understood and agreed that El Paso County would not be a legally binding party to any contractual agreement made between any other agency and the Contractor as a result of this Solicitation.

May other units of government avail themselves of this contract and purchase any and all items specified.

- Yes No

EXHIBIT 1: EXCEPTIONS

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

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

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

Company Name: _____

Address: _____
(County, State and Zip Code)

Federal Tax ID#: _____

PHONE: _____

FAX: _____

E-MAIL ADDRESS: _____

Authorized Signature: _____ Date: _____

Printed Name/Title: _____

EXHIBIT 2: CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

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

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
- B. **Are presently active and in good standing on SAMS.gov**
- C. **Are required to be in good standing throughout the contract term.**
- D. Have not within a three-year period preceding this Response 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.
- E. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (B) of this certification; and
- F. Have not within a three-year period preceding this application/Response had one or more public transaction (federal, state, or local) terminated for cause or default.
- G. Are not on the Comptroller General’s List of Ineligible Bidders or any similar list maintained by any other governmental entity.
- H. Are **required** to submit proof of SAM.gov eligibility (certificate of good standing) with their submittal.

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

(Check One)

I DO CERTIFY I DO NOT CERTIFY

Date: _____

Signature: _____

Title: _____

EXHIBIT 3: RESTRICTIONS ON LOBBYING CERTIFICATION

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

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

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

I DO CERTIFY

I DO NOT CERTIFY

Proposer: _____

Signature: _____

Title: _____

Date: _____

EXHIBIT 4: NON-COLLUSION AFFIDAVIT

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

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

I DO CERTIFY

I DO NOT CERTIFY

Proposer: _____

Signature: _____

Title: _____

Date: _____

EXHIBIT 5: MINIMUM INSURANCE REQUIREMENTS

For this contract, the following provisions for insurance shall apply:

The Contractor agrees to procure and maintain, during the life of this Agreement, a policy, or policies of insurance against all liability, claims, demands and other obligations assumed by the Contractor, pursuant to Attachment A. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. The Contractor shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to Attachment A, by reason of its failure to procure or maintain, during the life of this Agreement, insurance in sufficient amounts, durations, or types.

The Contractor shall procure and maintain, during the life of this Agreement, for itself and any subconsultants, the minimum insurance coverages listed in Attachment A. Such coverages shall be procured and maintained with forms and insurers acceptable to PPRTA and the County. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by the Contractor, pursuant to Attachment A. In the case of a claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Notwithstanding the foregoing, when the Contractor requires a subconsultant to obtain insurance coverage, the types and minimum limits of this coverage may be different than those required, as stated herein for the Contractor.

1. The certificate of insurance provided by the Contractor shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect and **shall be reviewed and approved by PPRTA and the County prior to commencement of the Agreement**. No other form of certificate shall be used. The certificate shall identify this Agreement and the coverages afforded under the policies. **The certificate of insurance must be on file with PPRTA and the County two (2) weeks prior to commencement of the Agreement**. The completed certificate of insurance shall be sent to:

El Paso County
Board of County Commissioners
Attn: Contracts and Procurement Division
15 East Vermijo Avenue
Colorado Springs, Colorado 80903

2. It is the affirmative obligation of the Contractor to notify the County's Contract Specialist, as provided in this Agreement, including e-mailing (PURCOI@elpasoco.com) a copy of the notice to the Contracts and Procurement Division, within two (2) business days of the cancellation or substantive change to any insurance policy required under this Agreement, and failure to do so shall constitute a breach of this Agreement.

3. Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a material breach of contract upon which PPRTA and the County may immediately terminate this Agreement or, at its discretion, PPRTA and the County may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by PPRTA and the County shall be repaid by Contractor to PPRTA and the County upon demand, or the County may offset the cost of the premiums against any monies due to Contractor from PPRTA and the County.

4. The County reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

5. The parties hereto understand and agree that PPRTA and the County, its officers and employees, are relying on and do not waive or intend to waive by any provision of this Agreement the

monetary limitations (presently Three Hundred Eighty-Seven Thousand Dollars (\$387,000) per person, and One Million Ninety-Three Thousand Dollars (\$1,093,000) per occurrence), which amounts shall be adjusted by an amount reflecting the percentage change over a four-year period in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Denver-Boulder-Greeley, All Items, All Urban Consumers, or its successor index, or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as from time to time amended, or otherwise available to the County, its officers or employees.

El Paso County and PPRTA must be included on the General Liability insurance as an additional insured. Certificates of Insurance must be submitted before commencing work and provide 30 days' notice prior to any cancellation.

It shall be the responsibility of the Contractor to ensure that all sub-Contractors carry insurance of not less than those coverages and limits specified herein. Proper evidence of this compliance must be forwarded to appropriate department prior to the inception of any work by sub-Contractor.

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)

**ATTACHMENT A
INSURANCE CHECKLIST**

SOLICITATION NUMBER: 23-042
TITLE OF SOLICITATION: Annual Concrete Replacement Project (Multi-Year)

Insurance items checked below have been identified as necessary requirements for this Contractor per the desired scope of work.

EL PASO COUNTY SHALL BE NAMED AS ADDITIONAL INSURED ON ALL RELEVANT POLICIES.

Insurance Item:	Required	Waived
Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section and per EXHIBIT 5 at all times during the term of this Contract. All insurance policies required by this Contract shall be issued by insurance companies as approved by the County.	X	
Workers' Compensation: Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment.	X	
Commercial General Liability: Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: \$1,000,000 each occurrence; \$2,000,000 general aggregate; \$1,000,000 products and completed operations aggregate; and \$50,000 damage to premises rented to you – any one premises.	X	
Automobile Liability: Automobile liability insurance covering any auto (including owned, hired, and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.	X	
Subrogation Waiver: All insurance policies secured or maintained by Contractor in relation to this contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against the County, its agencies, institutions, organizations, officers, agents, employees, and volunteers.	X	
Garagekeepers Coverage: Garagekeepers coverage for loss to vehicles in the Contractors custody for servicing or storage with a minimum limit of \$500,000 for each loss.		X
Umbrella Liability Insurance: Commercial Umbrella/Excess Liability Insurance for bodily injury and property damage liability must sit over Contractor's primary Employer's Liability, Commercial General Liability and Commercial Automobile Liability with limits of: \$1,000,000 each occurrence and aggregate. Higher or Lower limits may be required or determined acceptable at the sole discretion of County.		X
Protected Information: If Contractor's scope of work will include access to Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, Contractor shall maintain Cyber/ Network Security and Privacy Liability Insurance in an amount of not less than \$1,000,000 each occurrence; and \$2,000,000 general aggregate to cover civil, regulatory and statutory damages, contractual damage, as well as data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as confidential information of County.		X
Pollution Liability: If Contractor's scope of work includes any pollution liability exposure, Contractor must provide and maintain a separate Pollution Liability Insurance policy. Such insurance shall include coverage for the Hold-Harmless or Indemnification Clause contained in this Agreement. Coverage shall include Additional Insured status in favor of County, its agents and employees and a Waiver of Subrogation in favor of additional insured parties the policy shall be written with a limit of liability no less than \$1,000,000 each occurrence and aggregate.		X
Professional Liability/Malpractice Insurance: Professionals to include: physicians, nurses, psychologists, social workers, etc. If Contractor's scope of work includes the performance of professional services, Contractor shall provide and maintain, for the statute of repose, Professional liability insurance covering any damages caused by an error, omission in performance of the professional services with minimum limits as follows: \$1,000,000 each claim; and \$1,000,000 general aggregate. Policy shall include coverage for bodily injury and sexual misconduct claims.		X
Professional Liability Insurance: Professionals to include: Architects, Engineers, Construction Managers. If Contractor's scope of work includes the performance of professional services, Contractor shall provide and maintain, for the statute of repose, Professional liability insurance covering any damages caused by an error, omission, or negligent professional act in performance of the professional services with minimum limits as follows: \$1,000,000 each claim; and \$1,000,000 general aggregate.		X
Professional Liability Insurance (Errors and Omissions): Miscellaneous professions to include: IT Consultants/Programmers, Insurance Brokers, Accountants, Real Estate Agents, Etc. If Contractor's scope of work includes the performance of professional services, Contractor shall provide and maintain, for the statute of repose, Professional liability insurance covering any damages caused by an error, omission, or negligent professional act in performance of the professional services with minimum limits as follows: \$1,000,000 each claim; and \$1,000,000 general aggregate.		X
Crime Insurance: If Contractor's scope of work includes Contractor or Contractor's employees' involvement with money or securities of County, Contractor shall provide and maintain Commercial Crime coverage for a loss arising out of or in connection with any fraudulent or dishonest act committed by employees of the Contractor, in an amount of not less than \$1,000,000 single limit. Commercial Crime Coverage shall include third party liability coverage and list County as a loss payee		X
Builders Risk: The Contractor shall purchase and maintain All Risk Builder's Risk insurance upon the entire Project to One Hundred Percent (100%) of the insurable value thereof for the benefit of the Owner and the Contractor. Such insurance shall include any and all direct damage to all structures under construction (including temporary structures) and all materials, supplies, machinery, and equipment at the work site which are or will be incorporated in the work, which is caused by hazards such as but not limited to, the hazards of fire, lightning, wind, earthquake, flood, vandalism, malicious mischief, and other hazards included in a standard Extended Coverage Endorsement.	X	

The Sample PPRTA Trade Contractor Agreement is included in this solicitation for information and reference purposes only.

It is the responsibility of the Contractor to provide any exceptions to this Solicitation and/or Sample PPRTA Trade Contractor Agreement with its response for evaluation by El Paso County. It is the responsibility of the Consultant to provide the Solicitation and Sample Trade Contractor Agreement to their Legal Counsel for review and notation of any exceptions prior to submitting a proposal.

Following the determination of award, El Paso County and the successful Contractor will execute this document to consummate a contract between the parties. The Solicitation and the Contractor 's Offer will be attached and incorporated as part of the contract.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity,
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust, and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China Income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS a percentage of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code* on page 3 and the separate instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* on page 1.

What is FATCA reporting? The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name/disregarded entity name" line.

Partnership, C Corporation, or S Corporation. Enter the entity's name on the "Name" line and any business, trade, or "doing business as (DBA)" name on the "Business name/disregarded entity name" line.

Disregarded entity. For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulation section 301.7701-2(c)(2)(ii). Enter the owner's name on the "Name" line. The name of the entity entered on the "Name" line should never be a disregarded entity. The name on the "Name" line must be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on the "Name" line. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on the "Business name/disregarded entity name" line. If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Note. Check the appropriate box for the U.S. federal tax classification of the person whose name is entered on the "Name" line (individual/sole proprietor, Partnership, C Corporation, S Corporation, Trust/estate).

Limited Liability Company (LLC). If the person identified on the "Name" line is an LLC, check the "limited liability company" box only and enter the appropriate code for the U.S. federal tax classification in the space provided. If you are an LLC that is treated as a partnership for U.S. federal tax purposes, enter "P" for partnership. If you are an LLC that has filed a Form 8832 or a Form 2553 to be taxed as a corporation, enter "C" for C corporation or "S" for S corporation, as appropriate. If you are an LLC that is disregarded as an entity separate from its owner under Regulation section 301.7701-3 (except for employment and excise tax), do not check the LLC box unless the owner of the LLC (required to be identified on the "Name" line) is another LLC that is not disregarded for U.S. federal tax purposes. If the LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the "Name" line.

Other entities. Enter your business name as shown on required U.S. federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/disregarded entity name" line.

Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the *Exemptions* box, any code(s) that may apply to you. See *Exempt payee code* and *Exemption from FATCA reporting code* on page 3.

Exempt payee code. Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends. Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following codes identify payees that are exempt from backup withholding:

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements.

- A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)
- B—The United States or any of its agencies or instrumentalities
- C—A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities
- D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Reg. section 1.1472-1(c)(1)(i)
- E—A corporation that is a member of the same expanded affiliated group as a corporation described in Reg. section 1.1472-1(c)(1)(i)
- F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

- G—A real estate investment trust
- H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940
- I—A common trust fund as defined in section 584(a)
- J—A bank as defined in section 581
- K—A broker
- L—A trust exempt from tax under section 664 or described in section 4947(a)(1)
- M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, or 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the "Name" line must sign. Exempt payees, see *Exempt payee code* earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee ³ The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulation section 1.671-4(b)(2)(i)(A))	The grantor ⁴
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity ⁴
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulation section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see "Special rules for partnerships" on page 1.

*Note. Grantor also must provide a Form W-9 to trustee of trust.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.ftc.gov/idtheft or 1-877-IDTHEFT (1-877-438-4338).

Visit IRS.gov to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

TRADE CONTRACTOR AGREEMENT IFB-XX-XXX; _____

THIS AGREEMENT is made this _____ day of _____, 20__, by and between the Board of County Commissioners of the County of El Paso, State of Colorado (the "County"), the Pikes Peak Rural Transportation Authority ("PPRTA"), and _____ ("Contractor").

In consideration of the mutual covenants, agreements, conditions and undertakings hereinafter specified, the County, PPRTA and Contractor agree as follows:

Section 1. Scope of Work. Contractor shall perform all work in accordance with **Exhibit A**, which is attached hereto and incorporated by this reference, including furnishing all supervision, labor, equipment and materials therefor (the "Project").

Section 2. Agreement Documents. The Agreement Documents, which comprise the entire agreement and contract between the County, PPRTA and Contractor, consist of this Agreement, Exhibit A, Exhibit B (General Conditions of the Agreement); Invitation for Bids, Bid Form, Request for Proposals, Schedule, Performance and Payment Bond, Notice of Award, Notice to Proceed, general conditions, special conditions, measurement, payment, and technical specifications and drawings, and any modifications, change orders or other such revisions properly authorized after the execution of this Agreement.

Section 3. Agreement Price. PPRTA has appropriated the money necessary to fund this Project in the current fiscal year. PPRTA shall pay the Contractor in current funds for the performance of the work, subject to any additions and deletions, by written change order, the total sum not to exceed _____ Dollars (\$_____) (the "Original Agreement Amount"). Notwithstanding anything to the contrary contained in this Agreement, no change order or other form of directive by the County or PPRTA requiring additional compensable work to be performed, which causes the aggregate amount payable under this Agreement to exceed the amount appropriated for the Original Agreement Amount, will not be valid unless the Contractor is given written assurance by the County via an Amendment, a Contract Modification Order (CMO) shall be included as supporting documentation, that lawful appropriations have been made by PPRTA to cover the cost of the additional work.

Section 4. Non-appropriation. Pursuant to Article X, Section 20 of the Colorado Constitution and C.R.S. § 29-1-110, as amended, the financial obligations of the County as set forth herein after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise available. This Agreement is automatically terminated on January 1st of the first fiscal year for which funds are not appropriated. The County shall give the Contractor written notice of such non-appropriation. Financial obligations of the County payable after the current Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available, pursuant to the Constitution for annual funding appropriation.

Section 5. PPRTA Funding Availability

a. On November 2, 2004, the voters of El Paso County, Colorado approved a ballot measure for a one (1%) percent sales and use tax to pay for certain transportation improvement projects throughout the City of Colorado Springs, CO and El Paso County, CO to be funded from the sales and use tax revenue generated for PPRTA projects. On November 6, 2012 the voters of El Paso County, Colorado approved the extension of the portion of the sales and use tax dedicated to funding regional transportation capital improvements projects. This expected revenue from such sales and use tax is expected to be equal to or in excess of the contract sum of this Agreement.

b. Financial obligations of PPRTA payable after the current fiscal year are contingent on appropriation or budgeting of funds for those obligations. Should the performance of this Agreement continue past the current fiscal year, Contractor may continue work in the new fiscal year, unless Contractor is notified by the County or PPRTA in writing that sufficient funds are not available and have not been appropriated for continuance of Contractor's performance under this Agreement into the new fiscal year

c. Optional Extension Term: The prices quoted in this Solicitation shall prevail during the specified term of the Agreement, at which time the County and PPRTA shall have the option to extend the Agreement for four (4) additional one-year periods. Continuation of the Agreement beyond the initial period is a County and PPRTA prerogative and not a right of the Contractor and will be exercised only when such continuation is clearly in the best interest of the County and PPRTA. Any renewal of, or change orders to this Agreement are contingent upon available funding and satisfactory performance by the Contractor, as determined by the County and PPRTA. It shall be the Contractor's responsibility to provide the County Representative (with a copy to the Contracts and Procurement Division) all requested Agreement changes and/or price adjustments at least 90 days prior to the expiration of the Agreement or Agreement renewal date for consideration. After review by the County and PPRTA of the Contractor's requested changes or price adjustments, the County and PPRTA will enter into negotiations with the Contractor to determine if the requested Agreement changes and/or price adjustments are acceptable to the County and PPRTA. Negotiations must be completed ninety (90) days prior to expiration of the Agreement or Agreement renewal date. Failure of the County, PPRTA and the Contractor to agree upon the terms and conditions for the renewal may result in resolicitation of the goods or services covered by the original Agreement. Continued performance by the Contractor outside of the Agreement term will be at the Contractor's risk.

Section 6. Times and Methods of Payment.

a. Progress payments shall be made in proportion to services rendered and shall be due and owing within thirty (30) days of Contractor's submittal of a monthly invoice. If the County or PPRTA object to any invoices submitted by Contractor or required documentation is missing, the County or PPRTA will so advise Contractor in writing giving the reason within fourteen (14) days of receipt of such invoice.

b. If PPRTA fails to make payments due Contractor within sixty (60) days after receipt and acceptance of Contractor's invoice and required documentation, Contractor may, after giving seven (7) days' written notice to PPRTA and the County, suspend services under this Agreement until Contractor's outstanding bills have been paid in full.

Section 7. Retainage. An amount up to or equal to five percent (5%) of all progress payments shall be retained by PPRTA until the Project is completed satisfactorily and finally accepted by the County.

Section 8. Final Payment. PPRTA shall make final payment, including release of retainage, to Contractor when the Project is complete and finally accepted by the County and PPRTA.

Section 9. Final Acceptance. Final acceptance of the Project shall follow inspection and approval of Contractor's performance by the County and PPRTA, along with inspection by appropriate governmental officials pursuant to local, state and federal requirements, if necessary. The County and PPRTA shall have the right and authority to determine the acceptability of Contractor's performance for conformity with this Agreement, which determination shall be conclusive and binding upon Contractor. Final acceptance by the County and PPRTA is subject to the provisions of this Agreement and C.R.S. § 38-26-107, as amended, and in no manner affects or releases applicable warranties or guarantees with Contractor or Suppliers for the Project.

The Project, when presented to the County and PPRTA for final acceptance, shall be delivered free from any and all claims or encumbrances whether then in existence or later established by law, statute, ordinance or otherwise. No claim or encumbrance against the Project or the Project site shall be outstanding or otherwise unsettled at the time of final acceptance. The right to assert any claim or encumbrance against the Project, after final acceptance by the County and PPRTA and final payment to Contractor, is hereby waived by Contractor on behalf of itself and any subcontractor, laborer, materialman, equipment supplier, manufacturer or other person.

Section 10. Commencement and Completion of Performance. The services called for shall commence on the date of Agreement execution by all Parties and as outlined in Section 2 of Exhibit A and shall be completed in **XX** Working Days. The Agreement term, based on the Agreement execution and working days, will end on _____, 20___. Contractor shall commence any work requested by the County within **XX (XX)** days of notification, either through the applicable Notice to Proceed(s) or by issuance of this Agreement by the County. In

the event Contractor fails to commence work within this time period, the County and PPRTA may take over the work and prosecute the same to completion. The date of beginning and the time for completion of the work are essential conditions of this Agreement. Contractor shall proceed with the work at such rate of progress to ensure full completion within the Agreement time. It is expressly understood and agreed by and between the County, PPRTA and Contractor that the Agreement time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work during the period such work is to be performed. If Contractor shall fail to complete the work within the Agreement time, or extension of time granted by the County and PPRTA, then Contractor shall pay to the County and PPRTA the amount of _____ Dollars (\$___) as liquidated damages and not as penalty, for each calendar day that Contractor shall be in default after the allowable Working Days have expired.

Section 11. Termination.

a. This Agreement may be terminated in whole or in part in writing by any party in the event of substantial failure by any other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided, that no such termination may be affected unless the other party is given:

- i. not less than ten (10) calendar days' written notice of intent to terminate, and
- ii. an opportunity for consultation with the terminating party prior to termination.

b. This Agreement may be terminated in whole or in part in writing by the County or PPRTA for the convenience of either entity.

c. Upon receipt of a termination action pursuant to paragraphs a. or b. above, Contractor shall promptly discontinue all services affected (unless the notice directs otherwise), and the County and PPRTA may take over the work and prosecute the same to completion by agreement with another party or otherwise.

d. Pandemics. The Contractor shall abide by any local, state, and federal health orders in effect or instituted during the term of this Agreement. The Contractor is expected to implement any such changes effective immediately. Failure to abide by such requirements may result in termination of the Agreement.

Section 12. Taxes, Licenses, Permits and Regulations. In all operations connected with the Project, Contractor shall pay all fees, charges and taxes imposed by law and shall obtain all licenses and permits necessary for completion of the Project, paying all fees therefore, unless otherwise specified by the County and PPRTA. The County and PPRTA shall assist Contractor to determine which licenses and permits are required for completion of the Project.

The County is exempt from Colorado state sales and use taxes on materials to be permanently incorporated in the work. Accordingly, taxes for which the County is exempt shall not be included in any amounts payable to the Contractor under this Agreement. The County shall, upon request, furnish Contractor with a copy of its Certificate of Tax Exemption. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an exemption certificate and purchase the materials tax free. Pursuant to C.R.S. §39-26-114(1)(a)(XIX), Contractor and subcontractors shall be liable to the State of Colorado for exempt taxes paid due to failure to apply for exemption certificates or for failure to use said certificates. Contractor shall comply with all laws, ordinances, codes, rules and regulations of all governmental authorities, whether local, state or federal, relating to the performance of work on the Project and, particularly, in complying with those laws concerning the environment, workers' compensation, safety and health, state labor and materials, and equal employment opportunity.

Section 13. Indemnification. The Contractor shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the County and PPRTA, their respective elected and appointed officials, officers, employees, and agents, and their insurers, and employees, from and against all liability, claims, demands, suits, actions or proceedings of any kind, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement, including workers' compensation claims, in any way resulting from or arising from the services rendered by the Contractor, its employees, agents or subcontractors, or others for whom the Contractor is legally liable,

under this Agreement; provided, however, that the Contractor need not indemnify or save harmless the County or PPRTA, their elected and appointed officials, officers, employees, and agents, from damages resulting from the negligence of the County's or PPRTA's elected and appointed officials, officers, employees, and agents, and their insurers, and employees. The County and PPRTA cannot and by this Agreement do not agree to indemnify, hold harmless, exonerate or assume the defense of the Contractor or any other person or entity whatsoever, for any purpose whatsoever.

The Contractor shall, to the fullest extent permitted by law, defend, investigate, handle, respond to, and provide defense for and defend against, any such liability, claims or demands, at the sole expense of the Contractor, or, at the option of the County and PPRTA, agrees to pay the County and PPRTA or reimburse the County and PPRTA for the defense costs incurred by the County and PPRTA in connection with any such liability, claims or demands. The Contractor shall, to the fullest extent permitted by law, defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent.

This indemnification provision is intended to comply with C.R.S. § 13-21-111.5(6), as amended, and shall be read as broadly as permitted to satisfy that intent.

Section 14. Insurance. The Contractor agrees to procure and maintain, during the life of this Agreement, a policy or policies of insurance against all liability, claims, demands and other obligations assumed by the Contractor, pursuant to Section 1 of Exhibit A. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. The Contractor shall not be relieved of any liability, claims, demands or other obligations assumed, pursuant to Section 1 of Exhibit A, by reason of its failure to procure and maintain, during the life of this Agreement, insurance in sufficient amounts, durations or types.

The Contractor shall procure and maintain, during the life of this Agreement, for itself and any subcontractor, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the County and PPRTA. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor, pursuant to this Agreement. In the case of a claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

a. Workers' Compensation Insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of the work under this Agreement, and Employers Liability Insurance with minimum limits of Five Hundred Thousand Dollars (\$500,000) each accident, Five Hundred Thousand Dollars (\$500,000) disease-policy limit, and Five Hundred Thousand Dollars (\$500,000) disease-each employee. Evidence of qualified self-insured status may be substituted for the workers' compensation requirements of this Paragraph.

b. Commercial General Liability Insurance to be written with a limit of liability of not less than One Million Dollars (\$1,000,000) for all damages arising out of bodily injury, personal injury (including coverage for employee and contractual acts), including death, at any time resulting therefrom, arising out of any one occurrence, and not less than Two Million Dollars (\$2,000,000) general aggregate for all damages arising out of bodily injury, including death, at any time resulting therefrom, during the policy period. This policy shall also include coverage for blanket contractual and independent contractor risks.

The limits of Commercial General Liability Insurance for broad-form property damage (including products and completed operations) shall be not less than One Million Dollars (\$1,000,000) for all damages arising out of injury to or destruction of property in any one occurrence, and not less than Two Million Dollars (\$2,000,000) for all damages arising out of injury to or destruction of property, including the County's and PPRTA's property during the policy period.

The Commercial General Liability Insurance policy shall include coverage for explosion, collapse and underground hazards. The policy shall contain a severability of interests provision.

c. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) each occurrence, and One Million Dollars (\$1,000,000) aggregate with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Agreement. The policy shall contain a severability of interests provision.

The policy required by Paragraph b. above shall be endorsed to include the County and PPRTA, whether private or governmental, their officers and employees, and any other person(s), company(ies) or entity(ies) deemed necessary by the County and PPRTA as additional insureds. The Contractor shall be solely responsible for any deductible losses under any policy required herein.

Every policy required above shall be primary insurance, with the exception of Workers' Compensation, and any insurance carried by the County and PPRTA, their officers, their employees or their consultants shall be excess and not contributory insurance to that provided by the Contractor. No additional insured endorsement to the policy required by this Agreement shall contain any exclusion for bodily injury or property damage arising from completed operations.

The certificate of insurance provided by the Contractor shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect and shall be reviewed and approved by the County and PPRTA prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and the coverages afforded under the policies. The completed certificate of insurance shall be sent to:

El Paso County
Attn: Contract Specialist
15 East Vermijo Avenue
Colorado Springs, Colorado 80903

It is the affirmative obligation of the Contractor to notify the County and PPRTA, as provided in this Agreement, a copy of the notice, within two (2) business days of the cancellation or substantive change to any insurance policy required under this Agreement, and failure to do so shall constitute a breach of this Agreement.

Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a material breach of Agreement upon which the County and PPRTA may immediately terminate this Agreement or, at their discretion, the County and PPRTA may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the County and PPRTA shall be repaid by the Contractor to the County and PPRTA upon demand, or the County and PPRTA may offset the cost of the premiums against any monies due to the Contractor from the County and PPRTA.

The County and PPRTA reserve the right to request and receive a certified copy of any policy and any endorsement thereto.

The parties hereto understand and agree that the County and PPRTA, their officers and employees, are relying on and do not waive or intend to waive by any provision of this Agreement the monetary limitations (presently Three Hundred Eighty-Seven Thousand Dollars (\$387,000) for any injury to one person in any single occurrence, and One Million Ninety-Three Thousand Dollars (\$1,093,000) for any injury to two or more persons in any single occurrence; except that, in such instance, no person may recover in excess of Three Hundred Eighty-Seven Thousand Dollars (\$387,000), which amounts shall be adjusted by an amount reflecting the percentage change over a four-year period in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Denver-Boulder-Greeley, All Items, All Urban Consumers, or its successor index, or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as from time to time amended, or otherwise available to the County and PPRTA, their officers or employees.

Section 15. Performance and Payment Bond. Contractor shall provide to the County and PPRTA, prior to commencement of performance, a Performance and Payment Bond acceptable to the County and PPRTA in the full

amount of _____ Dollars (\$ _____), including provisions for any adjustment thereof in accordance with the terms of this Agreement. Contractor shall obtain such bond on the County's and PPRTA's behalf, separate and apart from any similar bonds or surety or warranty agreements entered into independently between the County and PPRTA and any manufacturer or supplier.

Section 16. Government Immunity. Liability for claims for injuries to persons or property arising from the negligence of the County and PPRTA, their departments, boards, commissions committees, bureaus, offices, employees, and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§ 24-30-1501, *et seq.*, C.R.S. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

Section 17. Prohibited Terms. Any term included in this Agreement that requires the County or PPRTA to indemnify or hold Contractor harmless, requires the County and PPRTA to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of § 24-106-109, C.R.S.

Section 18. Warranties and Guarantees. Contractor hereby represents, warrants and guarantees to the County and PPRTA all workmanship, equipment and materials on or made a part of the Project and its structures for a period of one (1) year from and after the date of final acceptance of the work by the County and PPRTA, as provided by this Agreement.

Section 19. Subcontractors. All Agreements between Contractor and subcontractors shall conform explicitly to all applicable provisions of this Agreement. In all events, Contractor shall be responsible and held liable for any bonding, insurance, warranties, indemnities, progress payments and completion of performance of or to such subcontractors. Upon receipt of progress and final payments from PPRTA, Contractor shall disburse the same immediately to subcontractors without any requirement of the County to supervise the same. The County or PPRTA may, but shall not be obligated to, require Contractor to furnish lien waivers for the work performed or materials furnished by subcontractors or materialmen prior to payment of progress payments or final payment. No contractual relationship shall exist between the County and PPRTA and any subcontractor because of the subletting of any part of the Project work.

Section 20. Change Order. There shall be no increase in price or change in the scope of work described herein without a written change order issued by the County and PPRTA along with the County's and PPRTA's written assurance that lawful appropriations have been made by the County and PPRTA to cover the cost of any additional work or materials described in the change order and an Amendment has been completed.

Section 21. Amendment. This Agreement may be amended from time to time by agreement between the parties hereto. No amendment, modification or alteration of this Agreement shall be binding upon the parties hereto unless the same is in writing and approved by the duly authorized representatives of each party hereto.

Section 22. Work Rules.

a. Contractor shall perform all work hereunder in keeping with the rules and regulations that the County and PPRTA may promulgate at any time for the safe, orderly and efficient conduct of all operations.

b. The County and PPRTA shall have the right to require of Contractor the immediate removal from the Project of any employee of Contractor or of his subcontractors who, in the discretion of the County and PPRTA, is not qualified to perform the work assigned to him, is guilty of improper conduct, or is not working in harmony with the other trades.

c. Nothing contained in this Agreement shall constitute Contractor as being an employee of the County or PPRTA, nor shall any employment relationship between the County, PPRTA and Contractor be created by the terms hereof.

d. Contractor is responsible for the safety of any of its materials, tools, possessions and rented items stored on the job site, and for protection of the Project, and shall hold the County and PPRTA and their authorized representatives harmless from any damage or loss incurred thereto.

e. Contractor shall promptly pay in full for any and all damage caused to the Project site by Contractor or by any subcontractor or other person or entity of any nature furnishing materials, equipment, machinery, supplies, labor, skilled services or instruments for whose actions Contractor is responsible hereunder.

f. No material, equipment, tools, supplies or instruments, other than those belonging to or leased by Contractor, will be removed from the Project site by Contractor without the prior written approval of the County and PPRTA.

g. Contractor agrees to report immediately to the County and PPRTA, in writing, any and all property damage and/or personal injury that occurs on the Project site during the course of Contractor's performance.

Section 23. Assignment. Contractor shall not, at any time, assign any interest in this Agreement or the other Agreement Documents to any person or entity without the prior written consent of the County and PPRTA. The terms of this Agreement shall inure to and be binding upon the successors and assigns of the parties hereto.

Section 24. Nondiscrimination. The Contractor will take affirmative action to not refuse to hire, to discharge, to promote or demote, to harass during the course of employment, or to discriminate in matters of compensation, terms, conditions, or privileges of employment against any employee, subcontractor, or applicant for employment because of race, color, sex, sexual orientation, gender identity, gender expression, age, religion, disability, national origin or ancestry, as provided by Colo. Rev. Stat. § 24-34-402 (1)(a). Contractor agrees to comply with all applicable Federal and State statutes and regulations concerning non-discrimination.

Section 25. Severability. If any term, section or other provision of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, section or other provision shall not affect any of the remaining provisions of this Agreement.

Section 26. Waiver. No waiver by either party of any right, term or condition of this Agreement shall be deemed or construed as a waiver of any other right, term or condition, nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

Section 27. Personally Identifiable Information (PII). If the Contractor or any of its Subcontractors will or may receive PII under this Agreement, Contractor shall provide for the security of such PII, in a manner and form acceptable to the County and PPRTA, including, without limitation, non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections and audits. Contractor shall be a "Third-Party Service Provider" as defined in C.R.S. § 24-73-101(1) (i) and shall maintain security procedures and practices consistent with C.R.S. § 24-73-102 and C.R.S. § 24-73-103. In the event Contractor incurs a data breach whereby it is reasonably believed that any of County's and PPRTA's PII either could have been, or was compromised, then Contractor shall immediately notify the County in writing and shall abide by C.R.S. § 24-73-101 *et seq.*

Section 28. Remedies. None of the remedies provided to any party under this Agreement shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which such party may then be entitled. Every obligation assumed by, or imposed upon, either party hereto shall be enforceable by any appropriate action, petition or proceeding at law or in equity. In addition to any other remedies provided by law, this Agreement shall be specifically enforceable by either party. This Agreement shall be construed in accordance with the laws of the State of Colorado, and particularly those relating to governmental contracts. The duties and obligations imposed by this

Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law, including, but not limited to, tort remedies. The Contractor agrees that the economic loss rule as set forth in the *Town of Alma v. Azco Construction, Inc.*, 10 P.3d 1256 (Colo. 2000) shall not serve as a limitation on the County's or PPRTA's right to pursue tort remedies in addition to other remedies it may have against the Contractor. Such rights and remedies shall survive the acceptance of the Work or any termination of this Agreement. Contractor further specifically waives all the provisions of Chapter 8 of Article 20 of Title 13, Colorado Revised Statutes, regarding defects in the Work under this Agreement.

Section 29. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.

Section 30. Entirety. This Agreement constitutes the entire agreement between the parties concerning the subject matter herein, and all prior negotiations, representations, Agreements, understandings or agreements pertaining to such matters are merged into and are superseded by this Agreement.

{REMAINDER OF PAGE LEFT BLANK – SIGNATURES ON NEXT PAGE}

EXHIBIT A to Agreement between the County, PPRTA and _____.
IFB-XX-XXX; _____

1. **Scope of Services.** The Contractor hereby agrees to and accepts responsibility to perform the following services:

In the event of any conflicts between this Agreement and any attached solicitation documents, this Agreement shall control.

2. **Time of Performance.** The services of the Contractor shall commence (choose one):

- As of the date of this Agreement.
- As specified in a Notice to Proceed(s) to be provided by the County.
- As of the following date: _____, 20__, (this is a working day Agreement and shall be completed within ____ working days).

The services of the Contractor shall be completed, in XX Workable Working Days or shall end, by _____, 20__, at which time the County and PPRTA shall have the option to extend the Agreement for four additional one-year terms under the same terms and conditions of the original Agreement by issuance of an Extension Letter. Continuation of the Agreement beyond the initial period is a County and a PPRTA prerogative and not a right of the Contractor and will be exercised only when such continuation is clearly in the best interest of the County and PPRTA.

3. **Compensation.** PPRTA agrees to compensate the Contractor for the performance of services detailed in Section 1 above, Scope of Services, as follows (choose one):

- Phased payments for completed work: Phase I - \$_____; Phase II - \$_____; Phase III - \$_____.
- Hourly rate: \$_____/hour or as outlined in the attached document.
- Lump sum payment upon completion: \$_____.
- Other:

It is expressly understood and agreed that the total compensation to be paid to the Contractor under this Agreement shall not exceed \$_____.

4. **Notices of Termination.** Notices of termination shall be given at least thirty (30) days before the effective date of termination.

5. **Additional Insurance Requirements.**

Protective Liability and Property Damage Insurance covering the liability of the County, including any employee, officer, or agent of the County, with respect to all operations under the Agreement by the Contractor or his subcontractors, shall be procured and maintained during the life of the Agreement. The limits of the County's

Protective Liability Policy, to be provided by the Contractor, as described in Section 7, shall be increased to the same limits for the Contractor's Commercial General Liability Insurance. **Check box if required only.**

Professional Liability Insurance is required. If Contractor's scope of work includes the performance of professional services, Contractor shall provide and maintain, for the statute of repose, Professional liability insurance covering any damages caused by an error, omission in performance of the professional services with the required minimum limits of One Million Dollars (\$1,000,000) each claim and Two Million Dollars (\$2,000,000) annual aggregate, and Contractor shall maintain such coverage for at least two (2) years from the termination of this Agreement. **Check box if required only.**

Umbrella Liability Insurance is required: Commercial Umbrella/Excess Liability Insurance for bodily injury and property damage liability must sit over Contractor's primary Employer's Liability, Commercial General Liability and Commercial Automobile Liability with limits of: One Million Dollars (\$1,000,000) each occurrence and aggregate. Higher or Lower limits may be required or determined acceptable at the sole discretion of County. **Check box if required only.**

Protected Information: If Contractor's scope of work will include access to Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, Contractor shall maintain Cyber/ Network Security and Privacy Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000) each occurrence; and Two Million Dollars (\$2,000,000) general aggregate to cover civil, regulatory and statutory damages, contractual damage, as well as data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as confidential information of County. **Check box if required only.**

Pollution Liability: If Contractor's scope of work includes any pollution liability exposure, Contractor must provide and maintain a separate Pollution Liability Insurance policy. Such insurance shall include coverage for the Hold-Harmless or Indemnification Clause contained in this Agreement. Coverage shall include Additional Insured status in favor of County, its agents and employees and a Waiver of Subrogation in favor of additional insured parties the policy shall be written with a limit of liability no less than One Million Dollars (\$1,000,000) each occurrence and aggregate. **Check box if required only.**

Crime Insurance: If Contractor's scope of work includes Contractor or Contractor's employees' involvement with money or securities of County, Contractor shall provide and maintain Commercial Crime coverage for a loss arising out of or in connection with any fraudulent or dishonest act committed by employees of the Contractor, in an amount of not less than One Million Dollars (\$1,000,000) single limit. Commercial Crime Coverage shall include third party liability coverage and list County as a loss payee. **Check box if required only.**

Builders Risk: The Contractor shall purchase and maintain All Risk Builder's Risk insurance upon the entire Project to One Hundred Percent (100%) of the insurable value thereof for the benefit of the County, PPRTA, and the Contractor. Such insurance shall include any and all direct damage to all structures under construction (including temporary structures) and all materials, supplies, machinery, and equipment at the work site which are or will be incorporated in the work, which is caused by hazards such as but not limited to, the hazards of fire, lightning, wind, earthquake, flood, vandalism, malicious mischief, and other hazards included in a standard Extended Coverage Endorsement. **Check box if required only.**

Subrogation Waiver: All insurance policies secured or maintained by Contractor in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against the County, PPRTA, and their respective agencies, institutions, organizations, officers, agents, employees, and volunteers. **REQUIRED.**

Waiver of Workers' Compensation Insurance Requirements. Check box for Sole Proprietors only.

A Waiver of Workers' Compensation Insurance is required only when a Contractor is a sole proprietor and has no employees. This form must be requested from the Contracts & Procurement Division.

6. Addresses for Notices. The addresses for Notices are as follows:

To the County: El Paso County Contracts & Procurement Division
15 East Vermijo Avenue
Colorado Springs, Colorado 80903

To PPRTA: Pikes Peak Rural Transportation Authority 15 S
7th Street
Colorado Springs, CO 80905

AND

To the Contractor:

7. Special Conditions.

- No special conditions
- Special Conditions are as follows:

EXHIBIT B to Agreement between the County, PPRTA and _____.
IFB-XX-XXX; _____

GENERAL CONDITIONS OF THE AGREEMENT

EL PASO COUNTY
PIKES PEAK RURAL TRANSPORTATION AUTHORITY (PPRTA)

EXHIBIT B

GENERAL CONDITIONS OF THE AGREEMENT

APPENDIX C – GENERAL CONDITIONS OF THE CONTRACT

FOR CONSTRUCTION CONTRACT #00-000

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GENERAL CONDITIONS OF THE CONTRACT

ARTICLE 1: CONTRACT DOCUMENTS

1.1 Definitions

1.1.1 The Contract Documents

The Contract Documents consist of the Trade Contractor Agreement between the PPRTA, Owner and Contractor, these General Conditions of the Contract, the Performance Bond, the Payment Bond, the Notice to Proceed and the Construction Documents, which are composed of the Drawings, the Technical Specifications, and all Addenda and Modifications. The Contract Documents also include all Invitation For Bids (IFB) or Request For Proposals (RFP) documents, the Contractor's Bid or proposal and portions of Addenda relating to any of these, or any other documents, specifically enumerated in the Contract. A Modification is 1) a written amendment to the Contract signed by both parties, (2) a Change Order or Change Directive, or (3) a written Field Order for a minor change in the work issued by the Architect or Owner pursuant to Paragraph 11.1.3.

1.1.2 The Contract

The Contract Documents form the Contract for Construction (the "Contract"). The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Architect and the Contractor or the Owner's Representative and the Contractor; but the Owner's Representative and the Contractor shall each be entitled to the performance and enforcement of the obligations intended for its benefit. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner and Owner's Representative and any Subcontractor(s).

1.1.3 The Work

The work is comprised of the completed construction required by the Contract Documents and includes all supervision, labor, tools and equipment necessary to produce such construction and all materials and equipment incorporated or to be incorporated in such construction.

1.1.4 The Project

The Project is the total construction of which the work performed under the Contract Documents may be the whole or a part.

1.2 Execution, Correlation and Intent

1.2.1 The Contract shall be signed by the PPRTA, the Owner and Contractor.

1.2.2 By executing the Contract, the Contractor represents that he/she has visited the Site, become familiar with the local conditions under which the work is to be performed, and correlated any observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the work. The Contract Documents are complementary and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations that have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meaning. Full-size or large-scale details or drawings shall govern small-scale drawings which they are intended to amplify. Dimensions shall be figured rather than determined by scale or rule. In the event of any conflict or inconsistency among the Contract Documents, the requirement defining, or describing the higher quality or more demanding work or performance shall control.

1.2.4 The organization of the Technical Specifications into divisions, sections, and articles, and the arrangement of the Drawings shall not control the Contractor in dividing the work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.3 Ownership and Use of Documents

1.3.1 All Contract Drawings and Technical Specifications are the property of the Owner and shall not be used by the Contractor for any purpose other than the work to be performed under this Contract. Upon completion of work, all Shop Drawings and As-Built Drawings shall be the property of the Owner. The Contractor will be permitted to keep a copy of the Contract Drawings, Technical Specifications and Shop Drawings, excluding any such drawings or documents relating to the Project's security system which might compromise that system, as necessary to maintain a contract record file and to perform warranty work.

ARTICLE II: OWNER

2.1 Definitions

2.1.1 The Owner is The Board of County Commissioners of El Paso County, Colorado identified as such in the Contract and is referred to throughout the Contract Documents as "Owner" or as the "County" as if singular in number. The term Owner or County shall include the Owner's Project Manager who shall have the authority to act for the Owner on the Project.

2.1.2 Owner's Representative means the County representative or consultant selected by the Owner to represent and advise the Owner on-site during construction, accountable only to the County. The Owner's Representative shall have no authority to act for or on behalf of the Owner, except as specifically set forth herein.

2.1.2 PPRTA means the Pikes Peak Rural Transportation Authority, which is duly established pursuant to C.R.S. § 43-4-601 *et seq.*

2.2 Information and Services Required of the Owner

2.2.1 The Owner shall furnish a survey describing the physical characteristics, legal limitations and utility locations for the Site of the Project, and a legal description of the Site.

2.2.2 Except as provided in Subparagraph 3.7.1, the Owner shall secure and authorize payment for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures.

2.2.3 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness in order to avoid delay in the orderly progress of the work.

2.2.4 Unless otherwise provided in the Contract Documents. The Contractor will be furnished, free of charge, a reasonable number of Drawings and Specifications necessary for the execution of the work.

2.2.5 The Owner shall forward all instructions to the Contractor directly, or may, at its discretion, forward instructions through the Owner's Authorized Representative.

2.2.6 The foregoing are in addition to the other duties and responsibilities of the Owner, enumerated herein, particularly those with respect to work by Owner or by Separate Contractors, Payments and Completion, and Insurance as provided in Articles III, VIII and X, respectively.

2.3 Owner's Right to Stop the Work

2.3.1 If the Contractor fails to correct defective work as required by Paragraph 14.2 or persistently fails to carry out the work in accordance with the Contract Documents, the Owner, by a written order signed by Owner's Project Manager, or a designee thereof, may order the Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

2.4 Owner's Right to Carry Out the Work

2.4.1 If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents, and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness satisfactorily to Owner, the Owner may, seven (7) days after giving the Contractor an additional written notice, and without prejudice to any other right or remedy he may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for additional architectural services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall promptly pay the difference to the Owner.

2.5 Owner's Use of Premises

2.5.1 The Owner reserves the right, upon written notice to the Contractor, to occupy any portion of the work prior to Substantial Completion thereof. Such occupancy shall constitute acceptance of the portion of the work occupied, subject to a list of items to be completed or corrected, but shall not otherwise affect the rights or responsibilities of the parties except as specifically provided in this Paragraph 2.5. For purposes of this paragraph, access and limited use by the County of any portion of the premises for training purposes or for the installation and testing of owner-furnished equipment shall not constitute occupancy of any portion of the premises.

2.5.2 In the event that the Owner desires to exercise such right of occupancy, the Contractor shall cooperate in making available for the Owner's use such building services as heating, ventilating, cooling, water, lighting and telephone and shall complete as soon as practicable any equipment required to furnish such services which are not then ready for operation and use.

2.5.3 During any such Partial occupancy, mutually acceptable arrangements shall be made between the Owner and Contractor regarding the operation and cost of building services and guarantees and/or warranties respecting the portion of the work affected by the occupancy.

2.6 Owner's Review, Observation and Approval Rights

2.6.1 The Owner's review, observation and approval rights shall not relieve the Contractor of its duty, express or implied, to perform its obligations in accordance with the Construct Documents.

ARTICLE III: CONTRACTOR

3.1 Definition

3.1.1 Contractor means the person, partnership, corporation, or joint venture, which has contracted with the Owner to perform the work as an independent contractor.

3.2 Review of Contract Documents

3.2.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner any error, inconsistency, or omission he may discover. The Contractor shall not perform any portion of the work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the work in accordance with the provisions of the Contract Documents.

3.3 Supervision and Construction Procedures

3.3.1 The Contractor agrees to perform the work or cause the work to be performed in a manner which is in strict accordance and compliance with the requirements of the Contract Documents.

3.3.2 The Contractor shall supervise, direct and perform the work using the Contractor's highest and best skill and attention. The Contractor shall also supervise and direct the work performed by its Subcontractor(s) and be responsible thereof. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures.

3.3.3 The Contractor shall be responsible to the Owner for the acts and omissions of its employees, Subcontractor(s) and their agents and employees, and all other persons performing any portion of the work under a contract with the Contractor.

3.3.4 The Contractor shall not be relieved of its obligations to perform the work in accordance with the Contract Documents either by the activities or duties of the Owner, the Owner's Representative in their administration of the Contract, or by observations, inspections, tests or approvals required or performed by persons other than the Contractor.

3.4 Labor and Materials

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all Supervision, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and service necessary for the proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated in the work.

3.4.2 The Contractor shall assign an adequate number of persons to each task to complete the work on schedule and in accordance with the Contract Documents.

3.4.3 The Contractor shall have available for use when needed all necessary construction machinery and equipment which is safe, in good working condition, and adequate for the task and in the numbers needed to maintain a rate of progress sufficient to complete the work within the Contract Time and milestones.

3.4.4 The Contractor shall at all times enforce strict discipline and good order among its employees and Subcontractors and shall not employ to work or allow to be employed any unfit person or anyone not skilled in the task assigned.

3.5 Contractor's Warranties and Correction of Work

3.5.1 The Contractor warrants that all parts, materials, components, equipment and other items used to perform the work shall be new (unless otherwise specified) and suitable for the purpose used and will be of good quality, free from faults and defects and in conformance with the Contract Documents. The Contractor also warrants that its workers will be sufficiently skilled to produce the highest quality of work which is free from faults and defects. Work not so conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor shall, when requested, furnish the Owner with satisfactory evidence as to the kind and quality of materials and equipment. The Contractor further warrants that the construction processes and methods employed to perform the work shall be suitable for the results required and expected. If the Contractor proposes to use an unproved and untried method, process or product, the Owner must be advised of the proposal, in writing. The Owner may permit experimentation, but may require special guarantees of the Contractor to cover the work produced by any new and untried process, method or product.

3.5.2 The Contractor further warrants that it has full title to all equipment, components and other items conveyed to the Owner under the terms of this Contract, that its transfer of such title to the Owner is rightful and that all such equipment, components and other items shall be transferred free and clear from all security interest, liens, or encumbrances whatsoever. The Contractor agrees to warrant and defend such title against all persons claiming the whole or any part thereof at no cost to the Owner.

3.5.3 The Contractor shall promptly repair, replace or otherwise correct any of its workmanship and any parts, materials, components, equipment or other items in the work which contain faults or defects whether such failures are observed by the Owner or the Contractor before or after Final Completion. The Contractor shall bear all costs of correcting such work covered by the warranties. The Contractor's warranties shall continue for a period of one (1) year after the date of Final Completion or such longer period of time as may be prescribed by the terms of any special warranties required by the Contract Documents. If repair or replacement of faulty items of the work is necessary, proper temporary substitutes shall be provided by the Contractor in order to maintain the progress of the work and/or keep systems operating without any additional costs to the Owner. These obligations shall survive termination of the Contract. Nothing herein shall limit Owner's right to seek recovery for latent defects which are not observable until after the warranty periods have run.

3.5.4 Nothing herein shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents. The establishment of the warranty periods set forth above relates only to the specific obligations of the Contractor to correct known defects in the work, and has no relationship to the time within which its obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligations and resulting damages other than specifically to correct known defects in the work which are discovered and called to the Contractor's attention during the warranty period.

3.5.5 The Contractor at its own expense shall also repair or replace any damages to any equipment, facilities or other personal or real property owned or leased by the Owner which is damaged as a result of any such fault or defect, at no cost the Owner.

3.5.6 All subcontractors', manufacturers', and suppliers' warranties and guarantees, expressed or implied, for any part of the work and any materials used therein shall be obtained and enforced by the Contractor for the benefit of the Owner whether or not these warranties have been assigned or otherwise transferred to the Owner. The Contractor shall assign or transfer such warranties and guarantees to the Owner if the Owner requests the Contractor to do so, but such transfer shall not affect the Contractor's obligation to enforce such warranties and guarantees.

3.6 Taxes

3.6.1 All Contractors and Subcontractors performing work on the Project shall apply to the State of Colorado Department of Revenue for a Tax Exemption Certificate. All Contractors are to have their own tax exemption number to cover the purchase of materials provided to this job. Contractors and Subcontractors shall apply for the Tax Exemption Certificate using Form DR 172 (Rev. 6/79). This form may be obtained from the State of Colorado Department of Revenue. Contractors and Subcontractors shall submit their Tax Exemption Certificate numbers to the Owner prior to beginning any work.

3.6.2 The Contractor shall furnish the County with City of Colorado Springs Sales Tax Forms 16 and ST-16A with each monthly request for progress payment. If the Contractor fails to keep such records resulting in the inability of the County to collect the amount of sales tax which the Contractor has paid, the Contractor shall be liable to the County for the amount of sales tax which the County would have recovered had the Contractor kept sufficient records.

3.7 Permits, Fees and Notices

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permits, and shall secure and pay for all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Contract and which are legally required at the time the bids are received.

3.7.2 The Contractor shall waive all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work.

3.7.3 It is not the responsibility of the Contractor to ascertain that the requirements of the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. However, if the Contractor observes that any of the Contract Documents are at variance therewith in any respect, the Contractor shall promptly notify the Owner in writing, and any necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs any work knowing it to be contrary to laws, codes, ordinances, rules and regulations, then regardless of whether it gives notice as required by Subparagraph 3.7.3, Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto and for the correction thereof.

3.8 Allowances

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom it makes a reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

3.8.2.1. These allowances shall cover the direct cost to the Contractor (less any applicable trade discount) of the materials and equipment required by the allowance delivered at the Site, all labor, installation costs or other reasonable and customary direct expenses, and all applicable taxes.

3.8.2.2 The Contractor's costs for unloading and handling on the Site, storage, supervision, overhead, profit and related costs shall be included in the Contract Sum, and not in the allowance.

3.8.2.3. Whenever the cost of an item is more than or less than the allowance thereof, the Contract Sum shall be adjusted accordingly by Change Order.

3.9 Superintendent

3.9.1 The Contractor shall employ a competent Superintendent whose qualifications shall be acceptable to the Owner. The Superintendent shall serve on a full-time basis at the work site and shall be authorized to act on behalf of the Contractor in all field, financial, engineering and other matters related to the work. The Contractor agrees that the same persons shall continue in the capacity of Superintendent until the work has been completed, unless the Owner requests that they be replaced for cause, or they cease to be employed by the Contractor or are sick or disabled. The Superintendent or his designated representative must be on-site at all times when on-site work is performed.

3.10 Progress Schedule

3.10.1 The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Owner's review and approval a progress schedule for the work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents and shall provide for expeditious and practicable execution of the work. The progress schedule shall be updated monthly throughout the duration of the Project and such updates shall be submitted to the Owner for review and approval.

3.10.2 The Contractor shall schedule and coordinate the work of all of its subcontractors and suppliers including their use of the work site. The Contractor shall keep the subcontractors and suppliers informed of the Project construction schedule to enable the subcontractors and suppliers to plan and perform their work properly.

3.10.3 The Contractor shall, in accordance with the requirements of the Technical Specifications, submit a construction schedule that shall provide for the expeditious and practicable execution of the work.

3.10.4 The construction schedule for the performance of the work shall be a critical path method system with reasonable detail including a time scaled network and computer printout all as more fully detailed in the Technical Specifications.

3.10.5 Float or slack is defined as the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any activities in the schedule. Float or slack is not for the exclusive use or benefit of either the Contractor or the Owner and may be used by and benefit the party who first needs or uses it.

3.10.6 The Contractor shall submit a monthly progress report and schedule update in accordance with the scheduling provision of the Technical Specifications.

3.10.7 The Contractor shall complete the work within the Contract Time and in accordance with the most recent schedule that has been approved in writing by the Owner. Notwithstanding anything else contained herein to the contrary, the Contractor shall have no right to finish the Project early or to assert any claims to the Owner for schedule delays which prevent it from doing so.

3.10.8 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

3.11 Documents and Samples at the Site

3.11.1 The Contractor shall maintain at the Site for the Owner one record copy of all Drawings, Technical Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and all approved Shop Drawings, Product Data and Samples. These shall be available to Owner and shall be delivered to the Owner upon completion of the work.

3.12 Shop Drawings, Product Data and Samples

3.12.1 The term "Shop Drawings" includes fabrication, erection, layout and setting drawings, schedules, performance and test data, wiring and control diagrams, and other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and construction as required to show that materials, equipment, or systems and position thereof comply with the Contract Documents. The term "manufactured" applies to standard units usually mass-produced. The term "fabricated" means items specifically assembled or made out of selected materials to meet individual design requirements. Shop Drawings shall establish actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical equipment in proper relation to physical spaces on the structure and incorporate minor changes of construction to suit actual conditions.

3.12.2 The term "Product Data" includes illustrations, standard schedules, performance charts, instructions, brochures, diagrams, test data, manufacturer's standard drawings, catalogs and other information furnished by the Contractor to illustrate a material, product or system for any portion of the work.

3.12.3 The term "Samples" includes materials, fabricated items, equipment, devices, appliances, or parts thereof as specified, and other samples as may be required to determine whether kind, quality, construction, workmanship, finish, color and other characteristics of materials comply with requirements of the Contract Documents. Samples shall establish kind, quality and other required characteristics of various portions of the work.

3.12.4 The Contractor shall submit Shop Drawings, Product Data and Samples in accordance with the provisions of the Contract Documents.

3.12.5 By approving and substituting Shop Drawings, Product Data and Samples, the Contractor represents that it has determined and verified all materials, field measurements and field construction criteria related thereto, or will do so, and that it has checked and coordinated the information contained within such submittals with the requirements of the work and of the Contract Documents.

3.12.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner's approval of Shop Drawings, Product Data or Samples unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Owner's approval thereof.

3.12.7 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Owner on previous submittals.

3.12.8 No portion of the work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Owner as provided in Subparagraph 5.2.13. All such portions of the work shall be in accordance with the approved submittals.

3.13 Use of Site

3.13.1 The Contractor shall confine operations at the Site to areas permitted by the Owner, by laws, ordinances, permits, and by the Contract Documents, and shall not unreasonably encumber the Site with any materials or equipment.

3.14 Cutting and Patching of Work

3.14.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the work or to make its several parts fit together properly.

3.14.2 The Contractor shall not damage or endanger any portion of the work or the work of the Owner or any separate contractors by cutting, patching or otherwise altering such work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor. Structural members shall not be cut or altered except by written permission of the Owner. The Contractor shall not unreasonably withhold from the Owner or any separate contractor its consent to cutting or otherwise altering the work.

3.15 Cleaning Up

3.15.1 The Contractor shall at all times keep the work site and the surrounding premises free of accumulated waste materials. If space is available, the Owner may designate a place on the premises to collect all debris and rejected materials. If such space is designated, the Contractor shall, at its expense, install fencing and whatever else is needed to keep loose materials confined so that these are not scattered by the winds. Removal of the waste material to a suitable licensed landfill must be done on at least a weekly schedule or more often whenever the waste material creates a safety or health hazard or interferes with any contractor's work.

3.15.2 Accumulations of mud tracked onto areas adjacent to the work site by construction equipment must be resolved promptly and not allowed to create a hazard.

3.15.3 If the Contractor fails to maintain the work site in a clean, orderly, and safe condition, progress payments may be withheld or the Owner may have others perform the clean up work and deduct the cost thereof.

3.16 Communications

3.16.1 All communications relating to the day to day activities for the project shall be exchanged between respective project representatives of the Owner (Project Director and Superintendent) and Contractor. Within five (5) days of Notice to Proceed, the General Contractor shall provide a project directory of key personnel including name, title, address, telephone and fax numbers, and email addresses. Once on site, the list shall be updated to include on-site telephone and fax numbers. All notices shall be in writing and shall be personally delivered, sent by fax, or sent by certified mail, postage prepaid, return receipt requested, to the parties at their respective addresses listed above. Any mailed notices hereunder shall be effective three (3) days after mailing.

3.17 Royalties and Patents

3.17.1 The Contractor shall pay all applicable royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the Owner and the Owner's Representative harmless from and against any and all claims, damage, loss, cost and expense on account thereof, except that the Owner shall be responsible for all such matters when a particular design, process or the product of a particular manufacturer or manufacturers is specified; provided, however, that if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, it shall be responsible for such loss unless it promptly gives written notice thereof to the Owner.

3.18 Indemnification

3.18.1 To the fullest extent permitted by law, the Contractor and each of its subcontractors and sub-subcontractors shall indemnify and hold harmless the County and its Owner's Representative, their officers, employees and insurers, and the PPRTA, its directors and member governmental units from and against all claims, damages, losses, expenses and demands, including court costs, attorney's fees and expenses, due to injuries, losses or damages arising out of, resulting from, or in any manner connected with Contractor's services on behalf of the County and the PPRTA pursuant to this Contract, if any such injury, loss or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, mistake, negligence, other fault of Contractor, any subcontractor, any officer, employee, representative or agent of any of them, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable; provided, however, that except for worker's compensation, disability benefits or other similar employee benefit claims, Contractor is not obligated to indemnify the Owner and the Owner's Representative, and the PPRTA, its directors, and member governmental units hereunder for that portion of any claims, damages, losses, demands, and expenses arising out of or resulting from any negligent act or omission of the Owner, the Owner's Representative, or their agents and employees. Contractor's indemnification obligation hereunder shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 3.18. 1.

3.18.2 With respect to any and all claims against the County, the Owner's Representative or any of their officers, employees, or agents and the PPRTA, its directors and member governmental units, by any employee of Contractor, any of its subcontractors, any of its sub-subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation described above shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, any of its subcontractors, or any of its sub-subcontractors under workers' compensation acts, disability benefit acts, or other employee benefit acts.

3.18.3 The indemnification obligations of the Contractor, its subcontractors and sub-subcontractors shall not extend to the liability of the Architect, its officers, employees and agents, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, its officers, employees or agents, provided such giving or failure to give directions or instructions is the primary cause of the injury or damage.

ARTICLE IV: SUBCONTRACTORS

4.1 Definition

4.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the work. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and includes a Subcontractor or its authorized representative. The term Subcontractor does not include any separate contractor or its subcontractors.

4.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the work at the Site. The term Sub-subcontractor is referred to throughout the Contract Documents as if singular in number and includes a Sub-subcontractor's authorized representative.

4.2 Award of Subcontracts and Other Contracts for Portions of the Work

4.2.1 The Contractor shall provide to the Owner, in writing, a list of Subcontractors, if different from those listed in the Contractor's bid documents, within five (5) days after bid award. The Owner shall have the right to reject for reasonable cause any Subcontractor within 15 days of the receipt of a proposed Subcontractor list. The Owner shall provide to Contractor in writing the specific cause(s) for rejection. Rejection of a Subcontractor for reasonable cause shall not be grounds for a change order or claim against the Owner.

4.2.2 If during the course of the Project, the Contractor changes the Subcontractor list, the Contractor shall notify the Owner, in writing, within three (3) days of the change, stating the reason for substitution and providing the name of the proposed substitution Subcontractor. The Owner shall have the right to reject the substitute for reasonable cause, but must do so within five (5) days of notice. Should the Owner reject a proposed Subcontractor, the Owner shall provide to the Contractor in writing the specific cause(s). Rejection of a Subcontractor for cause shall not be grounds for a change order or claim against the Owner.

4.3 Subcontractual Relations

4.3.1 By an appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the work to be performed by such Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner. Said agreement shall preserve and protect the rights of the Owner and Owner's Representative under the Contract Documents with respect to the work to be performed by such Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with its sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 4.3 and identify to the Subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Contract Documents available to its Sub-subcontractors.

ARTICLE V: ARCHITECT (IF APPLICABLE TO THIS CONTRACT)

5.1 Architect/Design Consultant

5.1.1 The Architect, also sometimes referred to herein as Design Consultant, is the entity retained by the Owner under contract to design the Project and to describe that design by the preparation of drawings and specifications. The Architect may be requested to interpret drawings and specifications and shall review and approve shop drawings, product data samples, working drawings, and other documents. The Architect observes the work as it is performed, monitors identified critical construction activities identified in the Contract Documents and participates in the final inspection of the work. Unless otherwise provided in the Contract Documents, the Architect is the entity lawfully practicing architecture identified as such in the Contract, and is referred to throughout the Contract Documents as if singular in number and includes the Architect's authorized representative(s).

5.2 Administration of the Contract

5.2.1 The Architect will act on behalf of the Owner as further defined herein during construction of the work and until final payment is due. The Architect will advise and consult with the Owner. The Owner's instructions to the Contractor shall be forwarded directly or may be forwarded through the Architect when the Owner so elects. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Subparagraph 5.2.16.

5.2.2 The Architect will periodically, but not less often than every two weeks, visit the Site to become generally familiar with the progress and quality of the work and to determine if the work is proceeding in accordance with the Contract Documents. On the basis of its on-Site observations, the Architect will keep the Owner informed of the progress of the work and will endeavor to guard the Owner against defects and deficiencies in the work of the Contractor.

5.2.3 The Architect or Owner and the PPRTA will not be responsible for, and will not have control or charge of, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and will not be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents. The Architect, Owner and the PPRTA will not be responsible for, or have control or charge over, the acts or omissions of the Contractor, Subcontractors, Sub-Subcontractors, or any of their agents or employees, or any other persons performing any of the work.

5.2.4 The Architect and the Owner shall at all times have access to the Project site and the work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Architect and Owner may perform their functions under the Contract Documents.

5.2.5 Based on the Architect's observations and determination of work in place and an evaluation of the Contractor's Applications for Payment, the Architect will assist Owner in determining the amounts owed to the Contractor and will issue Certificates for Payment in said amounts, as provided in Paragraph 8.4.

5.2.6 Subject to Owner's final determination, the Architect will interpret the requirements of the Drawings and Technical Specifications and written notice of all such interpretations shall be delivered to Owner and Contractor.

5.2.7 The Architect will render interpretations necessary for the proper execution or progress of the work with reasonable promptness.

5.2.8 Claims, disputes, and other matters in question between the Contractor and the Owner relating to the execution or progress of the work or the interpretation of the Contract Documents may be referred to the Architect by the Owner for its recommendations, which will be set forth in writing to the Owner within a reasonable time.

5.2.9 All interpretations and recommendations of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents will be in writing or in the form of drawings and will be subject to final approval by Owner. Architect will endeavor to secure faithful performance of the Contract Documents by the Contractor and will not be liable to Contractor for the result of any interpretation or recommendation rendered in good faith.

5.2.10 The Architect's recommendations in matters relating to artistic effect will be submitted to the Owner. The Owner's decision on such matters will be final.

5.2.11 The Architect will have the authority to reject work which does not conform to the Contract Documents; provided, however, that work may not be rejected without prior notice to, and approval of, the Owner. Whenever, in its opinion, the Architect considers it necessary or advisable for the implementation of the intent of the Contract Documents, it will have the authority, subject to prior notice to and approval of Owner, to require special inspection or testing of the work, whether or not such work be then fabricated, installed, or completed. However, neither the Architect's authority to act under this Subparagraph 5.2.12, nor any decision in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the work.

5.2.12 The Architect will review and approve or take other appropriate action upon Contractor's submittals, such as Shop Drawings, Product Data, and Samples, regarding their conformance and compliance with the Contract Documents. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component, nor shall the Architect's review and approval relieve any Contractor, Subcontractor, manufacturer, supplier, fabricator, consultant, or third party from responsibility for any deficiency that may exist or for any departures or deviations from the requirements of the Contract Documents. Submittal procedures shall be in accordance with the provisions of the Contract Documents.

5.2.13 The Architect will prepare Change Orders in accordance with Article XI, and will have authority to order minor changes in the work as provided in Subparagraph 11.1.3.

5.2.14 The Architect will conduct on-Site observations to determine the dates of Substantial Completion and final completion, will receive and forward to the Owner for the Owner's review written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of Paragraph 8.9.

5.2.15 The duties, responsibilities, and limitations of authority of the Architect during construction, as set forth in the Contract Documents, will not be modified or extended without the written consent of the Owner and the Architect.

5.2.16 In case of the termination of the employment of the Architect, the Owner shall so notify Contractor in writing and shall appoint a new architect, whose status under the Contract Documents shall be that of the former architect.

ARTICLE VI: WORK BY OWNER OR BY SEPARATE CONTRACTORS

6.1 Owner's Right to Perform Work and to Award Separate Contracts

6.1.1 The Owner reserves the right to perform work related to the Project with its own forces and to award separate contracts in connection with other portions of the Project or other work on the Site under these or similar General Conditions of the Contract for Construction. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, it shall make such claim as provided elsewhere in the Contract Documents.

6.1.2 When separate contracts are awarded for different portions of the Project or other work on the Site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Agreement between Owner and Contractor for such portion of the Project.

6.1.3 The Owner will provide for the coordination of the work of its own forces and of each separate contractor with the work of the Contractor and the Contractor shall cooperate therewith as provided in Paragraph 6.2.

6.2 Mutual Responsibility

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate its work as required by the Contract Documents.

6.2.2 If any part of the Contractor's work depends upon the work of the Owner or any separate contractor for proper execution or results, the Contractor shall, prior to proceeding with the work, promptly report to the Owner any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acceptance of the Owner's or separate contractors' work as fit and proper to receive its work, except as to latent defects which could not have been discovered by the Contractor by careful inspection before acceptance thereof.

6.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible thereof.

6.2.4 Should the Contractor wrongfully or negligently cause damage to the work or property of the Owner, or to other work on the Site, the Contractor shall promptly remedy such damage as provided in Subparagraph 9.2.5.

6.2.5 Should the Contractor wrongfully or negligently cause damage to property or delay the progress of the work of any separate contractor, the Contractor shall upon due notice promptly attempt to settle with such other contractor by agreement or otherwise to resolve the dispute. If such separate contractor institutes any proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the

Owner shall notify the Contractor who shall defend such proceedings at the Contractor's expense and, if any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court costs which the Owner has incurred.

6.3 Owner's Right to Clean Up

6.3.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Paragraph 3.15, the Owner may clean up and charge the cost thereof to the contractors responsible therefor.

ARTICLE VII: TIME OF COMMENCEMENT AND COMPLETION

7.1 Beginning, Progress and Time of Completion

7.1.1 Time is of the essence for this contract. The Owner will issue a written Notice to Proceed and the Contractor shall start the work within ten (10) days of the date of the Notice to Proceed. Thereafter, the Contractor shall prosecute the work at such place or places as the Contract Documents require and shall complete the work within the time limits set forth in the Contract Documents.

7.2 Time Extension

7.2.1 Any extension of the Contract Time must be requested in a Contractor Change Request which complies with all of the requirements of Article XI, and specifically Paragraphs 11.5 - 11.9. Failure to strictly comply with the timing and submittal requirements shall constitute a waiver of any request of claim.

7.2.2 If the Contractor is delayed at any time in the progress of the work and such delay was caused, in whole or in part, by any act or omission of the Owner, any separate contractor, or by changes ordered in the work, or by directed suspensions of the work, strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or any other causes beyond the Contractor's control, then the Contract Time shall be extended. Such extensions will be for such period of time as the Owner may, in its sole discretion, determine, based upon the criteria of Paragraph 11.9; provided, however, that such delay could not have been avoided by the exercise of due diligence by the Contractor and did not result from the acts or omissions of the Contractor; and provided further that the Contractor has taken reasonable actions to mitigate or prevent further delays resulting from such causes.

7.2.3 If abnormal weather conditions are the basis for a claim for an extension of the Contract Time, such claim shall be documented by data substantiating that weather conditions were unusually severe for the period of time and could not have been reasonably anticipated. To establish the existence of abnormal weather, the Contractor must submit documentation which establishes that the weather conditions experienced fall outside of the extreme ranges of weather data published by the National Climatic Data Center for the area closest to the Project. Regardless of actual weather conditions, any day in which the Contractor is able to work eighty percent (80%) or more of its scheduled work force shall not be counted as an abnormal weather day for purposes of calculating weather related time extensions.

7.3 Suspension of Work

7.3.1 The Contractor agrees that the Owner may suspend all or any part of the work by written order signed by the Owner without invalidating the Contract for such period or periods as it may deem necessary due to:

- (a) any reason for the convenience of the Owner, with or without cause, including, but not limited to, the availability of funding for the Project provided. However, such a suspension shall not exceed 90 days;
- (b) an order from a state or federal court; or
- (c) Contractor's failure to perform any provision of the Contract Documents.

In the event Owner elects to suspend all or any part of, the work by written order, Owner shall provide a copy to the PPRTA of such written order.

7.3.2 If it should become necessary to suspend the work, the Contractor shall immediately submit a plan to the Owner for acceptance. The plan shall describe how the Contractor will store all materials in a manner so that the materials will not become an obstruction or become damaged in any way, what cost effective methods it will employ to prevent damage to or deterioration of the work, and otherwise protect the work, how suitable drainage will be provided, what temporary structures will be necessary and how the Contractor will prepare for resuming the work for the least possible start-up cost. After the plan is accepted, the Contractor shall implement it in accordance with instructions received from the Owner.

7.3.3 Under no circumstance shall a suspension absolve the Contractor or the Contractor's sureties of the duties and responsibilities guaranteed under bond. A suspension order will be signed by the Owner. The Contractor shall again proceed with the work when it is ordered to do so in writing by the Owner.

7.3.4 For all suspensions not involving the Contractor's failure to perform in accord with Contract Documents, adjustment of Contract Amount and/or Contract Time, if any, will be made pursuant to Paragraphs 11.8, 11.9 and 11.11, except that any adjustments to Contract Amount shall not include anticipated lost profits or other consequential damages.

7.4 Suspension for the Work for the Owner's Convenience

7.4.1 An order suspending all of the work for the Owner's convenience will extend the Contract Time for the number of days of such suspension. If the suspension applies to only a part of the work, a time extension will not be authorized until the partial suspension has been lifted and its effect on the date for completing the work has been evaluated and determined by the Owner.

7.5 Suspension Because of Order of State or Federal Court or Agency

7.5.1 The Order of suspension will identify the court or agency order, which caused the suspension and will extend the Contract by the amount of time specified by the court or agency order. If the order causes suspension for an indefinite period of time and as a result a time extension cannot be established, the order of suspension will also be for an indefinite period of time. If the order is issued because of acts or omissions of the Contractor, the Contractor shall not be entitled to a time extension or payment for any additional costs it incurs.

7.6 Suspension Resulting from Contractor's Failure of Performance

7.6.1 If a suspension order results from the Contractor's failure to satisfactorily perform any of the provisions of the Contract Documents, including, but not limited to, faulty workmanship, improper or inadequate manpower, equipment, supplies or supervision, or failure to perform the work or pay employees, subcontractors or suppliers in a timely manner, the order will identify the reason, or reasons, for the order. In this circumstance, the Contractor will not be authorized a time extension and any costs to the Contractor resulting from such a suspension order will not be reimbursed by the Owner. A suspension order issued under these circumstances will remain in effect until the Contractor has removed or corrected the grounds for the suspension.

7.7 Delay Damages

7.7.1 The Contractor agrees that delays resulting from any causes other than acts or omissions of the Owner, its employees, agents or officials shall be considered fully compensated by a time extension and agrees to make no claims for monetary damages for such delays. In no event shall the Contractor be entitled to recover any delay costs caused by the acts or omissions of the Contractor, its employees or agents.

7.7.2 If the Contractor believes that it has suffered delays in performing the Contract that are caused by acts or omissions of the Owner, the Contractor may submit a Contractor Change Request under Paragraph 11.5. Failure of the Contractor to comply with all applicable requirements of Paragraphs 11.5, 11.6 and 11.9 shall constitute a waiver of any claim for damages resulting from such delays.

ARTICLE VIII: PAYMENTS AND COMPLETION

8.1 Contract Amount

8.1.1 "Contract Amount" means the total amount of money payable to the Contractor under the Contract.

8.2 Schedule of Values

8.2.1 Before the first Application for Payment, the Contractor shall submit to the Owner for approval a schedule of values allocated to the various portions of the work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, once accepted by the Owner, shall be used as the basis for the Contractor's Applications for Payment.

8.2.2 Should the Owner issue a change order that decreases or increases the Contract Amount, the schedule of values shall be modified to reflect the amount of the decrease or increase.

8.3 Applications for Payment

8.3.1 The Contractor shall, on a monthly basis, on or before the 10th of each month, submit to the Owner an itemized Application for Payment, in form satisfactory to Owner and notarized if required, supported by such data substantiating the Contractor's right to payment as the Owner may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents.

8.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the work, but delivered and suitably stored at the Site, and, if approved in advance by the Owner, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the Site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the Site for those materials and equipment stored off the Site.

8.3.3 The Contractor warrants that title to all work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the work or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereafter referred to in this Article VIII as "liens"; and that no work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing work at the Site or furnishing materials and equipment for the Project, subject to an agreement under which an interest or an encumbrance is retained by the seller or otherwise imposed by the Contractor or such other person.

8.4 Certificates for Payment

8.4.1 If the Contractor has made Application for Payment as required above, the Owner will, within fourteen (14) days after such Application is received, issue a recommendation for payment to the PPRTA, or notify the Contractor in writing any reasons for withholding a Certificate for Payment as provided in Subparagraph 8.6. 1. All certifications and payments, including those pursuant to a pending claim, shall be conditional and it shall not be necessary for the Owner to make any statement to this effect.

8.4.2 Upon Contractor's acceptance of progress payments by the PPRTA, the PPRTA and the Owner shall be released from any claims from the Contractor, all subcontractors, suppliers and material men for any and all services or materials included in the payment application.

8.4.3 The provisions for payment and Certificates for Payment are solely for the benefit of the PPRTA and the Owner and no other party (including sureties of the Contractor) shall have any claim for negligence or other action against the Owner or anyone acting in behalf of either of them for waiving or otherwise deviating from these provisions.

8.5 Progress Payments

8.5.1 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the PPRTA, out of the amount paid to the Contractor on account of such Subcontractor's work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.

8.5.2 The Owner may, upon request and at its discretion, furnish to any Subcontractor information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Owner on account of that portion of the work done by such Subcontractor.

8.5.3 The PPRTA and the Owner shall not have any obligation to pay, or to see to the payment of, any monies to any Subcontractor except as may otherwise be required by law.

8.5.4 No Certificate for Payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of any work not in accordance with the Contract Documents.

8.5.5 The PPRTA and the Owner shall deduct and retain a total of up to five percent (5%) from the amount shown in approved Applications for Payment throughout the duration of the project and until the work has been completed to the Owner's satisfaction. The Owner, at its sole discretion, at any time after Contractor has substantially completed the work and it deems that satisfactory progress has and continues to be made and, if applicable, upon the Contractor's presentation of Consent of Surety, may authorize the PPRTA to make any remaining progress payments without further retainage, but may elect to reinstate the withholding of up to five percent (5%) at any time it deems it is in the best interest of the County to do so.

8.6 Payments Withheld

8.6.1 The Owner may decline to certify payment and may withhold the Certificate for Payment in whole or in part, to the extent necessary to protect the Owner. If the Contractor and the Owner cannot agree on a revised amount, the Owner will promptly authorize issuance of a Certificate for Payment for the amount for which it believes is appropriate. The Owner may withhold payment and may decline to certify payment because of subsequently discovered evidence or subsequent observations. The Owner may nullify the whole or any part of any Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss due to:

- (a) Defective work not remedied;
- (b) Third party claims filed or reasonable evidence indicating probable filing of such claims;
- (c) Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,
- (d) Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract Sum;
- (e) Damage to the Owner or another contractor;
- (f) Reasonable evidence that the work will not be completed within the Contract Time; or
- (g) Persistent failure to carry out the work in accordance with the Contract Documents.

8.6.2 When the above objections in Subparagraph 8.6.1 are cured, payment shall be made for amounts withheld on account thereof.

8.6.3 Execution of this Contract by the Contractor shall constitute a waiver by the Contractor to claim any right of payment of interest upon any such retained funds, or to claim any right of payment of interest upon funds withheld under the provisions of Section 38-26-107, Colorado Revised Statutes.

8.7 Failure of Payment

8.7.1 If the Owner does not authorize issuance of a Certificate for Payment or notice as required by Subparagraph 8.4.1, through no fault of the Contractor, within fourteen (14) days after receipt of the Contractor's Application for Payment, or if the PPRTA does not pay the Contractor the amount due pursuant to the Contract Documents within fifteen (15) days after the date established in the Contract Documents, subject to other applicable provisions of the Contract Documents, the Contractor may, upon seven (7) additional days written notice to the PPRTA and the Owner, stop the work until payment of the amount owing has been received; provided, however, that a dispute between the Contractor, the PPRTA and the Owner concerning any amount due shall not give the Contractor the right to stop work. The Contract Sum shall be adjusted by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, which adjustment shall be effected by an appropriate Change Order in accordance with Article XI.

8.8 Substantial Completion

8.8.1 The date of substantial completion of the work, or any designated portion thereof, is the date certified by the Owner when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the work, or any designated portion thereof, for the use for which it is intended.

8.8.2 When the Contractor considers that the work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Paragraph 8.8.1, the Contractor shall prepare for submission to the Owner a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents. When the Owner determines, on the basis of its review, that the work or designated portion thereof is substantially complete, it will then prepare a Certificate of Substantial Completion which shall establish the date of substantial completion, the responsibilities of the Owner and the Contractor, as agreed upon, for security, maintenance, heat, utilities, damage to the work and insurance, and shall fix the time within which the Contractor shall complete or correct the items listed therein. Warranties required by the Contract Documents shall commence on the date of substantial completion of the work, or designated portion thereof, unless otherwise provided in the Certificate of Substantial Completion. The

Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate.

8.8.3 Upon substantial completion of the work, or designated portion thereof, and upon application by the Contractor and issuance of the Certificate of Substantial Completion by the Owner, the Owner shall make payment, reflecting adjustment in retainage, if any, for such work or portion thereof, as provided in the Contract Documents.

8.9 Final Completion and Final Payment

8.9.1 "Final Completion" of the work occurs following substantial completion and when the Owner confirms, in writing, that the Contractor has completed the work in accordance with the Contract, including completion of all punch list and clean-up work. Upon receipt of written notice that the work is ready for final review and acceptance, and upon receipt of a final Application for Payment, the Owner will promptly review the completed work and, if it finds the work acceptable under the Contract Documents and the Contract fully performed, the Owner will promptly issue a final Certificate for Payment stating that to the best of its knowledge, information and belief, and on the basis of its observations, the work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate of Payment, is due and payable. The Owner's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Paragraph 8.9.5 have been fulfilled.

8.9.2 The notice of final payment shall be advertised in accordance with C.R.S. § 38-26-107, by two (2) publications of notice, the last publication appearing at least ten (10) days prior to the time of final settlement. On the date of final settlement thus advertised, and after the Contractor has completed the foregoing requirements, and the Owner is satisfied that no claims have been filed, final payment and settlement shall be made by the PPRTA.

8.9.3 If any unpaid claim for labor, materials, rental, machinery, tools, supplies, or equipment is filed prior to the date set for final settlement, the PPRTA, at the Owner's direction, shall withhold from the Contractor sufficient funds to ensure the payment of such claim, until the same shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing a receipt in full or an order for withdrawal signed by the claimant or its duly authorized agent or assignee. It is further understood by the Contractor that the PPRTA will withhold from payment any funds it may be required by law to withhold or that it may in the determination of the Owner be entitled to withhold, and final payment will not be made until in the sole determination of the Owner all conditions of law have been met.

8.9.4 In the event there are, at the time set for final settlement, outstanding claims against the Contractor or its subcontractors or for any other reason the Contractor is not able to give a proper affidavit that liens or other obligations have been properly paid and settled, the Owner may, at its sole discretion, waive the requirement of the said affidavit provided the surety on the Performance and Payment Bonds will agree to the Owner making final settlement without in any way lessening or modifying the surety's liability under such Performance and Payment Bonds.

8.9.5 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Owner or its property might in any way be responsible, have been paid or otherwise satisfied, (2) Consent of Surety to final payment, and (3) if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens or verified claims arising out of the Contract, to the extent and in such form as may be designated by the Owner. If any such lien or claim remains unsatisfied after all payments to Contractor are made, the Contractor shall refund to the Owner all monies that the Owner may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorneys fees.

8.9.6 If, after substantial completion of the work, final completion is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, the Owner may, upon application by the Contractor, subject to applicable statutory provisions and such other terms as it deems reasonable and necessary, 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, except that it shall not constitute a waiver of claims under Paragraph 8.9.7.

8.9.7 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

- (a) Unsettled liens or verified claims;
- (b) Faulty or defective work;
- (c) Failure of the work to comply with the requirements of the Contract Documents, including the terms of any warranties and guarantees required by the Contract Documents; or
- (d) Incomplete work appearing or discovered after substantial completion.

8.9.8 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.

ARTICLE IX: PROTECTION OF PERSONS AND PROPERTY

9.1 Safety Precautions and Programs

9.1.1 The Contractor shall provide all necessary protective devices and safety precautions which may include, but are not limited to, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials; placement of warning flares; equipment back-up alarms; installation of barricades; promulgation and application of safety regulations and employment of safety personnel and guards. Signs will not be considered an adequate substitute for physical protective barriers. The costs of all protective devices and the planning and implementing of safety precautions are included in the Contract Amount.

9.1.2 The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work.

9.2 Safety of Persons and Property

9.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- (a) All employees on the Project and all other persons who may be affected by the project;
- (b) All the work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, or under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and
- (c) Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

9.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

9.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

9.2.4 When the use or storage of explosives, flammable or otherwise hazardous materials or equipment is necessary for the execution of the work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

9.2.5 The Contractor shall promptly remedy all damage or loss to any property referred to in Clauses 9.2.1.(b) and 9.2.1.(c) caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Clauses 9.2.1.(b) and 9.2.1.(c), except damage or loss attributable solely to the acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to its obligations under Paragraph 3.18.

9.2.6 The Contractor shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents and administration of safety procedures. This person shall be the Contractor's Superintendent unless otherwise designated by the Contractor in writing to the Owner.

9.2.7 The Contractor shall not load or permit any part of the work to be loaded so as to endanger its safety.

9.2.8 When required by law or for the safety of the work, the Contractor shall shore up, brace, underpin and protect foundations and other portions of existing structures which are in any way affected by the work. The Contractor, before commencement of any part of the work, shall give any notices and obtain any permits or written permission required to be given to or received from adjoining landowners or other parties.

9.3 Emergencies

9.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, in its reasonable discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of the Contract Time claimed by the Contractor on account of emergency work shall be determined as provided in Paragraphs 11.8 and 11.9.

9.4 Protection of Property and Work in Progress

9.4.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- (a) All the work and all materials and equipment to be incorporated therein, whether in storage on or off the work site, under the care, custody or control of the Contractor, Subcontractors, Sub-subcontractor, or suppliers.
- (b) Other property at the work site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
- (c) The work of the Owner or other contractors provided, however, that the Contractor shall not be responsible to furnish the direct protection of the work of the Owner or other contractors.

9.4.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the safety of property or its protection from damage, injury or loss.

9.4.3 The Contractor shall be totally responsible for the design, installation and maintenance of all temporary structures such as concrete forms and all necessary bracing, shoring, and tying of all decks, framing and structures or structural elements to prevent the failure of materials or temporary facilities required in the execution of the work which could result in damage to property or the injury or death of persons. The Contractor shall take all reasonable precautions to ensure that no part of any structure or equipment of any description is loaded beyond its carrying capacity with anything that will endanger its safety at any time during the execution of the work and shall provide for the adequacy and safety of all scaffolding and hoisting equipment. The Contractor shall not permit open fires within any building enclosure. The Contractor shall construct and maintain all necessary temporary drainage and do all pumping reasonably required to keep excavations, floors, pits, and trenches free of water.

9.4.4 If any of the Contractor's operations destroy or damage any real or personal property, public or private, the Contractor shall promptly repair or replace such property before the Owner will accept the work performed under this Contract.

9.4.5 Should the Contractor do anything to impair or otherwise diminish the capabilities of any permanent or temporary highway, street or road without first notifying the Owner, the Owner may withhold progress payments or suspend the Contractor's right to proceed with the work.

9.4.6 Any damages to public roads or streets caused by the Contractor or Subcontractor shall be repaired as soon as is practical. The Owner shall have the right to stop work until such repairs are made to the satisfaction of the Owner. Such stop work order shall not be grounds for a claim against the Owner.

9.5 Protection of the Environment

9.5.1 The Contractor shall comply with all applicable federal, state and local environmental protection rules, laws and regulations and accept responsibility for compliance with all environmental quality standards, limitations and permit requirements promulgated thereunder, including, but not limited to, the federal and state air quality standards for fugitive dust control prevention of surface and groundwater contamination and hazardous and other waste disposal practices and procedures.

9.5.2 If the Owner is determined by any federal, state or local government agency, department, board or commission, or in any judicial proceeding to have violated any such environmental protection rules, laws, or regulations as a result of the Contractor's acts or omissions, the Contractor agrees to indemnify and hold harmless the Owner from any and all prosecutions, payment of any and all fines or penalties, and the cost of abatement and remediation and shall take action to remedy the claims or charges against the Owner. In addition, Contractor shall reimburse Owner for all costs, expenses and reasonable attorney's fees incurred by Owner as a result of the violation of said rules, laws or regulations.

9.6 Hazardous and Explosive Materials

9.6.1 The Contractor shall exercise the utmost care and caution if the storage or use of hazardous materials or explosives are required for the performance of the work. Activities related to the purchase, storage, use, removal, treatment, and disposal of such hazardous materials shall at all times be the sole responsibility of the Contractor and shall be supervised and carried out by personnel properly qualified to perform such activities. However, in no circumstances shall activities requiring the purchase, storage, use, removal, treatment or disposal of hazardous materials be started without first notifying the Owner in writing of the proposed activity and receiving the Owner's written approval of that action. The use and storage of explosives will not be allowed on site unless they are required or permitted by the Contract Documents. If hazardous and explosive materials are required on site, the Contractor shall comply with all federal, state, and local laws, rules, and regulations that are applicable.

9.7 Archeological and Historical Discoveries

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

9.7.2 If as a result of the Contractor's efforts to preserve the potential discovery site, the Contractor's activities are delayed for longer than eight (8) normal working-time hours, the Contractor may submit a Contractor's Change Request if it believes it is entitled to an adjustment in Contract Amount and/or Contract Time. Adjustments for such delays shall be considered by the Owner only for the portions of the delay which exceed eight (8) hours.

ARTICLE X: INSURANCE

10.1 Insurance

10.1.1 In part to assure the Owner that the Contractor is always capable of fulfilling the specified indemnification obligations, the Contractor is required to purchase and maintain insurance of the kind and in the minimum amounts specified in the Contract Documents. However, the insurance requirements contained in the Contract Documents shall not be deemed to limit or define the obligations of the Contractor as provided elsewhere.

10.1.2 The Contractor agrees to procure and maintain, at its own expense, until final payment by the PPRTA, for all work covered by the Contract, the following policies of insurance:

10.1.3 Worker's Compensation/Employer's Liability: As Required By Statute. Worker's Compensation and Employers' Liability insurance shall be procured and maintained to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Contract. The Contractor shall comply with the requirements of the Worker's Compensation Act of Colorado and shall provide Worker's Compensation Insurance to protect the Contractor from and against any and all Worker's Compensation claims arising from performance of work under the Contract. The requirements of this provision shall apply to the Contractor and to all Subcontractors.

10.1.4 Comprehensive General Liability Insurance: Comprehensive General Liability insurance with minimum combined single limits of Two Million Dollars (\$2,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse and underground hazards. The policy shall contain a severability of interests provision. Coverage must be on an "occurrence" basis as opposed to a "claims made" basis. This insurance must pay on behalf of the Contractor all sums which the Contractor shall become legally obligated to pay as damages because of bodily injury or property damage caused by an occurrence up to the specified limits of liability for each occurrence. This insurance coverage must extend to all levels of Subcontractors.

10.1.5 Comprehensive Automobile Liability Insurance: Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than Two Million Dollars (\$2,000,000) each occurrence with respect to each of Contractor's

owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. Comprehensive Automobile Liability insurance must cover the Contractor for all sums which the Contractor shall become legally obligated to pay as damages because of bodily injury or property damage caused by an occurrence up to the specified limits of liability for each occurrence. This insurance coverage must extend to all levels of Subcontractors. Such coverage must include all automotive equipment used in the performance of the Contract, both on and off the work site, and must include non-ownership and hired car coverage.

10.1.6 The above-mentioned coverage shall be procured and maintained with insurers with an A- or better rating, as determined by Best's Key Rating Guide. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

10.1.7 The policies required above shall be primary insurance, and any insurance carried by El Paso County, its officers, or its employees, and the PPRTA, its directors, and member governmental units, shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement to the policy required above shall contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under any policy required above.

10.1.8 The required Comprehensive General Liability and Comprehensive Automobile Liability policies shall be endorsed to include El Paso County and the PPRTA as a Certificate Holder and name the PPRTA and El Paso County, its officers and employees as additional insured. The required Worker's Compensation policy shall be endorsed to include El Paso County as a Certificate Holder. The policies shall provide that El Paso County will receive notice no less than thirty (30) days prior to cancellation, termination or a material change to the policies.

10.1.9 The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the Contract Documents by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, duration or types.

10.1.10 Failure on the part of the Contractor to procure or maintain policies providing the required coverage, conditions and minimum limits shall constitute a material breach of contract upon which Owner may immediately terminate this Contract, or at its discretion, Owner may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by Owner shall be repaid by Contractor to Owner upon demand, or Owner may offset the cost of the premiums against any monies due to Contractor from Owner.

10.1.11 Owner reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

10.1.12 The parties hereto understand and agree that Owner is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations (presently \$387,000 per person and \$1,093,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Sections 24-10-101, et seq. C.R.S., as amended, or otherwise available to Owner, its officers or its employees.

10.2 Insurance Certificates

10.2.1 The Contractor shall deliver to the Owner, Certificates of Insurance identified on their face as to Contract Name and Contract Number, as evidence that policies providing the required coverage and limits are in full force and effect.

10.2.2 These certificates will serve as an indication to the Owner that the Contractor has acquired all necessary insurance; however, the Owner may require that certified copies of the insurance policies be submitted and may refuse to execute the Contract until the applicable insurance policies are received and found to be acceptable.

10.2.3 The Contractor shall provide sufficient evidence to the Owner that the person signing the insurance certificate has the requisite authority to bind the insurer.

10.2.4 The certificates of insurance shall be provided to Owner by the Contractor's insurance agent or carrier as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. Insurance limits must be on each Certificate of Insurance. Each Certificate of Insurance shall be reviewed and approved by Owner prior to commencement of the Contract. The certificates shall identify this Contract. The completed certificates of insurance and any notices, within 30 days of cancellation, termination or material change, shall be sent to:

County Office Building
Contracts and Procurement Division
15 E. Vermijo Avenue
Colorado Springs, Colorado 80903

10.3 Builder's Risk Insurance

10.3.1 The Contractor shall purchase and maintain All Risk Builder's Risk insurance upon the entire Project to One Hundred Percent (100%) of the insurable value thereof for the benefit of the Owner and the Contractor. Such insurance shall include any and all direct damage to all structures under construction (including temporary structures) and all materials, supplies, machinery and equipment at the work site which are or will be incorporated in the work, which is caused by hazards such as but not limited to, the hazards of fire, lightning, wind, earthquake, flood, vandalism, malicious mischief and other hazards included in a standard Extended Coverage Endorsement.

ARTICLE XI: CHANGES IN THE WORK

11.1 Owner-Initiated Changes - General

11.1.1 The Owner may require, without notification to sureties, the Contractor to perform changes, additions or deletions to the work at any time after execution of the Contract without invalidating the Contract. Changes shall be accomplished by a written Change Order or a Change Directive. If a Change Directive is used, a Change Order will be executed when the terms of the change are agreed upon.

11.1.2 The Contractor shall promptly perform changes in the work which are described in Change Orders and Change Directives in accordance with applicable provisions of the Contract Documents, unless otherwise provided in the Change Order or Change Directive.

11.1.3 The Owner will have authority to order minor changes in the work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Contractor. The Contractor shall carry out such written orders promptly.

11.2 Change Request

11.2.1 The Owner may issue a request informing the Contractor of a planned change in the work and its scope, and requesting the Contractor's detailed price proposal. The Contractor, at no expense to the Owner, shall submit a priced proposal for performing the proposed change in the work. The Contractor, within ten (10) days after receiving the Change Request, or such longer time which the Owner in its discretion has granted, shall provide the Owner with a complete and itemized proposal which includes the estimated increase or decrease in the Contract Amount and/or in the Contract Time attributable to the planned changes based on the criteria and methods described in Paragraphs 11.8 and 11.9. The Contractor shall be responsible for delays to the work and any additional costs incurred by the Owner caused by its failure to submit complete pricing information within the time provided above. The Contractor shall participate with the Owner in prompt joint analysis and negotiations to finalize a Change Order.

11.3 Change Directive

11.3.1 A Change Directive is a written order signed by the Owner's Project Manager or its designated representative which directs the Contractor to commence a change in the work, prior to complete agreement on a Change Order.

11.3.2 A Change Directive may be used when:

- (a) The Owner determines that the Contractor must proceed immediately to perform a change in the work in order to avoid an adverse impact on the schedule or other unchanged work, and sufficient time is not available to negotiate an adjustment to the Contract Amount or Contract Time; or
- (b) The Owner and Contractor have not completed their negotiation and reached agreement on all of the terms of a Change Order, but the Owner requires the Contractor to proceed without such agreement.

11.3.3 Upon receipt of a Change Directive, the Contractor shall promptly sign the Change Directive and return it to the Owner, and shall promptly proceed with performing the change in the work. Additionally, the Contractor shall comply with all of the requirements of Paragraph 11.2.

11.4 Change Order

11.4.1 A Change Order is a written instrument signed by the Owner's Project Manager or its designated representative and by the Contractor which contains their agreement upon all of the following matters:

- (a) A change, addition or deletion to the work;
- (b) The amount or method of the adjustment in the Contract Amount, if any (see Paragraph 11.8); and
- (c) The extent of the adjustment in the Contract Time (see Paragraph 11.9), if any.

11.4.2 When the Owner and Contractor reach agreements on the adjustments to the Contract Amount and/or Contract Time, if any, as appropriate, such agreements shall be promptly recorded in an executed Change Order.

11.5 Contractor Change Request

11.5.1 If the Contractor: (1) receives any oral or written instructions, directives or interpretations of Contract Documents, or determinations from the Owner; or (2) identifies what it believes are design errors or omissions or any other errors or omission in the Contract Drawings or Technical Specifications; or (3) encounters a differing site condition; or (4) is delayed in the progress of the work; or (5) becomes aware of any other matter or circumstance which it believes would require a change in Contract Time or Contract Amount, the Contractor shall give the Owner prompt written notice of such matters in a letter or notice denominated "Contractor Change Request," and request a Change Order.

11.5.2 All Contractor Change Requests shall be dated, numbered sequentially, and shall describe the action or event which the Contractor believes may require the issuance of a Change Order. The Contractor shall also provide descriptions of possible Contractor actions or solutions to minimize the cost of the Contractor Change Request and, when possible, provide an estimate of the adjustment in the Contract Time and Contract Amount that it believes is appropriate.

11.6 Time Requirements

11.6.1 With respect to orders, instructions, directives, interpretations, determinations, or the discovery of any errors or omissions in the Contract Documents, a Contractor Change Request shall be submitted before the Contractor acts on them, but in no event more than ten (10) days after they were received or discovered.

11.6.2 With respect to any differing site conditions (Article XII), a Contractor Change Request shall be submitted before the conditions are disturbed, but in no event more than ten (10) days after the conditions are first discovered.

11.6.3 With respect to delays, a Contractor Change Request shall be submitted as soon as the Contractor has knowledge of the delay, but in no event more than ten (10) days from that time.

11.6.4 With respect to any other matter or circumstance which the Contractor believes would require a Change, including delays, a Contractor Change Request shall be submitted as soon as the Contractor has knowledge of the matter or circumstance, but in no event more than ten (10) days after the Contractor becomes aware of such circumstances or matter.

11.7 Submittal Requirements and Waiver of Claims

11.7.1 If the Contractor does not submit a Contractor Change Request within the time required by Subparagraph 11.6 above, any action by the Contractor related to such order, direction, instruction, interpretation, determination, design error or omission, or other matter, including delays or differing site conditions, will not be considered by the Owner as a change to the work and the Contractor waives any claim for an adjustment on the Contract Amount or the Contract Time.

11.7.2 The Contractor shall, within twenty (20) days after submitting a Contractor Change Request, provide the Owner a complete and itemized proposal which contains the information described in Paragraph 11.8. The proposal shall also contain a detailed explanation, citing all applicable provisions in the Contract Documents, which supports the Contractor Change Request. If the Contractor does not submit its itemized proposal for a Change Order within the time described above or within such extension which the Owner, in its discretion may have granted in writing, it waives any claim for an adjustment in the Contract Amount or Contract Time arising out of the act or event described in the Contractor Change Request.

11.7.3 If a Contractor Change Request is denied by the Owner, in whole or in part, any claim for an increase in the Contract Amount or Contract Time arising out of the act or event described in the Contractor Change Request is waived unless the Contractor timely complies with the provisions of Paragraph 13.1 (Notice of Intent to Claim).

11.8 Adjustment to Contract Amount

11.8.1 All adjustments to the Contract Amount shall be determined by using one or more of the following methods:

- (a) A negotiated lump sum. If requested by the Owner, the Contractor shall promptly provide itemized and sufficient substantiating data, including calculations, measurements, cost records, production rates, equipment types and capacity, labor costs by craft and other information which the Owner may reasonably require the Contractor to produce in order to permit the Owner to evaluate the Contractor's lump sum change order proposals. In pricing this proposal, the Contractor shall include estimates of the type of costs described in Subparagraph 11.11;
- (b) Unit prices stated in the Contract Documents or subsequently agreed upon multiplied by final verified quantities of work performed;
- (c) Cost to be determined in a manner agreed upon by the parties which includes markups that do not exceed those set forth in Subparagraph 11.11.7 below; and
- (d) Costs to be determined in the manner described in Subparagraph 11.10.

11.9 Contract Time Adjustment

Any adjustment in Contract Time shall be determined in accordance with the scheduling requirements in the Technical Specifications. The Contractor shall support any request or proposal for an adjustment in Contract Time with a schedule produced in accordance with the Technical Specifications, which shows how and where a delay on the critical path occurs and will affect the Contract Time. This submittal shall include a description of the Contractor's efforts to reschedule work in order to mitigate the effect of the changes on the schedule.

11.10 Force Account Work

11.10.1 In situations where the cost or time for performing a required change cannot be adequately defined or agreed upon, but the changed work must proceed, the Owner may direct the Contractor to perform the work on a Force Account basis. Adjustments shall be determined on the basis of reasonable expenditures and savings of those performing the change in the work including, in case of an increase in the Contract Amount, an allowance for overhead and profit which shall not exceed the allowance described in Subparagraph 11.11.7 below. In such case, the Contractor shall keep and present in such form as the Owner may prescribe an itemized detailed accounting together with appropriate supporting data of all of the costs associated with the change in accordance with the rates described in Subparagraph 11.11.1 through Subparagraph 11.11.4 which clearly distinguishes the cost of changed work from base contract work. Information which shall be required on these forms includes an itemization of all costs for labor, materials and equipment rental and total costs to date for force account work. The Contractor shall include hours worked, rates of pay, names and job classifications for all workers and size, type, identification number, rental rate and hours of operation for equipment.

11.10.2 Unless otherwise provided in the Contract Documents, costs for the purposes of Force Account Work shall be itemized daily on Daily Force Account Forms provided by the Owner which are signed by the Contractor and Owner. Such costs shall form the basis for determining the maximum amount to be paid the Contractor, but this amount may be reduced where necessary to take into account the cost of base contract work, work included in approved Change Orders, work described in Change Directives, idle time for workers and/or equipment when work could have been performed in other locations or the number of workers or amount of equipment provided exceeds the number or amount required to perform the work, unsatisfactory work or work which may be performed concurrently with the changed work and which cannot be easily segregated from the changed work.

11.11 Contract Sum Determination

In no event shall the charge or credit to the Owner associated with any change exceed the sum of the following:

11.11.1 Direct Labor. Actual net direct increase or decrease in the cost of the Contractor's labor for all work associated with the change. Contractor's labor shall be limited to labor (including salaried field personnel) that performs the individual change in the work full-time.

11.11.2 Labor Burden. Contractor's actual costs for worker's compensation and liability insurance, payroll taxes, social security and employees' fringe benefits (including employer paid health insurance) imposed on the basis of payrolls. This labor burden must reflect the variability of some burdens, i.e., social security. The burden shall include all small tools that cost less than \$200 a piece.

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

11.11.4 Equipment. Actual net cost to the Contractor of owned and/or rented equipment, other than small tools, is to be determined using the following methods:

- (a) Owned equipment operating costs shall be determined in accordance with the requirements and provisions applicable to owned equipment and extra work contained in the current edition of the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction.
- (b) Rental equipment costs shall be determined using actual invoiced rates less all discounts for bare equipment rental. Operating costs will be determined based on rates in the above-cited Colorado Department of Transportation Specifications.
- (c) Mobilization/demobilization costs will be paid if the equipment is mobilized exclusively for work described in a Change Order. If the equipment is used on base contract work, no mobilization or demobilization cost will be paid. Mobilization/demobilization cost will be based on using the least expensive means to mobilize or demobilize. Equipment shall be obtained from the nearest available source. When the least expensive methods are used, then costs shown in the actual invoice will be the basis for pricing.

11.11.5 Bonds, Insurance, Permits and Taxes. Actual increases or decreases in the cost of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the work.

11.11.6 Subcontract Costs. Net cost of Subcontractor work at any tier, provided that the cost of the Subcontractor is determined in accordance with the above requirements. When possible, the Contractor shall obtain quotes from more than one Subcontractor.

11.11.7 Overhead and Profit.

- (a) Twelve percent (12 %) of the sum of Subparagraphs 11.11.1 through 11.11.5 above, to cover a Contractor's or Subcontractor's overhead and profit for work performed by that Contractor or Subcontractor.
- (b) Three percent (3 %) of Subparagraph 11.11.6 above to cover Contractor's and Subcontractor's overhead and profit for overseeing work performed by Subcontractors at any tier.
- (c) Neither the Contractor nor any Subcontractor, nor the Owner in the case of a credit, will attempt to apply these percentage adjustments in a way which would pyramid either the cost or credit because a Subcontractor or Subcontractors at any tier are involved.

11.11.8 Totals as Equitable Adjustment. The Contractor agrees that the total of the above constitutes an equitable adjustment for any and all damages resulting from a change or due to delay or disruption caused by the Owner.

11.12 Variation in Quantity of Unit-Priced Items

11.12.1 Where the quantity of a unit-priced item in this Contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 25 percent above or below the estimated quantity, an equitable adjustment in the Contract Amount may be made by Change Order. The equitable adjustment shall be based upon any increase or decrease in cost due solely to the variation above 125 percent or below 75 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completing the work, the Contractor may request in writing an extension of time in accordance with Paragraph 11.5.

ARTICLE XII: SITE CONDITIONS

12.1 Differing Site Condition

12.1.1 The Contractor shall promptly and before such conditions are disturbed, but in no event more than ten (10) days after the conditions are first discovered, notify the Owner both verbally and with a written Contractor Change Request submitted pursuant to Subparagraphs 11.5 through 11.9 of the following: (a) subsurface or latent physical conditions at the work site differing materially from those indicated in the Contract Documents; or (b) unknown physical conditions at the work site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

12.1.2 The Owner shall promptly investigate the conditions and, if it finds that such conditions do materially so differ and could not have been discovered or reasonably inferred from the Contract Documents or a thorough inspection of the work site by the Contractor, and such conditions cause an increase or decrease in the Contract Time or Contract Amount, the Owner shall issue a Change Notice or Change Directive under Paragraphs 11.2 or 11.3

12.1.3 If the Contractor has not fully complied with the notice and submittal requirements of this Paragraph 12.1 and Paragraphs 11.5 through 11.7 (including if appropriate the provisions of Paragraph 11.9) with particular attention to not disturbing the site prior to allowing the Owner to

investigate the condition, the Contractor shall be deemed to have waived its right to assert a claim for an adjustment in the Contract Time or Contract Amount arising out of such differing site conditions.

12.2 Site Conditions, Inspection and Investigations

12.2.1 By executing the Contract, the Contractor represents that it has visited the site, familiarized itself with the local conditions under which the work is to be performed, and correlated its observations with the requirements of the Contract Documents.

12.3 Geo-technical and Other Designer Reports, Investigations and Test

12.3.1 By executing the Contract, the Contractor acknowledges that certain soil reports, boring, and other geo-technical data, more particularly described or referenced in the Technical Specifications of this Contract, have been made available for inspection and review.

12.3.2 It is expressly understood by the Contractor that the Owner does not warranty the accuracy or reliability of said borings and other geo-technical data or of the data, information or interpretations contained in said soils reports, and is not responsible for any deduction, interpretation, or conclusion drawn therefrom by the Contractor. Said soil reports may contain interpretations of borings and geo-technical data obtained at the work site by engineering or design professionals. Such borings and geo-technical data are subject to sampling errors, and any interpretations or conclusions based on such borings and data depend to a degree on the judgment of the engineering or design professional.

12.3.3 The Contractor agrees that it will make no claims against the Owner if, in performing the work, it finds that the actual conditions encountered conform to those indicated by said soil reports, borings and other geo-technical data, those reasonably inferred therefrom, or those reasonably discoverable by a thorough inspection of the site by the Contractor.

ARTICLE XIII: CLAIMS FOR ADJUSTMENTS

13.1 Notice of Intent to Claim

13.1.1 If after receiving a decision from the Owner that a Change Order or Change Directive will not be issued as requested by the Contractor, or the Contractor does not agree with the Owner's decision on an equitable change in price or time, or the Contractor disputes a decision by the Owner to assess charges against the Contractor or any other event occurs giving rise to a claim, and the Contractor intends to submit a claim thereof, the Contractor shall submit in letter form a Notice of Intent to Claim to the Owner. A Notice of Intent to Claim for change in price or time cannot be filed unless a Contractor's Change Request has first been made in accord with Subparagraphs 11.5 through 11.9.

13.1.2 The written Notice of Intent to Claim shall be clearly titled as such and all Notices shall be numbered sequentially. The Notice shall contain the following:

- (a) Date of the event giving rise to the claim.
- (b) A description of the claim.
- (c) The reasons why the Contractor believes additional compensation or time is due or charges were wrongly assessed.
- (d) An estimate of any additional costs associated with the claim.
- (e) Contractor's plan for mitigating costs or delays associated with the claim.

13.1.3 The Notice of Intent to Claim described above shall be given within ten (10) days after (1) denial of any request for a change in the Contract Amount or Contract Time contained in a Contractor Change Request submitted pursuant to Subparagraphs 11.5 and 11.9, (2) issuance of a Change Directive with which the Contractor disagrees, (3) receipt of written notice from the Owner that the Owner intends to assess liquidated damages or other charges against the Contractor, or (4) the occurrence of any other event or events giving rise to the claim.

13.2 Submittal of Claims

13.2.1 The Contractor shall, within twenty (20) days after it submits a Notice of Intent to Claim, submit to the Owner a complete and itemized claim which includes any claimed increase in Contract Time and Contract Amount. The Contractor may request an extension of time to submit the claim, which extension may be granted by the Owner for good cause shown. The claim must be described in sufficient detail to allow the Owner to evaluate the basis of and costs associated with said claim. A claim for increase in Contract Amount shall be submitted based on actual costs whenever possible, rather than estimate or opinion, shall be supported by invoices, time cards, and other business records commonly accepted in the industry, and shall comply with the requirements of Subparagraph 11.11. The claim shall be accompanied by copies of all contract provisions or other documents relied on and a summary of the legal and factual theories supporting the claim. A claim for time extension must be accompanied by a Revised Construction Schedule reflecting the effects of the delay on the critical path and showing actions which the Contractor has taken or proposes to take to minimize the effects of the delay. The claim shall also identify any measures the County can take to minimize the claim.

The Contractor shall furnish upon request all additional information and data which the Owner determines would be needed to aid in resolving the claim through negotiation or which is required to complete an evaluation of the claim. The Contractor shall give the Owner access to its books, correspondence, records, and other materials relating to the work described in the claim, shall require its Subcontractors and suppliers to provide the Owner with such access, and shall make its personnel and that of its subcontractors and suppliers available to discuss and answer cost, schedule and other questions related to its claim. Clear copies of all necessary supporting records shall be provided to the Owner at no cost. Failure to submit requested information may be the basis for denial of a claim.

13.2.2 Failure to submit the claim in writing within the time and in the manner described above, or within such extended time granted by the Owner shall constitute a waiver by the Contractor of any right equitable or otherwise to make such claim.

13.2.3 The Contractor shall submit with its claim a notarized certificate that:

- (a) the claim is made in good faith;

- (b) all supporting data are accurate and complete to the best of the Contractor's knowledge and belief;
- (c) the amount requested is not overstated or inflated and fairly and accurately reflects that contract adjustment for which the Contractor believes the Owner is liable; and
- (d) The prices stated for material and equipment are the lowest reasonably available to the Contractor and include all available discounts.

If the Contractor is an individual, the certification shall be executed by that individual. If the Contractor is not an individual, the certification shall be executed by (1) a senior company official in charge of the work performed under this Contract; or (2) an officer or general partner of the Contractor.

13.2.4 The Owner or his designee shall investigate, review and evaluate the claim and make a determination. Such determination shall normally be made in writing within thirty (30) days of receipt of a completed and fully-documented claim; however, if special circumstances exist or the claim is unusually complex, the Contractor will be notified of a longer period.

13.2.5 If the Contractor disagrees with the Owner's final determination, it may within ten (10) days of receipt of that determination request a Disputes Review Panel Hearing under (Article XVIII).

13.2.6 The Contractor shall proceed diligently with performance of this Contract pending final resolution of any claim made under this section, and shall comply with any decision of the Owner pending final resolution of the claim. Failure to proceed with the work shall be grounds for suspension or termination of the Contract.

13.2.7 If the Contractor agrees with any determination or resolution by the Owner requiring a change in Contract Time or Amount, it shall be processed as a Change Order.

13.2.8 Failure to meet any of the requirements of this Article XIII in a timely and complete manner shall constitute a waiver by the Contractor of any right to adjustments of Contract Time or Amount either by administrative review or by any other action at law or equity.

ARTICLE XIV: UNCOVERING AND CORRECTION OF WORK

14.1 Uncovering of Work

14.1.1 If any portion of the work should be covered contrary to the request of the Owner or the requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner, be uncovered for its observation and replaced at the Contractor's expense.

14.1.2 If any other portion of the work has been covered which the Owner has not specifically requested to observe prior to being covered, the Owner may request to see such work and it shall be uncovered by the Contractor. If such work shall be found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by the Owner or a separate contractor (as described in Article IV), in which event the Owner shall be responsible for the payment of such costs.

14.2 Correction of Work

14.2.1 The Contractor shall promptly correct all work rejected by the Owner as defective or as failing to conform to the Contract Documents, whether such defect or failure is observed before or after substantial completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected work, including compensation for additional services made necessary by such defect or failure.

14.2.2 If, within one year after the date of substantial completion of the work or designated portion thereof, or within one year after acceptance by the Owner of designated equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so (unless the Owner has previously given the Contractor a written acceptance of such specific condition). This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

14.2.3 The Contractor shall remove from the site all portions of the work which are defective or non-conforming and which have not been corrected under Paragraphs 3.5.3, 14.2.1 and 14.2.2, unless such obligation to remove is waived in writing by the Owner.

14.2.4 If the Contractor fails to correct defective or nonconforming work as provided in Paragraphs 3.5.3, 14.2.1 and 14.2.2, the Owner may correct it in accordance with Paragraph 14.2.5.

14.2.5 If the Contractor does not proceed with the correction of such defective or nonconforming work within a reasonable time as specified by written notice from the Owner, the Owner may correct or remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may, upon ten (10) days written notice, sell such work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for any additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall promptly pay the difference to the Owner.

14.2.6 The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction or removal.

14.2.7 Nothing contained in this Paragraph 14.2 shall be construed as establishing a period of limitation with respect to any other obligation of Contractor under the Contract Documents, including without limitation Paragraph 3.5 hereof. The establishment of the time period of one (1) year after the date of substantial completion or such longer period of time as may be prescribed by law or by the terms of any warranty required

by the Contract Documents relates only to the specific obligation of the Contractor to correct the work, and shall in no way be deemed to limit or modify the time within which Contractor's obligation to comply with the Contract Documents may be sought to be enforced. Further, this will not modify the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations under the Contract Documents other than specifically to correct the work.

14.3 Acceptance of Defective or Non-Conforming Work

14.3.1 If the Owner agrees to accept defective or non-conforming work, it may do so instead of requiring its removal and correction. In the event of such acceptance by Owner, a Change Order will be issued to reflect an adjustment in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has then been made.

ARTICLE XV: OWNER'S RIGHT TO TERMINATE THE CONTRACT

15.1 Termination of Contract for Cause

15.1.1 The Owner may terminate the Contract for cause based on reasons due to actions or inactions of the Contractor. Such reasons for termination are:

- (a) If the work to be performed under the Contract is assigned by the Contractor without written permission of Owner;
- (b) If the Contractor shall file a voluntary petition in bankruptcy;
- (c) If a general assignment of the Contractor's assets are to be made for the benefit of his creditors;
- (d) If a receiver should be appointed for the Contractor or any of its property;
- (e) If at any time the Owner shall conclude that the performance of the work under the Contract is being unnecessarily delayed or that the Contractor is violating any of the conditions, provisions, or covenants of the Contract, drawings, or specifications, or that the Contractor is executing the same in bad faith or otherwise not in accordance with terms of the Contract;
- (f) If the work or any part thereof is not fully completed within the time or times named for its completion or within the time to which such completion date or dates may be extended;
- (g) If the Contractor abandons the work;
- (h) If the Contractor fails to maintain the required bonds and/or insurance;
- (i) If other just causes exist.

15.1.2 The Owner will serve written notice on the Contractor, with a copy to the PPRTA, of the Owner's intent to terminate for cause and will give the Contractor ten (10) days from the date it receives the Notice to cure the default or provide to the Owner, in writing, a detailed plan of how it will remove the causes for termination, except that, if the contract completion date is less than ten (10) days away, the Notice may specify less than ten (10) days. If the Contractor does not submit such plan within the time established or if, in the judgment of the Owner, such plan will not ensure the satisfactory performance of the work, the Owner may declare the Contract terminated on the effective date specified in the Notice or any other date thereafter.

15.1.3 In the event of such termination, the Owner shall notify the PPRTA and notify the Contractor to discontinue all work under the Contract and the Contractor shall immediately respect such notice and stop work and cease to have any right to the possession of the work site and shall forfeit its Contract as of the effective date of termination specified.

15.1.4 Upon such termination, the Owner may take possession of all materials, equipment, tools and plant as may be on the site of the work and required as necessary for completion of the work and take over the work and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Contractor. The Contractor and its surety shall be liable to the Owner and the PPRTA for any and all costs and expenses in excess of the Contract Amount or prices sustained by the Owner by reason of such prosecution and completion, which costs shall include administrative costs and attorney's fees.

15.1.5 In the event Owner terminates under this Section, the PPRTA shall also be deemed to have terminated this Contract as a Party.

15.2 Termination of Contract for Convenience of Owner

15.2.1 The performance of work under this Contract may be terminated by the Owner in whole or in part whenever for any reason. in its sole discretion, Owner shall determine that such termination is in the best interest of the Owner or whenever the Owner is prohibited from completing the work because of conditions beyond the control of either the Owner or the Contractor. Such termination shall be effected by giving not less than three (3) days written notice to the Contractor, with a copy to the PPRTA, specifying the extent to which performance of work under this Contract is terminated and the date upon which such termination becomes effective.

15.2.2 Upon receipt of notice of such termination, the Contractor shall:

- (a) Stop work as specified in the notice;
- (b) Terminate all orders and subcontracts except as necessary to complete work which is not terminated;
- (c) If directed by the Owner, assign all right, title and interest in subcontracts and materials in progress, in which case the Owner will have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such subcontracts;
- (d) Settle outstanding liabilities and claims with the approval of the Owner or his designated representative;
- (e) Complete performance of such part of the work as has not been terminated; and
- (f) Take such other actions as may be necessary, or as may be directed by the Owner, for the protection and preservation of the property related to the Contract.

15.2.3 Except as provided above, any inventory resulting from the termination of this Contract may, with written approval of the Owner, be sold or acquired by the Contractor under the conditions prescribed by and at prices approved by the Owner.

15.2.4 Upon receipt of Notice of such termination, the Contractor shall submit to the Owner a request for payment of its termination costs, in the form and with certification prescribed by the Owner. Such request shall be submitted promptly, but in no event later than six (6) months from the effective date of termination, unless extended in writing by the Owner upon the written request of the Contractor within such six (16) month period. However, if the Owner determines that the facts justify it, a request may be received and acted upon after six (6) months.

15.2.5 The Contractor shall be entitled to receive reimbursement for the reasonable cost of the work and a proportion of the bid profit as of the date of termination, including, a release of retainage. The Owner will additionally authorize the PPRTA to reimburse the Contractor for such other reasonable costs resulting from said termination such as restocking charges and protection of the work. The reimbursement of profit shall be calculated by dividing the amount of the work paid for prior to termination by the total contract amount and multiplying that percentage by the amount of profit in the original bid and approved change orders. The Contractor shall not be entitled to loss of other anticipated profits, profits lost on other work not obtained or any other consequential damages, or any reimbursement for any costs incurred due to the Contractor's fault or failure to mitigate, as a result of any such termination for convenience, and in no event shall the total sums paid the Contractor exceed the Contract Amount.

15.2.6 In arriving at the amount due the Contractor under this Paragraph 15.2, there shall be deducted:

- (a) All unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this Contract;
- (b) Any claim which the Owner may have against the Contractor in connection with this Contract;
- (c) The agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired or sold by the Contractor or sold pursuant to the provisions of Paragraph 15.2.3 and not otherwise recovered by or credited to the Owner; and
- (d) Any outstanding Subcontractor claims.

15.2.7 The Owner may, from time to time, under such terms and conditions as it may prescribe, authorize partial payments and payments against costs incurred by the Contractor for the terminated portion of the construction, if it is estimated that the total of such payments will not exceed the amount to which the Contractor will be entitled.

15.2.8 A settlement for the work performed shall not relieve the Contractor or its surety from responsibility for defective work and/or materials on the completed portion of the work nor for labor and materials as guaranteed by the Payment and Performance Bonds.

15.2.8 The Owner shall be given full access to all books, correspondence, records and other materials of the Contractor relative to this Contract in order to determine the amounts to be paid on account of the termination of the Contract. The Contractor shall, as requested by the Owner, furnish clear copies of any such materials.

15.2.9 In the event Owner terminates under this Section, the PPRTA shall also be deemed to have terminated this Contract as a Party.

ARTICLE XVI: ENVIRONMENTAL HAZARDS

16.1 Contractor shall not permit the site to be used in any manner, or permit any operations to be conducted thereon, which might result in the site becoming contaminated by any hazardous substance or environmental pollutant in violation of any federal, state, or local environmental statutes, ordinances or regulations, including without limitation the Comprehensive Environmental Response and Compensation and Liability Act.

ARTICLE XVII: PERFORMANCE AND PAYMENT BONDS

17.1 Surety Bonds

Payment bonds and performance bonds must be issued by a corporate surety authorized to do business in the State of Colorado, on the U.S. Treasury Department's list of approved sureties, and approved by the Owner.

17.2 Performance Bond

The Contractor must procure and pay for a performance bond which, when executed by the Contractor and surety, shall be a guarantee for the faithful performance and completion of the work in strict accordance with the terms of the Contract. The performance bond shall also be a guarantee for the repair or replacement of all work found to be defective or otherwise unacceptable during the Contract Time and through the warranty period. This bond shall be in the amount of one hundred (100%) percent of the dollar value of the Contract.

17.3 Payment Bond

The Contractor must procure and pay for a payment bond which, when executed by the Contractor and surety, shall be a guarantee that all those performing labor or furnishing materials, supplies, tools, and equipment for the performance of work under the Contract shall be paid. This bond shall be in the amount of one hundred percent (100%) of the dollar value of the Contract, and it shall meet the requirements of Title 38, Article 26, Colorado Revised Statutes, as amended.

ARTICLE XVIII: DISPUTES AND LITIGATION

18.1 If a dispute arises out of or relating to this Contract or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled by the parties through direct discussions, with respect to disputes relating to the construction of the Project (including claims submitted by the Contractor pursuant to Article XIII and back-charges or liquidated damages asserted by the County against the Contractor), the parties shall attempt to resolve the dispute by submitting it to a Dispute Review Panel in accordance with the procedures set forth in Paragraph 18.2. The submittal of any such disputes to the Dispute Review Panel and obtaining a decision from that Panel shall be a condition precedent to commencing litigation pursuant to Paragraph 18.3; provided, however, that any dispute involving a claim in excess of \$1 million or the termination of the Contract need not be submitted to the Dispute Review Panel before commencing litigation.

18.2 A three-person Dispute Review Panel (the "Panel") shall be selected to hear and attempt to resolve disputes between the parties concerning the construction of the Project. The Panel shall consist of a design professional (architect/engineer), a municipal owner representative, and a contractor representative, all of whom shall have experience on municipal construction projects and shall be neutral decision makers. The Panel shall be chosen jointly by the Owner and the Contractor from a list of proposed panel members generated by the parties. The parties may seek the assistance of the American Arbitration Association in generating a list of potential Panel members. In the event the parties are unable to agree on the members of the Panel, the Owner shall select the Panel members.

18.2.1 If necessary, any two of the Panel members may act for the Panel. A decision by any two of the Panel members shall constitute a decision of the Panel, which shall be in writing and shall describe in reasonable detail the basis for the decision. The Panel's decision on any dispute shall be advisory only and shall not be final or binding on the parties. No decisions or statements of the Panel may be admitted as evidence in any litigation between the parties nor may the members of the Panel be called to testify, in any litigation between the parties concerning disputes submitted to the Panel.

18.2.2 Each party shall bear its own costs associated with presenting any disputes to the Panel, which cost shall not be recoverable as part of a change order or in any subsequent Litigation. The cost of selecting the Panel and the Panel members' compensation and expenses shall be borne equally by the Owner and the Contractor. Any billing statement submitted by Panel members (who are intended beneficiaries of this Paragraph), to the parties shall be paid within thirty (30) days of receipt. The Panel members shall also be entitled to recover from the delinquent party all costs of collection associated with late or nonpayment, including reasonable attorney's fees.

18.2.3 To the extent they are not inconsistent with the terms and provisions of this Paragraph 18.2, the procedures set forth in Rules 9 through 15 of the Dispute Review Board Procedures of the American Arbitration Association (June 1, 1993 edition) shall apply to all Panel proceedings.

18.3 Any litigation whatsoever regarding this Contract, including but not limited to claims and disputes concerning payment or breach or default of this Contract, shall be tried by the District Court in and for the County of El Paso, State of Colorado.

18.4 In the event any dispute or litigation arises under this Contract and during the time such dispute or litigation is being resolved, the Contractor hereby agrees that it shall continue performance under this Contract in accordance with the terms and conditions hereof since time is of the essence. The failure of the Contractor to continue expeditious performance due to a dispute or litigation arising under this Contract, at the option of the Owner, shall be construed as a material breach of this Contract justifying termination or such other action as the Owner deems appropriate.

ARTICLE XIX: REQUEST FOR INFORMATION

19.1 The Contractor shall submit any requests for information or clarification of drawings and specifications to the Owner. When the Owner responds to such requests for explanation or clarification, it will issue a response which can consist of a written explanation with or without drawings. Responses to requests for information shall neither authorize nor constitute time extensions or changes in the Contract Amount. Should the Contractor believe that the response to requests for information requires a change in Contract Time and/or Contract Amount, it must submit a Contractor Change Request to the Owner.

19.2 The Contractor shall attempt to answer requests for information from its Subcontractors and suppliers. Such requests may be forwarded by the Contractor to the Owner if the Contractor is unable to answer them. If Subcontractor requests are submitted to the Owner, the Contractor shall identify any information or statements in the request which it believes are incorrect and the reasons why.

ARTICLE XX: SUBSTITUTION OF MATERIALS AND EQUIPMENT

20.1 Within thirty (30) days of the Notice to Proceed, the Contractor may ask for substitution of specified material or equipment with equal or equivalent items only under the following circumstances:

- (a) The Contractor provides evidence to the Owner which, in the Owner's opinion, establishes that an item of specified material is not available; or
- (b) The Contractor provides evidence to the Owner which, in the Owner's sole opinion, establishes that the specified item will have an unreasonable delivery time due to no fault of the Contractor; or
- (c) The Technical Specifications allow the use of equal or equivalent items or material.

All requests shall be in writing as part of a submittal. The request shall describe all features of the requested substitution including any tie in with other elements of the construction including utilities and controls along with the substitute materials or equipment's size and capacity. The request shall list all differences from the product described in the Technical Specifications, include the price of the specified item and the requested substitution, and describe any advantages or disadvantages of the proposed substitution. If the equal or equivalent material or equipment costs less than that specified, the Contractor shall so state in its submittal and if the Owner accepts the proposed substitution, it may issue a change order to reduce the Contract Amount by the amount of the direct cost savings to the Contractor. If the equal or equivalent material or equipment is accepted for the reasons described in (a) or (b) above, the Owner may issue a change order to adjust the Contract Amount. If there are any additional and/or increased costs charged to the Owner by the Contractor due to a substitution of materials, the Contractor shall bear the additional and/or increased costs.

ARTICLE XXI: ACCOUNTING OF COSTS AND AUDIT

21.1 Contractor shall keep and maintain in the metropolitan Colorado Springs area, and shall cause its Subcontractors and outside consultants to keep and maintain books, records, accounts and other documents (hereinafter collectively referred to as "records") that are sufficient to accurately and completely reflect all costs incurred pursuant to this Contract, including costs which may be the basis of a Contractor Change Request or a claim by the Contractor. Such records shall include the project estimate, receipts, memoranda, vouchers, and accounts of every kind and nature pertaining to the performance of the work, including, but not limited to, job cost ledgers, invoices from and payments to subcontractors and

material men, and records or home and field office overhead, as well as complete summaries and reports setting forth all reimbursable man-hours expended and payroll records. All such records shall be kept for three (3) years from the date of Final Completion.

21.2 The PPRTA, the Owner and any firm of auditors retained by the PPRTA and the Owner shall have access, upon reasonable advance notice in writing, to all such records maintained by Contractor and its Subcontractors and consultants, for the purpose of auditing and verifying Contractor's costs or any other costs claimed to be due and payable hereunder. The Owner and the PPRTA, including any firm of auditors retained by the PPRTA, shall have the right to reproduce any such records, and Contractor and its Subcontractors and consultants shall keep and preserve all such records for a period of at least three (3) years from and after final acceptance or termination of the Contract.

21.3 The Contractor shall include in all subcontracts, consulting agreements and any other agreements entered into by Contractor pursuant to the performance of the work a provision to the effect that its Subcontractors, consultants or other parties shall observe and comply with all the obligations of Contractor under this provision in the same manner and to the same extent as Contractor.

ARTICLE XXII: MISCELLANEOUS PROVISIONS

22.1 Parties to the Contract

Although other entities may be involved in the work performed under the Contract and other parties may be affected by that work, it shall be understood that there are only three parties to the Contract; the Owner, the PPRTA and the Contractor.

22.2 No Waiver of Rights

No assent by the Owner, expressed or implied, to any breach of any one or more of the covenants, provisions, and agreements of the Contract Documents shall be deemed or taken to be a waiver of any succeeding breach.

22.3 Third-Party Beneficiary

It is specifically agreed between the parties executing this Contract that is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof a third-party beneficiary hereunder or, except as otherwise expressly provided for herein, to authorize anyone not a party to this Contract to maintain a suit for personal injuries, property damage, or any other damages under this Contract. The duties, obligations, and responsibilities of the parties to this Contract, with respect to third parties, shall remain as imposed by law.

22.4 Contract Made in Colorado

The Contract between the Contractor, the PPRTA and the Owner shall be deemed to have been made in the State of Colorado and shall be governed, interpreted, and construed in accordance with the laws of the State of Colorado.

22.5 Successors and Assigns

The PPRTA, the Owner and the Contractor each binds itself, its partners, successors, assigns and legal representatives to all covenants, agreements and obligations contained in the Contract Documents. The PPRTA, the Owner or the Contractor shall not assign the Contract or any interest therein, or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to it under any of the Contract Documents without the previous written consent of the Owner.

22.6 Tests

22.6.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the work to be inspected, tested or approved, the Contractor shall give the Owner timely notice of its readiness so that the Owner may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals.

22.6.2 If the Owner determines that any work requires special inspection, testing or approval which Subparagraph 22.6.1 does not include, it will instruct the Contractor to order such special inspection, testing or approval and the Contractor shall give notice as provided in Subparagraph 22.6.1. If such special inspection or testing reveals a failure of the work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs for the correction thereof or attributable thereto, including compensation for any additional services made necessary by such failure. Otherwise, the Owner shall bear such costs and an appropriate change order shall be issued.

22.6.3 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered to the Owner.

22.6.4 If the Owner is to observe the inspections, tests or approvals required by the Contract Documents, it will do so promptly and, where practicable, at the source of supply.

22.7 Attorney's Fees

In the event litigation is commenced to enforce or interpret all or any portion of this Contract, or if litigation is commenced for damages or for any other relief hereunder, the prevailing parties or party shall be entitled to recover reasonable attorney's fees incurred in connection with such litigation.

22.8 Contract Provisions

If any provision of this Contract is found to be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality or enforceability of any other provision of this Contract, and there shall be substituted for the affected provision a valid and enforceable provision as similar as possible to the affected provision.

22.9 No Discrimination on Project

The Contractor shall not discriminate in its employment practices against any person by reason of race, religion, color, sex or national origin and agrees to comply with the provisions of said laws and all laws and orders relating to the employment of the handicapped, the employment of veterans and the use of minority business enterprises to the extent any such laws and orders are applicable in the performance of work or furnishing of services, materials or supplies hereunder. For this purpose, the provisions of such laws and orders and pertinent regulations issued thereunder, as now in force or hereafter amended, shall be deemed an integral part of this Contract to the same extent as if written at length herein.

22.10 Public Relations

22.10.1 The Contractor and its subcontractors shall not include any reference to this Contract or to work it performs thereunder in any of its advertising or public relations materials without first obtaining the written approval of the PPRTA and the Owner. All information published shall be factual, and shall in no way imply that the PPRTA and the Owner endorses the Contractor or its services or product. All signage on the site shall comply with state and local sign codes, ordinances and regulations and shall be subject to the approval of the Owner.

22.10.2 The Owner shall have the right to photograph, videotape, film or in any other manner record the progress of the work at any time and to use such materials for any purpose.

22.11 Compliance With Laws

At all times during the performance of this Contract, Contractor shall strictly observe and conform to all applicable federal, state and local laws, rules, regulations and orders that have been or may hereafter be established.

22.12 Colorado Labor Preference

The provisions of Sections 8-17-101 and 102, C.R.S., are applicable to this Contract. Colorado labor must be employed to perform the work to the extent of not less than eighty percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed on the Project. "Colorado labor" means any person who is a resident of the State of Colorado, at the time of employment, without discrimination as to race, color, creed, sex, age or religion except when sex or age is a bona fide occupational qualification.

22.13 Federal Immigration Law Compliance

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