

**El Paso County
Financial Services Department
CONTRACTS & PROCUREMENT DIVISION**

**CONSTRUCTION CONTRACT
PIKES PEAK RURAL TRANSPORTATION AUTHORITY (PPRTA)**

CONTRACT NUMBER:	
SUBJECT MATTER:	
COUNTY DEPARTMENT:	
CONTRACTOR:	Vendor Address City, State Zip Phone: e-mail:
EFFECTIVE DATE:	DATE APPROVED BY PPRTA BOARD
EXPIRATION DATE:	UPON COMPLETION

THIS CONTRACT, entered into on the date set forth below, is made by and between the **BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO ("COUNTY")**, the **PIKES PEAK RURAL TRANSPORTATION AUTHORITY (PPRTA)** and _____ (**"CONTRACTOR"**).

WHEREAS, a bid has been received by the **COUNTY** for the construction of the project, and it has been recommended that a **CONTRACT** for said project be made and entered into with the above-named **CONTRACTOR** under the above stated contract number; and

WHEREAS, the **CONTRACTOR** is willing, qualified and able to perform all of the contract work in accordance with the contract documents and its bid; and

WHEREAS, the **COUNTY** and the **PPRTA** desire to purchase and receive from **CONTRACTOR** all materials, labor, equipment and supplies necessary or incidental to the project described in **Appendices A & B**; and

WHEREAS, **CONTRACTOR** is an individual or entity qualified and able to provide the type of labor and materials required for the project described in **Appendices A & B**; and

WHEREAS, the parties to this **CONTRACT** desire to reduce to written terms the manner and conditions under which labor and materials will be provided and compensated.

NOW, THEREFORE, in consideration of the above, in consideration of the compensation to be paid the **CONTRACTOR**, and in accordance with the mutual terms, conditions, requirements and obligations set forth in this **CONTRACT**, the **COUNTY**, the **PPRTA** and **CONTRACTOR** agree as follows:

SECTION 1. SCOPE OF WORK

The **COUNTY** and the **PPRTA** agree to retain **CONTRACTOR** and **CONTRACTOR** agrees to furnish all labor, tools and materials necessary to complete the project described in **Appendices A & B**.

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SECTION 2. CONTRACTOR'S RESPONSIBILITIES

- 2.1 **CONTRACTOR** shall adhere to all terms and conditions set forth in **Appendix C**, the General Conditions of the Contract attached to this **CONTRACT** and incorporated by reference.
- 2.2 All issues or questions of **CONTRACTOR** about this **CONTRACT** arising during the term of this **CONTRACT** shall be addressed to the designated County Representative identified in Section 3 below.
- 2.3 **CONTRACTOR** shall attend meetings and submit reports, plans, drawings and specifications as required in **Appendices A & B** shall be reasonably available to the County Representative to respond to any issues that may arise during the term of this **CONTRACT**.
- 2.4 All employees, agents, representatives and subcontractors of **CONTRACTOR** who will have significant responsibility for performance of this **CONTRACT** shall be identified to and be subject to approval by the County Representative prior to the commencement of any work by these individuals.
- 2.5 **CONTRACTOR** shall perform all work under this **CONTRACT** in a good workmanlike manner and in accordance with generally recognized practices and standards of the construction industry and to the reasonable satisfaction of the **COUNTY**.
- 2.6 **CONTRACTOR** represents, warrants and covenants that the prices, charges and/or fees set forth in this **CONTRACT** (on the whole) are at least as favorable as the prices, charges and/or fees **CONTRACTOR** charges (on the whole) to other of its customers or clients for the same or substantially similar products or services provided under the same or substantially similar circumstances, terms and conditions.
- 2.7 If **CONTRACTOR** agrees or contracts with other customers or clients similarly situated during the term of this **CONTRACT**, and offers or agrees to financial terms more favorable than those set forth herein (on the whole), **CONTRACTOR** hereby agrees that it will reduce the prices, charges and/or fees charged to the **COUNTY** and the **PPRTA** and paid for with **PPRTA** funds with respect to the products or services hereunder to the most favorable rates received by those other customers or clients.

SECTION 3. COUNTY'S RESPONSIBILITIES

The County Representative is (NAME, TITLE, DEPARTMENT, TELEPHONE NUMBER). The County Representative shall have authority to transmit instructions, receive information and documents and resolve any issues arising out of the performance of this **CONTRACT**. The County Representative shall provide **CONTRACTOR** with the identity of an alternate contact person in the event the County Representative is unavailable to respond to **CONTRACTOR'S** inquiries.

SECTION 4. TIME OF PERFORMANCE AND DELAY

Time is of the essence for this **CONTRACT**. **CONTRACTOR'S** time of performance shall commence as stated in the General Conditions of Contract unless the time of performance is extended by mutual written agreement of the parties or the **CONTRACT** is otherwise terminated in accordance with Section 13 below, or until the expiration date specified on the first page of this **CONTRACT**, whichever comes first.

SECTION 5. COMPENSATION

The **PPRTA** agrees to compensate **CONTRACTOR** as set forth in this Section for labor and materials supplied in accordance with this **CONTRACT**.

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- 5.1 The **PPRTA** agrees to pay the **CONTRACTOR** for the complete and satisfactory performance of services under this **CONTRACT**, as determined by the **COUNTY**, in the following Not to Exceed amount, subject to the **PPRTA'S** annual budgeting and appropriation:

TOTAL CONTRACT SUM NOT TO EXCEED:

\$ _____

(AMOUNT SPELLED OUT) AND00/100 DOLLARS

SEE APPENDIX D - PURCHASE ORDER # _____

Retainage on work performed during the term of the Contract Progress Payments and the Final Payment to the **CONTRACTOR** are dealt with in Article VIII of the General Conditions of the Contract.

The amount and terms of compensation referenced above shall not be modified except in accordance with Section 18 below.

If a resolution of the problem cannot be achieved, the dispute will be resolved in accordance with Article XVIII of the General Conditions of the Contract. During the term of any dispute resolution, payment of **CONTRACTOR'S** invoice or statement may be withheld by the **PPRTA**.

- 5.2 Unless otherwise agreed upon in writing by the **COUNTY**, **CONTRACTOR** shall be solely responsible for compensation of third parties, including subcontractors, consultants and suppliers, which are retained at the request of **CONTRACTOR** to perform this **CONTRACT**. Such third parties shall not be considered third-party beneficiaries to this **CONTRACT**.
- 5.3 No payment made under this **CONTRACT** shall be conclusive evidence of the performance of this **CONTRACT**, either in whole or in part, and no payment, including final payment, shall be construed to be a consent on the part of the **COUNTY** and the **PPRTA** to accept unsatisfactory or deficient work.

SECTION 6. FUNDING AVAILABILITY

- 6.1 On November 2, 2004, the voters of El Paso County, Colorado approved a ballot measure for a one (1%) percent sales 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 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 tax dedicated to funding regional transportation capital improvements projects. This amount is equal to or in excess of the contract sum of this **CONTRACT**.
- 6.2 Financial obligations of the **PPRTA** payable after the current fiscal year are contingent on appropriation or budgeting of funds for those obligations. Should the performance of this **CONTRACT** continue past the current fiscal year, **CONTRACTOR** shall not commence any work in the new fiscal year, unless **CONTRACTOR** is notified by the **COUNTY** in writing that sufficient funds are available for continuance of **CONTRACTOR'S** performance under this **CONTRACT** into the new fiscal year.
- 6.3 Any renewal of this **CONTRACT** is contingent upon available funding and satisfactory performance by the **CONTRACTOR**, as determined by the **COUNTY** and the **PPRTA**. It shall be the **CONTRACTOR'S** responsibility to provide the County Representative (with a copy to the Contracts and Procurement Division) all requested **CONTRACT** changes and/or price adjustments at least 90 days prior to the expiration of the **CONTRACT** or **CONTRACT** renewal date. After review by the **COUNTY** of the **CONTRACTOR'S** requested changes or price

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adjustments, the **COUNTY** will enter into negotiations with the **CONTRACTOR** to determine if the requested **CONTRACT** changes and/or price adjustments are acceptable to the **COUNTY** and the **PPRTA**. Negotiations must be completed 90 days prior to expiration of the **CONTRACT** or **CONTRACT** renewal date. Failure of the **COUNTY**, the **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 **CONTRACT**. Continued performance by the **CONTRACTOR** outside of the **CONTRACT** term will be at the **CONTRACTOR'S** risk.

SECTION 7. INDEPENDENT CONTRACTOR

CONTRACTOR is rendering services as an independent contractor, not as an employee, and shall be accountable to the **COUNTY** and the **PPRTA** for the ultimate results of its actions, but shall not be subject to the direct supervision and control of the **COUNTY** or the **PPRTA**, except as otherwise provided herein. Neither **CONTRACTOR** nor any agent, employee, or servant of **CONTRACTOR** shall be or shall be deemed to be an employee, agent, or servant of the **COUNTY** or the **PPRTA**. **CONTRACTOR** shall pay when due all required employment taxes and income tax withholding, shall provide and keep in force worker's compensation (and show proof of such insurance) and unemployment compensation insurance in the amounts required by law, and shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants and the subcontractors, during the performance of this **CONTRACT**.

SECTION 8. INSURANCE

- 8.1 During the entire term of this **CONTRACT**, **CONTRACTOR** shall maintain, at its own expense, insurance in the amounts and classification identified in **Appendix C**.
- 8.2 In addition to certificates of insurance, the **CONTRACTOR** shall also furnish a copy of its insurance policy to the County Contracts and Procurement Director ("**DIRECTOR**") prior to the performance of this **CONTRACT**. The **COUNTY** and the **PPRTA** shall be named as an additional insured on all policies of liability insurance.

SECTION 9. INDEMNIFICATION

To the extent authorized by law, the **CONTRACTOR** shall defend, indemnify and hold the **COUNTY** and the **PPRTA** free and harmless from and against any and all liabilities, demands, claims, damages, suits, judgments and decrees, and Court awards including costs, expenses and attorneys' fees, on account of injuries to or death of any person or persons or damage to any property arising out of or related to the **CONTRACTOR'S** intentional or negligent acts, errors or omissions or that of its agents, officers, servants and employees, subcontractors or assignees, whether contractual or otherwise, during the performance of this **CONTRACT** and pursuant to its terms. Nothing in this section shall be deemed to waive or otherwise limit the defenses available to the **COUNTY** and the **PPRTA** pursuant to the Colorado Governmental Immunity Act or otherwise provided by law.

SECTION 10. AUDIT AND INSPECTION

- 10.1 **CONTRACTOR** shall at all times during the term of this **CONTRACT** maintain such books and records as shall sufficiently and properly reflect all direct costs of any nature in the performance of this **CONTRACT**, and shall utilize such bookkeeping procedures and practices as will reflect these costs. Books and records shall be subject, at any reasonable time, to inspection, audit or copying by Federal, State or County personnel, or such independent auditors or accountants as are designated by the **COUNTY** or the **PPRTA**.
- 10.2 **CONTRACTOR** shall permit the County Representative, the PPRTA Representative or other authorized Federal, State, County, or PPRTA personnel, at any reasonable time, to inspect, transcribe or copy any and all data, notes, records, documents and files of the work **CONTRACTOR** is performing in relation to this **CONTRACT**.

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SECTION 11. OWNERSHIP

- 11.1 All data, plans, reports, notes and documents provided to or prepared by **CONTRACTOR** in performance of this **CONTRACT** shall become the property of the **COUNTY** upon payment under this **CONTRACT**, and shall be delivered to the County Representative.
- 11.2 Except as provided in Section 10 above, all such documents shall remain confidential and shall not be made available by **CONTRACTOR** to any individual or entity without the consent of the County Representative.
- 11.3 If the **CONTRACTOR** deems any documents submitted by **CONTRACTOR** to the **COUNTY** under this **CONTRACT** confidential business data, trade secrets, or data not otherwise subject to public disclosure, **CONTRACTOR** shall clearly mark the documents as "Confidential" prior to delivering or making them available to the **COUNTY**. If the **COUNTY** receives a request for the production or disclosure of documents so marked, it will decline disclosure and notify the **CONTRACTOR** of such request; *provided, however*, that if any action is commenced against the **COUNTY** under the Colorado Public (Open) Records Act or otherwise seeking to compel production or disclosure of the documents, **CONTRACTOR** or any other person asserting the confidentiality privilege of such documents shall immediately intervene in such action, and whether or not such intervention is permitted, shall defend, indemnify and hold **COUNTY** harmless from any costs, damages, penalties or other consequences of **COUNTY'S** refusal to disclose or produce such documents.

SECTION 12. DISPUTES

- 12.1 Any dispute concerning the performance of this **CONTRACT** that is not resolved by mutual agreement of the parties shall be resolved in the manner described in Article XVIII. Disputes & Litigation of the General Conditions of the Contract. The disputing party must provide written notice to the Procurement & Contracts Director within seven (7) working days from the date the dispute was known or should have been known. The written notice must provide the following information: 1) contract number; 2) cause of the dispute; 3) contract language in dispute, if any; 4) amount of dollars in controversy, if any.
- 12.2 **CONTRACTOR** shall not cease performance of this **CONTRACT** during the term of the dispute resolution process unless the parties mutually agree in writing that performance may be suspended.

SECTION 13. SUSPENSION AND TERMINATION

Suspension and termination of the **CONTRACT** shall be dealt with as described in Articles VII and XV respectively of the General Conditions of the Contract.

SECTION 14. RIGHTS OF THIRD PARTIES

This **CONTRACT** does not and shall not be deemed to confer on any third party the right to the performance of or proceeds under this **CONTRACT**, to claim any damages or to bring any legal action or other proceeding against the **COUNTY**, the **PPRTA** or **CONTRACTOR** for any breach or other failure to perform this **CONTRACT**.

SECTION 15. ASSIGNMENT/SUBCONTRACTS

CONTRACTOR shall not assign its interest in this **CONTRACT** or subcontract any of the work to be performed under this **CONTRACT** without the prior written consent of the **COUNTY** and the **PPRTA**.

SECTION 16. APPLICABLE LAW

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The laws, rules and regulations of the State of Colorado, El Paso County, Colorado, and the policies and rules and regulations of the Pikes Peak Rural Transportation Authority shall be applicable in the enforcement, interpretation and execution of this **CONTRACT**. The parties to this **CONTRACT** understand and agree that, in the event of any litigation which may arise between the parties under the **CONTRACT**, jurisdiction and venue shall lie in the Fourth Judicial District of El Paso County, Colorado.

SECTION 17. CHANGES OR MODIFICATIONS

- 17.1 No modification, amendment, notation, change or other alteration of this **CONTRACT** shall be valid unless mutually agreed by the parties in writing and executed as an addendum to this **CONTRACT**.
- 17.2 No change order resulting in an increase to the contract price set forth in Section 5 above shall be executed or effective unless the increase is approved by the **COUNTY** and **PPRTA**, and the additional funds have been appropriated or otherwise made available. **CONTRACTOR** shall prepare a cost calculation for the additional costs and submit it to the County Representative prior to approval of any change order. The County Representative then may arrange for a change order, confirming with **CONTRACTOR** that funds have been appropriated or made available to cover the additional costs.

SECTION 18. JOINT VENTURE

If the **CONTRACTOR** is a Joint Venture, the partners to the Joint Venture shall be jointly and severally liable to the **COUNTY** for the performance of all duties and obligations of the **CONTRACTOR** which are set forth in the **CONTRACT**.

SECTION 19. SEVERABILITY

If any section, subsection, clause or phrase of this **CONTRACT** is, for any reason, held to be invalid, such holding shall not affect the validity of the remaining portions of this **CONTRACT**.

SECTION 20. CONFLICT OF TERMS IN THE CONTRACT DOCUMENTS

In the event there is found any conflict in any of the terms between the **COUNTY'S** contract documents and the **CONTRACTOR'S** contract documents, the parties understand and agree that the terms contained in the **COUNTY'S** contract documents shall be controlling and shall take precedence over any conflicting terms found in the contract documents.

Further, if there are any conflicting terms as between the **COUNTY'S** contract and the **COUNTY'S** Purchase Order or any other **COUNTY** documents which are included as a part of the contract documents, those terms which the **COUNTY** deems most favorable toward the protection of the **COUNTY** and the goals of the **CONTRACT** shall be deemed to control and take precedence over any conflicting contract terms. The conflicting contract terms may be deleted at the **COUNTY'S** sole discretion.

In the event that one of the **COUNTY'S** contract documents contains a word, statement, or clause which is not contained in any other of the **COUNTY'S** contract documents nor in those of the **CONTRACTOR'S** contract documents, the parties understand and agree that such word, statement or clause shall be included as a part of the contract terms at the sole discretion of the **COUNTY**.

Finally, in the event that there is found in the **CONTRACTOR'S** contract documents a word, statement or clause not contained in the **COUNTY'S** contract documents and which the **COUNTY**, in its sole discretion, wishes to delete from the contract terms, the parties understand and agree that the **COUNTY** shall have the discretion to include or delete such word, statement or clause from the contract terms.

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SECTION 21. ENTIRE CONTRACT

This **CONTRACT**, including attached **Appendices**, constitutes the entire understanding of the parties. At the time of execution of this **CONTRACT**, there are no other terms, conditions, requirements or obligations affecting this **CONTRACT** which are not specifically set forth herein.

SECTION 22. APPENDICES

The following appendices are attached to and made a part of this **CONTRACT**:

- Appendix A: **RFP NO.:**
- Appendix B: **CONTRACTOR'S RESPONSE**
- Appendix C: **GENERAL CONDITIONS OF CONTRACT**
- Appendix D: **PURCHASE ORDER/INSURANCE CERTIFICATES**

IN WITNESS WHEREOF, the parties hereto have executed this **CONTRACT** on the _____ day of _____, 2020.

**BOARD OF COUNTY COMMISSIONERS
EL PASO COUNTY, COLORADO**

**PIKES PEAK RURAL TRANSPORTATION AUTHORITY
BOARD OF DIRECTORS**

BY: _____
CHAIR

BY: _____
CHAIRPERSON

ATTEST:

**COMPANY NAME
NAME OF AUTHORIZED REPRESENTATIVE
TITLE**

BY: _____
COUNTY CLERK AND RECORDER

BY: _____
AUTHORIZED REPRESENTATIVE (PRINT & SIGN)

APPROVED AS TO FORM

BY: _____
OFFICE OF THE COUNTY ATTORNEY