



E-470 SANDY ACRES LAKE INFILL

CONTRACT NO. 14C402

BID DOCUMENTS

BOOK I

OCTOBER 2014

**INDEX TO BID DOCUMENTS**  
**E-470 PUBLIC HIGHWAY AUTHORITY**  
**E-470 SANDY ACRES LAKE INFILL**  
**CONTRACT NO. 14C402**

**BOOK I:**

1. Invitation to Bid/Bidding Requirements
2. Bid Form (Attachment 1) with Bid Schedule
3. Declaration of Non-Collusion (Attachment 2)
4. Bid Bond (Attachment 3)
5. Contract
6. Payment, Performance and Warranty Bond

**BOOK II:**

1. E-470 Public Highway Authority General Provisions
2. Project Special Provisions

**PLANS**

## INVITATION TO BID/BIDDING REQUIREMENTS

### E-470 PUBLIC HIGHWAY AUTHORITY

### E-470 SANDY ACRES LAKE INFILL

### CONTRACT NO. 14C402

#### **Part 1.0: Invitation to Bid**

##### **1.1 Invitation.**

1.1.1 The Authority hereby invites and solicits sealed Bids for the construction of the E-470 Sandy Acres Lake Infill as described in Part 1.2 below, to be received by the E-470 Public Highway Authority ("Authority") in Suite 100 located at 22470 E. 6th Parkway Suite 100, Aurora, Colorado 80018 until **2:00 p.m. on Friday October 31, 2014**. Bids will not be publicly opened and read. The term "Bid" shall mean the following documents: (1) Bid Form, (2) Bid Bond, (3) Bid Schedule (Attachment to Bid Form), (4) Declaration of Non-Collusion affidavit (Attachment to the Bid Form). No Bid will be considered complete unless all such documents are submitted on the date specified in this Paragraph 1.1.1.

1.1.2 A pre-Bid meeting will be held at **1:00 p.m. on Tuesday October 14, 2014**, at the offices of the Authority, 22470 E. 6th Parkway Suite 100, Aurora, CO 80018. Attendance at the pre-Bid meeting is strongly recommended for all Bidders.

Bidding Requirements and Bid Packages are available free of charge at E-470 Public Highway Authority, 22470 E. 6th Parkway Suite 100, Aurora, Colorado 80018; phone number (303) 537-3727.

##### **1.2 Project Description.**

1.2.1 The Project location is at the E-470/US-85 Interchange located at approximately mile marker 36 in Adams County, Colorado. The Project scope involves transporting inert fill material, by conveyor belt through a box culvert to be installed in this contract, to fill Sandy Acres Lake, and coordination with the Authority staff, all as described in the Contract Documents.

1.2.2 E-470 is open to public traffic from I-25 South to I-25 North, which includes the general project area. No lane closures will be permitted during construction except for those described in the Contract.

#### **Part 2.0: Bidding Requirements and Conditions**

##### **2.1 Bidder Notification.**

2.1.1 Bidders are hereby notified that the Authority's contracts are not subject to any of the formal processes, procedures or legal requirements of the Construction Bidding for Public Projects Act, Sections 24-92-101, *et seq.*, C.R.S.

Certain of the Authority's contracts are subject to (1) the Keep Jobs in America Act of 2013, part 1 of article 17 of title 8, C.R.S., in which case the Authority will consider preferences for employment of Colorado labor as required by the Keep Jobs in America Act of 2013 and/or (2) Sections 8-19-101 *et seq.*, C.R.S., in which case the Authority will give preference to resident Bidders over nonresident Bidders as required by Sections 8-19-101 *et seq.*, C.R.S. In accordance with Section 8-19-104(3), C.R.S., notice is hereby provided that if any nonresident Bidders are from a state that provides a preference to Bidders from that state, then a comparable percentage disadvantage will be applied to the Bid of that nonresident Bidder. Notice is further provided that additional information about the foregoing is available from the Department of Personnel's website.

Evaluation of Bids and, if the Authority so chooses, selection of a successful Bidder shall be performed in a manner which the Authority determines, in its sole discretion, to be in the Authority's or public interest.

Bidders shall have no right to any administrative, legal or other protest, appeal or challenge of any matter or grievance in connection with the solicitation or award of any contracts, including the evaluation of Bids and selection of a successful Bidder. In submitting a Bid, each Bidder acknowledges that it shall bear all costs associated with the preparation and submission of such Bid and that it shall under no circumstances have any right to recover the costs of such Bid preparation from the Authority or any other costs, expenses or damages in the event such Bid is not accepted by the Authority.

In addition to the basis for rejection set forth in Paragraph 2.5 of this Invitation to Bid/Bidding Requirements, the Authority reserves the right to reject any or all Bids, to waive any and all informalities or technicalities or to advertise for new Bids if the Authority determines, in its sole discretion, that such actions are desired.

## **2.2 Examination of Contract Documents**

2.2.1 Before submitting a Bid, each Bidder must (a) examine all Bid Documents and Contract Documents thoroughly; (b) visit the Project site to familiarize itself with local conditions that may in any manner affect cost, progress or performance, or any other aspect of the proposed Work; (c) familiarize itself with federal, state, and local laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the proposed Work; and (d) study and carefully correlate Bidder's observations with the Contract Documents. Any visit must be coordinated with Jim Brady at (303) 537-3711.

2.2.2 The submission of a Bid will constitute an incontrovertible representation by the Bidder that he has complied with each requirement of this Invitation to Bid/Bidding Requirements and that the Contract Documents are sufficient

in scope and detail to indicate and convey understanding of all terms and conditions for performance of the proposed Work.

2.2.3 After the award, the selected Contractor will receive from the Authority, at no cost, five (5) half-size sets of plans and specifications for recordation of as-builts. Additional sets of plans and other available data may be purchased on a cash sale basis from the Authority at current reproduction prices. The Authority will not provide plans and specifications to any subcontractors or suppliers of the successful Bidder. Such parties may obtain plans and other data from the successful Bidder.

2.2.4 If a Bidder discovers an error-or omission in the Bid Form, estimated quantities, plans, specifications or any of the Bid or Contract Documents, the Bidder shall immediately notify the Authority and if the Authority agrees that an error or omission has been made, it may make any necessary revisions.

2.2.5 The Authority may consider it to be detrimental to the Authority for a Bidder to submit an obviously unbalanced Bid and may reject such a Bid.

## **2.3 Interpretations**

2.3.1 All questions about the meaning or intent of the Contract Documents prior to Bid submittal are to be submitted to Jim Brady at E-470 Public Highway Authority, 22470 E. 6th Parkway Suite 100, Aurora, Colorado 80018. All questions must be in writing and may be transmitted by facsimile (303-537-3472), e-mail [jbrady@e-470.com](mailto:jbrady@e-470.com), hand delivery or U.S. Mail. Any replies that the Authority elects to make will be made through the issuance of written addenda. Questions received after the cutoff date for receipt of questions will not be answered. Only questions answered by written addenda will be deemed to interpret the Contract Documents. Oral and other interpretation or clarifications will be without interpretive effect. Addenda will be emailed, mailed, faxed or delivered to all parties recorded by the Authority as having received the Bid Documents. No addenda will be issued after the proposed date of final addenda, except an addendum, if necessary, postponing the date for receipt of Bids or withdrawing the request for Bids.

2.3.2 Except as otherwise provided in this Paragraph 2.3.2 and the method of measurement for individual items, the quantities appearing in the Bid Form are estimates prepared for the comparison of Bids. Payment to the Contractor will be made in accordance with the following procedures:

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

The estimated quantities of Work to be performed and materials to be furnished may be increased, decreased or omitted by the Authority.

2.3.3 Any change to Bid Documents, Bid Forms, plans, or specifications prior to the opening of Bids will be issued by the Authority by addendum. Certain individuals are named in the Invitation to Bidders/Bidding Requirements who have authority to provide information, clarification or interpretation to Bidders prior to opening of Bids. Information obtained from anyone other than those named individuals shall not be used for bidding purposes.

## **2.4 Bid Form**

2.4.1 The Bidder shall submit the Bid on the Bid Form (Exhibit F) provided by the Authority in Attachment 1. Bid Forms must be completed in ink or be typewritten. The unit price of each Pay Item in the Bid Schedule attached to the Bid Form must be stated clearly in numerals.

2.4.2 Bids by corporations must be executed in the corporate name by a corporate officer, accompanied by evidence of authority to sign and the corporate seal must be affixed and the signatures attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

2.4.3 Bids by partnerships must be executed in the partnership name and signed by a partner accompanied by evidence of authority to sign and whose title must appear under the signature and the official address of the partnership must be shown below the signature.

2.4.4 Bids by sole proprietorships and joint ventures shall be signed by each proprietor or by each participant in the joint venture or by an authorized agent of each participant.

2.4.5 The names of all persons signing Bids must also be legibly printed or typed below the signature. A Bid by a person who affixes to his signature the word "president," "secretary," "agent" or other designation without disclosing his principal may be held to be the Bid of the individual signing. Evidence of the authority of the person signing shall be furnished.

2.4.6 The Bid shall contain an acknowledgment of receipt of all addenda, the numbers of which shall be inserted on the Bid Form.

2.4.7 No alterations in Bids, or in the printed forms therein, by erasures, interpolation, or otherwise will be acceptable unless each such alteration is signed or initialed by the Bidder; if initialed, the Authority may require the Bidder to identify any alteration so initialed. No alteration in any Bid Form shall be made after the time designated for the receipt of Bids.

2.4.8 The address to which communications regarding the Bid are to be directed must be shown.

2.4.9 Each Bid must include all information and documents required by the Bid Form. Failure to furnish all required information and documents may result in the rejection of the Bid.

2.4.10 Bids shall be submitted at the time and place indicated herein and shall be included in an opaque envelope addressed to the Authority and identified on the outside with the Bidder's name and address and with the words "Bid for the E-470 Sandy Acres Lake Infill, ATTN: Neil Thomson, Director of Engineering & Roadway Maintenance" on the face thereof. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the same notation.

2.4.11 Bids shall be submitted to the designated location prior to the time and date for receipt of Bids indicated in Part 1.0 above, or the modified time and date indicated by addendum. Bids received after the time and date for receipt of Bids may be returned unopened. Bidder shall assume full responsibility for timely delivery at the location designated for the receipt of Bids. A receipt for delivery of a Bid will be available upon request by the Bidder.

2.4.12 Oral, telephone, telegraph, facsimile or e-mail Bids are invalid and will be rejected.

2.4.13 No Bidder may submit more than one Bid for each portion of the proposed Work. Multiple Bids under different names will not be accepted from one Bidder.

2.4.14 Anti Collusion Affidavit. Every Bid submitted to the Authority shall contain a statement certifying that the Bidder has not participated in any collusion or taken any action in restraint of free competitive bidding. This statement shall be in the form of a Declaration of Non-Collusion affidavit provided by the Authority as Attachment 2 to the Bid Form and signed by the Bidder. The original of the signed anti-collusion affidavit shall be submitted with the Bid. The Bid will be rejected if it does not contain the completed affidavit.

2.4.15 Bid Guaranty. Each Bid must be accompanied by a Bid guaranty consisting of a properly submitted certified check, cashier's check or Bid bond, in the amount of five percent (5%) of Bidder's Bid, without conditions, payable to the E-470 Public Highway Authority. The form of the Bid bond is shown in the Bid Form as Attachment 3. Bid guaranties consisting of Bid bonds will be retained by the Authority. The Bid guaranties consisting of certified checks or cashier's checks accompanying the three lowest Bids may be held until the Contract is awarded, provided the time from Bid opening to Contract award does not exceed sixty (60) calendar days. The certified checks or cashier's checks accompanying the other Bids will be returned promptly after

the opening and verification of the Bids. If the successful Bidder fails to execute and deliver the Contract and furnish the bonds required pursuant to the Contract within ten (10) working days after Notice of Award, Authority may annul the Notice of Award and the Bid guarantee will be forfeited to the Authority.

**2.5 Basis for Rejection.** Bids will be considered irregular and may be rejected for any of the following reasons:

- (a) If the Bid is on a form other than that prescribed by the Authority, or if the form is altered or any part thereof is detached, or if the form does not contain original signatures.
- (b) If there are unauthorized additions, conditional or alternate Bids, or irregularities of any kind which may tend to make the Bid incomplete, indefinite, or ambiguous.
- (c) If the Bidder fails to acknowledge in the Bid the receipt of all addenda current on the date of opening of Bids.
- (d) If the Bid does not contain a unit price for each Pay Item listed except in the case of authorized alternative Pay Items, the mathematical products of the respective unit prices and the estimated quantities, or the total amount of the Bid obtained by adding such mathematical products.
- (e) If the Authority determines that any of the unit prices are materially unbalanced to the potential detriment of the Authority. There are two types of unbalanced Bids: (1) mathematically unbalanced and, (2) materially unbalanced. The mathematically unbalanced Bid is a Bid containing lump sum or unit Pay Items which do not reasonably reflect actual costs plus a reasonably proportionate share of the Bidder's anticipated profit, overhead costs, and other indirect costs, but not necessarily to the detriment of the Authority. These costs should all relate to the performance of the items in question. The materially unbalanced Bid is a mathematically unbalanced Bid which the Authority determines leaves reasonable doubt that award will result in the lowest ultimate cost to the Authority, or that award is in the public interest or that of the Authority.
- (f) If the contractor submitting the Bid is affiliated with another contractor that has submitted a Bid on the same public project.
- (g) If the Bidder has been asked in writing to show why it should not be found in default on an Authority contract.
- (h) If the Bid is in any way nonconforming, nonresponsive or conditional.
- (i) Any other reason which the Authority, in its sole discretion, deems to be in its best interests.

## **2.6 Modification and Withdrawal of Bids**

**2.6.1 Withdrawal of Bids prior to Bid Submittal Deadline.** Bids submitted early (prior to the deadline established for submittal of Bids) may be withdrawn by a potential Bidder prior to the Bid submittal deadline. Withdrawal shall be effected by a Bidder, or its authorized representative, appearing in person at the Authority's offices, providing proof of authority and submitting a written withdrawal request.



2.6.2 Withdrawal and Modification of Bids following Bid Submittal Deadline:

- (a) Authority Identified Bid Mistakes/Irregularities. If the Authority reviews a Bid and believes a mistake has been made by a Bidder, the Authority may seek confirmation of the Bid's amount and content from the Bidder. If the Bidder fails to provide confirmation, in writing, within forty-eight (48) hours of the Authority's request, the Bid may be rejected by the Authority as non-conforming or deficient.
- (b) Bidder Alleged Mistakes. Mistakes alleged by Bidders following the Bid submittal deadline, and prior to Contract award, shall be alleged by the Bidder's filing of a written "mistake statement." The mistake statement shall describe in detail the nature of the mistake, potential consequences flowing therefrom and shall suggest corrective action. The Authority will review a mistake statement and, in its sole discretion, may grant or deny the requested relief in the best interest of the Authority. The filing of a mistake statement does not in any way guaranty that the opportunity to correct the mistake will be granted by the Authority.

2.6.3 Except as expressly authorized by this Paragraph 2.6, Bids may not be withdrawn once they have been submitted to the Authority.

**Part 3.0: Award and Execution of Contract**

**3.1** After the Bids are opened, they will be evaluated by the Authority.

**3.2** If the Contract is awarded, the Authority intends that an award will be made within sixty (60) calendar days after Bid opening.

**3.3** In addition to the Authority's right to reject any and all Bids as provided in Paragraphs 2.1 and 2.5, the Authority reserves the right to negotiate Contract terms with the selected Bidder.

**3.4** At the time of the execution of the Contract, the successful Bidder shall furnish Payment, Performance and Warranty Bond using the Authority's form. Each Bond shall be in a penal sum equal to the nearest integral one hundred dollars in excess of the project commitment amount. The project commitment amount shall be the total amount of the Bidder's Bid plus the total estimated amount of the Force Account Work shown in the Contract Documents, if any, that are intended to be completed by the Contractor. The bonds and security shall be acceptable to the Authority.

**3.5** The Contract shall be signed and returned to the Authority by the successful Bidder together with the Contract bonds, within ten (10) working days after the date of award. If the signed Contract is returned and a bond is furnished to the Authority by the successful Bidder within ten (10) working days after award and, if the Contract is not executed by the Authority

within forty-five (45) calendar days from date of award, the Bidder shall have the right to withdraw the Bid without penalty. The Contract will not be considered effective until it has been fully executed by all of the parties to the Contract. Execution of this Contract is subject to approval by the Authority's Board of Directors.

**3.6** The successful Bidder may be required to furnish a complete statement of the origin, composition, and manufacture of materials used in the construction of the Work together with samples, which will be tested for conformance with Contract provisions.

#### **Part 4.0: Miscellaneous**

**4.1 Sales and Use Tax.** The Authority is a political subdivision of the State of Colorado and is exempt from state sales and use tax on construction and building materials to contractors and subcontractors for use in construction of public works, in accordance with §§ 39-26-708(1) and 39-26-713(2)(d), C.R.S. Said state taxes shall not be included in the Bid. In addition, Bidders should consider all similar sales and use tax exemptions made available by other applicable taxing entities.

**4.2 Definitions.** All capitalized terms used herein shall have the meanings ascribed to them as provided in the Contract Documents.

#### **4.3 Trade Secrets and Open Records Act.**

4.3.1. Application of the Act. The Bidder acknowledges and agrees that all documents submitted to the Authority, are subject to the provisions of the Colorado Open Records Act (§§ 24-72-101, et seq., C.R.S.), and the Bidder acknowledges that the Authority shall abide by the Colorado Open Records Act, including honoring all proper public records requests made thereunder. The Bidder shall be responsible for all costs incurred in connection with any determinations required to be made by a court, pursuant to the Colorado Open Records Act. The Bidder is advised to contact legal counsel concerning such acts in application of the Colorado Open Records Act to the Bidder.

4.3.2. Confidential or Proprietary Materials. If the Bidder deems any document(s) which it submits to the Authority to be confidential, proprietary, or otherwise protected from disclosure under the Open Records Act, then it shall appropriately label such document(s), and submit such document to the Authority together with a written statement describing the material which is requested to remain protected from disclosure and the justification for such request. This request will either be approved or denied by the Authority; however, the Authority will make a good-faith effort to accommodate all reasonable requests. The Bidder understands and agrees that, regardless of any position taken by the Authority or the Bidder, a Court may order production of material deemed confidential, proprietary or exempt from disclosure, and such a decision would be beyond the control of the Authority.

4.3.3. Stakeholder. In the event of litigation concerning the disclosure of any document(s) submitted by the Bidder to the Authority, the Authority's sole involvement

will be as stakeholder retaining the document(s) until otherwise ordered by the court, and the Bidder shall be fully responsible for otherwise prosecuting or defending any actions concerning the document(s) at its sole expense and risk. The Bidder shall be responsible for reimbursing the Authority for all costs, legal fees and other expenses incurred by the Authority as the result of a request or decision by the Bidder that any materials submitted to the Authority be withheld from any request under the Open Records Act or similar law.

**4.4 Authorizations.** The Bidder must be authorized to do business in the State of Colorado and comply with all applicable laws and regulations of the State of Colorado.

**4.5 Illegal Alien Compliance.** The successful Bidder shall comply with existing State law regarding employment of illegal aliens. See Paragraph 6 of the Contract.

**Part 5.0: Proposed Schedule**

**5.1** The following schedule is subject to change. Any change will be issued by addendum.

Bid Package Available	Monday, October 6, 2014
Pre-Bid Meeting	Tuesday, October 14, 2014, 1:00 PM
Cutoff Date for receipt of questions	Friday, October 24, 2014
Date for final addendum	Monday, October 27, 2014
Bids Due	Friday, October 31, before 2:00 PM
Notification to potential most responsive bidder	Monday, November 3, 2014
Contract Approval by the E-470 Board	Thursday, November 13, 2014
Anticipated Notice to Proceed (NTP)	Monday, December 1, 2014
Contract Completion Date	Sunday, November 1, 2015

**ATTACHMENT 1**  
**BID FORM WITH BID SCHEDULE**  
**E-470 PUBLIC HIGHWAY AUTHORITY**  
**E-470 SANDY ACRES LAKE INFILL**  
**CONTRACT NO. 14C402**

**BID OF**

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(Name)

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(Address)

**THE UNDERSIGNED BIDDER**, having familiarized himself with the Bid Documents, Contract Documents, proposed Work, the worksite where the Work is to be performed, local labor conditions and all laws, regulations and other factors affecting performance of the proposed Work, and having satisfied himself of the expense and difficulties attending performance of the proposed Work,

**HEREBY PROPOSES** and agrees, if this Bid is accepted, to enter into good-faith negotiations with the Authority to perform the Work required by the Contract, and if the Contract is executed between the undersigned Bidder and the Authority, to perform all Work, including the assumption of all obligations, duties and responsibilities necessary to the successful completion of the Contract and the furnishing of materials required to be incorporated in and form a permanent part of the Work, tools, equipment, supplies, transportation, facilities, labor, superintendence and services required to perform the Work; and bond, insurance and submittals; all as indicated or specified in the Contract Documents and all to be performed or furnished by Contractor in accordance with the Pay Items and unit prices set forth in the Bid Schedule attached to this Bid as Exhibit F.

A. **BIDDER ACKNOWLEDGEMENT:** The undersigned Bidder agrees to sign the Contract with the Authority within ten (10) working days after being chosen as the successful Bidder, if Bidder is so chosen, and if the Contract is executed between the Bidder and the Authority, Bidder further agrees to complete all Work covered by the Contract as provided in the Contract Documents.

B. **ABANDONMENT OF THE CONTRACT:** If this Bid shall be accepted and the undersigned shall fail to enter into the Contract with the Authority within ten (10) calendar days after the Bidder has received written notice from the Authority that the Contract had been awarded, the Authority may, at its option, determine that the Bidder has abandoned the Contract; thereupon this Bid and the acceptance thereof shall be null and void.

C. **BIDDER'S CERTIFICATIONS:** In submitting this Bid, it is understood that the Authority reserves the right to reject any and all Bids for whatever reason, and it is understood that this Bid may not be withdrawn during a period of six (6) months after the scheduled time for the receipt of Bids.

The undersigned Bidder hereby certifies (a) that this Bid is genuine and is not made in the interest of, or in the behalf of, any undisclosed person, firm or corporation, and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; (b) that Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham Bid; (c) that Bidder has not solicited or induced any person, firm or corporation to refrain from Bidding; and (d) that Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over the Authority as further affirmed by the Declaration of Non-Collusion affidavit attached to the Invitation to Bid/Bidding Requirements as Attachment 2.

D. **BIDDER QUALIFICATIONS:** The Bidder shall provide a list of the full names and addresses of each of the Bidder's principals. If this information is not provided, the Authority reserves the right to remove any such Bidder from further consideration. (Add pages as necessary)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

E. **ADDENDA:** Receipt of copies of the following addenda is hereby acknowledged..

Addendum No.

Bidder's Signature

Date Acknowledged

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F. **BID SCHEDULES ATTACHED:** The Bid Schedules are attached hereto as Exhibit F.

G. **BID UNIT PRICES:** Bid Pay Items, unit prices and their respective totals are to be

submitted on the Bid Schedules attached hereto as Exhibit F.

H. NON-COLLUSION: The undersigned Bidder has executed and attached the Authority's Declaration of Non-Collusion attached to the Invitation to Bid/Bidding Requirements as Attachment 2.

I. BID BOND: The undersigned Bidder has executed and attached the Authority's Bid Bond attached to the Invitation to Bid/Bidding Requirements as Attachment 3.

J. TOTAL OF BID: Bidders are required to submit bids for this project using the Bid Form in Attachment 1.

The Project location is at the E-470/US-85 Interchange located at approximately mile marker 36 in Adams County, Colorado. The project scope involves transporting inert fill material, by conveyor belt through a box culvert to be installed in this contract, to fill Sandy Acres Lake, and coordination with the Authority staff, all as described in the Contract Documents.

The price provided below is the total amount for the Bid submitted as acknowledged by the Bidder's signature:

\_\_\_\_\_  
Exhibit F Amount

\_\_\_\_\_  
Bidder's Signature

**[Remainder of page left blank intentionally]**

SIGNATURE OF BIDDER

Date: \_\_\_\_\_

If an Individual: \_\_\_\_\_  
(Signature)

Print or type name: \_\_\_\_\_

Doing Business As: \_\_\_\_\_

If a Partnership: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature) General Partner

Print or type name: \_\_\_\_\_

If a Sole Proprietorship: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature) Proprietor

Print or type name: \_\_\_\_\_

If a Corporation: \_\_\_\_\_

(A \_\_\_\_\_ Corporation)

By: \_\_\_\_\_  
(Signature)

Print or type name: \_\_\_\_\_

Title: \_\_\_\_\_

( S E A L )

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

If Bidder is a joint venture all ventures or their authorized agents must sign below.

Name of Joint Venture: \_\_\_\_\_

If Joint Venture is

An Individual: \_\_\_\_\_  
(Signature)

Print or type name: \_\_\_\_\_

Doing Business As: \_\_\_\_\_

A Partnership: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Print or type name: \_\_\_\_\_

General Partner

A Corporation: \_\_\_\_\_

(A \_\_\_\_\_ Corporation)

By: \_\_\_\_\_  
(Signature)

Print or type name: \_\_\_\_\_

Title: \_\_\_\_\_

( S E A L )

Attest: \_\_\_\_\_

Title: \_\_\_\_\_







**ATTACHMENT 2**  
**DECLARATION OF NON-COLLUSION**  
**E-470 SANDY ACRES LAKE INFILL**  
**CONTRACT NO. 14C402**  
**AFFIDAVIT**

At the time the Bid is submitted, the Bidder shall attach to his Bid a sworn statement, in the following form, executed by, or on behalf of the person, firm, association, or corporation submitting the Bid, which statement shall be sworn to before a person who is authorized by law to administer oaths.

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, personally appeared \_\_\_\_\_  
(Title)

of \_\_\_\_\_ of \_\_\_\_\_  
(Firm) (City and State)

the Bidder submitting the attached Bid for the Work in \_\_\_\_\_  
County, Colorado.

The affiant further states that no more than one Bid will be submitted from the individual, his firm or corporation, under the same or different name, and that such Bidder has no financial interest in the firm of another Bidder for the same Work. That he, his firm, association, or corporation, has neither directly, nor indirectly, entered into any agreement, participated in any collusion, or otherwise taken action in restraint of free competitive bidding in connection with this firm's Bid. Furthermore, neither he/she, his/her firm or corporation, nor any officers are debarred from participating in public contract lettings in any other state.

Corporation must affix Seal

(Bidder)

By: \_\_\_\_\_

Title: \_\_\_\_\_

**DECLARATION OF NON-COLLUSION (Page 2 of 2)**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this day of \_\_\_\_\_, 2014.

by \_\_\_\_\_  
(Name of Officer or agent, title of officer or agent)

of \_\_\_\_\_  
(Name of Corporation acknowledging)

\_\_\_\_\_ corporation, on behalf of the corporation. He/she is  
(State or place of incorporation)

personally known to me or has produced \_\_\_\_\_  
(Type of identification)  
as identified and did (did not) take an oath.

\_\_\_\_\_ Notary Public, Commission \_\_\_\_\_  
\_\_\_\_\_  
(Name of Notary typed, printed or stamped)

(SEAL ABOVE)

NOTICE: Any evidence of collusion among participating Bidders will preclude their recognition as Bidders and subject them to penalties under applicable State and Federal Law, both civil and criminal. The Authority will also disqualify such Bidders on any Work of the Authority until such participant shall have been reinstated as a qualified Bidder.

THE ABOVE FORM OF AFFIDAVIT IS REQUIRED TO BE EXECUTED AND ATTACHED TO EACH BID FOR THE BID TO BE CONSIDERED.

**ATTACHMENT 3**

**BID BOND**

**E-470 SANDY ACRES LAKE INFILL**

**CONTRACT NO. 14C402**

THE STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) ss.

KNOW ALL MEN BY THESE PRESENTS: That we, \_\_\_\_\_  
\_\_\_\_\_ of the City of \_\_\_\_\_, County of  
\_\_\_\_\_ and State of \_\_\_\_\_ as Principal (hereinafter called  
"Principal"), and \_\_\_\_\_ as surety, a corporation organized and existing under  
and by virtue of the laws of the State of \_\_\_\_\_ and authorized to do business within  
the State of Colorado and to act as surety on bonds for principals (hereinafter called "Surety"), are  
held and firmly bound unto E-470 Public Highway Authority (hereinafter called "Owner") as  
obligee, in the sum of \_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_) in lawful money of the United States, for the payment of which sum, well and  
truly to be made, the Principal and Surety, bind ourselves, our heirs, executors, administrators,  
successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has submitted a Bid Form (Proposal) to enter into a certain  
written agreement with Owner for construction of the E-470 Deer Fence project; and

WHEREAS, The Project location is at the E-470/US-85 Interchange located at  
approximately mile marker 36 in Adams County, Colorado. The project scope involves  
transporting inert fill material, by conveyor belt through a box culvert to be installed in this  
contract, to fill Sandy Acres Lake, and coordination with the Authority staff, all as described in  
the Contract Documents.

NOW, THEREFORE, the condition of this obligation is such that if (1) Owner shall  
accept the Bid Form (Proposal) of the Principal and Principal shall faithfully enter into  
Contract with the Owner in accordance with the terms of such Bid and give such bonds as are  
specified in the Bidding or Contract Documents, or (2) in the event of the failure of  
Principal to enter such Contract and give such bond or bonds, if Principal shall pay to Owner  
the difference (not to exceed the sum hereof) between the amount specified in said Bid and  
such larger amount for which Owner may in good faith contract with another party to  
perform the Work covered by said Bid, then this obligation shall be null and void, otherwise  
to remain in full force and effect. The sum of this Bid Bond is not less than five percent  
(5%) of the Principal's Bid.

The sum of this Bid Bond is LIQUIDATED DAMAGES, and subject to the conditions

stated above, shall be forfeited to Owner in its entirety upon failure of Principal to perform as contemplated in the clause above.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its Bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

PRINCIPAL:

\_\_\_\_\_  
By: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Witness

SURETY:

\_\_\_\_\_  
By: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Witness

Surety's No.

**2013 PRESCRIPTIVE CONTRACT**

**E-470 PUBLIC HIGHWAY AUTHORITY**

**E-470 Sandy Acres Lake Infill Contract**

**CONTRACT NO. 14C402**

THIS CONTRACT ("Contract") for construction of E-470 Sandy Acres Lake Infill is entered into effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the E-470 Public Highway Authority, a body corporate and political subdivision of the State of Colorado (the "Authority"), and \_\_\_\_\_ (the "Contractor").

In consideration of the mutual covenants and stipulations contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties do hereto agree as follows:

**TERMS**

**1. PROJECT DESCRIPTION AND SCOPE OF WORK.** The project shall consist of the provision of the services and all materials and equipment necessary for performing the services, as described in Exhibit A attached hereto and in accordance with the Contract Documents (collectively the "Work"). Exhibit A shall include benchmarks or milestones for completion of the Work and a schedule for meetings and/or review of Work performed, as applicable. The Contractor shall be responsible for providing, at its cost and expense, all management, supervision, labor, materials, administrative support, supplies and equipment necessary to perform the Work as required by this Contract.

**2. CONTRACT DOCUMENTS.** The "Contract Documents" shall collectively include all of the following documents (if and as indicated), in the versions which are in effect on the date this Contract is executed, which are incorporated herein by this reference:

A. Contract signed by the Authority and the Contractor and any change orders issued by the Authority, and the attachments and exhibits listed below:

- 1. Attachment 1 Certification regarding illegal aliens  
Included: Yes  No
- 2. Attachment 2 Affirmation of legal work status  
Included: Yes  No
- 3. Exhibit A Project description and scope of work  
Included: Yes  No
- 4. Exhibit B Work order procedure  
Included: Yes  No
- 5. Exhibit C Liquidated damages

Included: Yes  No

6. Exhibit D Insurance  
Included: Yes  No

7. Exhibit E Payment and performance bonds  
Included: Yes  No

8. Exhibit F Schedule of values  
Included: Yes  No

B. Project Special Provisions Included: Yes  No

C. E-470 General Provisions if specifically referenced here:

E-470 Public Highway Authority General Provisions for E-470 Sandy Acres Lake Infill, dated October, 2014.

D. Detailed plans Included: Yes  No

E. Colorado Department of Transportation ("CDOT") publications or provisions if specifically referenced here:

Standard Specifications for Road and Bridge Construction (2011), excluding the "100" series.

(The Contractor is responsible for obtaining the effective provisions of CDOT documents as incorporated by the Contract Documents.)

F. Any other specifications which are referenced in Contract Documents A. through E. above.

All Work performed and materials, equipment and methods used by the Contractor in the performance of the Work shall be in conformance with the provisions of all Contract Documents. The hierarchy of the Contract Documents shall match the order in which they are set forth in this Section. In the event of a conflict between or among Contract Documents, the documents shall prevail in the order of their listing.

**3. COMPENSATION.** The Authority shall compensate the Contractor for the Work, subject to Authority annual appropriations and in accordance with and subject to all of the conditions in the Contract Documents and in accordance with the E-470 general provision number(s) listed above, if any, for the not to exceed amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), based upon unit prices set forth in Exhibit F.

A. Progress Payments. The Contractor shall submit monthly invoices to the Authority's Finance Department for progress payments for portions of the Work satisfactorily performed during each month during the term of the Contract. The Authority's approval of invoices shall be a



condition of payment. The Authority shall pay approved invoices, or parts thereof, within thirty (30) days after submittal. All invoices shall be addressed to the Authority as follows: "E-470 Public Highway Authority, 22470 East 6th Parkway, Aurora, Colorado 80018 ATTN: FINANCE DEPARTMENT."

B. Requirements for Payment.

1. Invoices. The Contractor's invoices shall be in a format acceptable to the Authority, shall be supported by cost information in such detail as may be required by the Authority and shall be sufficient to substantiate all items for a proper audit and post audit thereof.

2. Invoice Documentation. With each invoice, the Contractor shall submit a progress report describing the Work performed, results achieved and the status of deliverables and a certification that the Contractor is current in payment of all employees and subcontractors and vendors and, if not current, a description of the non-current items and reasons for such.

C. Unsatisfactory Invoices or Work. The Authority may return to the Contractor for revision unsatisfactory invoices and may withhold payment thereof. The Authority may withhold payment for Work which is not completed as scheduled, or which is completed unsatisfactorily, until completed satisfactorily and may deny payment for such Work upon termination of the Contract.

D. Further, in compliance with Section 24-91-103.6, Colorado Revised Statutes, the following statements are included in this Contract:

1. The Authority has appropriated an amount of money equal to or in excess of the contract price, for the Work to be performed under this Contract.

2. The Authority is prohibited from issuing any change order or other form of order or directive requiring additional compensable work to be performed by the Contractor, if such directive causes the aggregate amount under the Contract to exceed the amount appropriated for the original Contract, unless the Contractor is given written assurance by the Authority that lawful appropriations to cover the costs of the additional work have been made and the appropriations are available prior to performance of the additional work or unless such work is covered under a remedy-granting provision in the Contract. "Remedy-granting provision" means any Contract clause which permits additional compensation in the event that a specific contingency or event occurs. Such term shall include, but not be limited to change clauses, differing site conditions clauses, variation in quantities clauses, and termination not-for-cause clauses.

3. Any form of order or directive issued by the Authority requiring additional compensable work to be performed by the Contractor shall be deemed to include a clause that requires the Authority to reimburse the Contractor for the Contractor's costs on a periodic basis for all additional directed work performed until such time as a change order is finalized. Provided, however, that in no instance shall the periodic reimbursement be

required before the Contractor has submitted an estimate of cost to the Authority for the additional compensable work to be performed.

**4. TERM OF CONTRACT/START AND COMPLETION OF WORK.** The Contractor shall commence the Work when the Authority gives the Contractor notice to proceed. The Contractor shall complete all Work by November 1, 2015, or when the Work has been completely performed to the Authority's satisfaction, whichever first occurs, or otherwise by mutual written agreement of the parties or by the exercise of the termination provisions specified in Section 9.

**5. CONTRACTOR'S REPRESENTATIONS.**

A. To the extent the Contractor deems necessary, the Contractor has inspected the sites and all surrounding locations whereupon it may be called to perform its obligations under this Contract, and is familiar with the requirements of the Work and accepts them for such performance.

B. The Contractor is validly organized and exists in good standing under the laws of the State of \_\_\_\_\_ and has all requisite power to own its properties and assets and to carry on its business as now conducted or proposed to be conducted and it is duly qualified, registered to do business and in good standing in the State of Colorado.

C. The Contractor shall comply with all applicable federal, state and local laws.

**6. ILLEGAL ALIENS.**

A. Certification. Prior to the execution of this Contract, the Contractor shall certify to the Authority, as attached hereto as Attachment 1, that at the time of certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and that the Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program (the "Department Program"), as further described in subsection F of this Section, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract.

B. Prohibited Acts. The Contractor shall not:

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

2. Enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. The Contractor shall provide the Authority with all certifications received from subcontractors in which subcontractors certify that said subcontractors do not knowingly employ or contract with an illegal alien to perform work under this Contract.

C. Verification.

1. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either E-Verify Program or the Department Program.

2. The Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.

3. If the Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall:

a. Notify the subcontractor and the Authority within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

b. Terminate the subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to subsection C.3.a of this Section, the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

D. Duty to Comply with Investigations. The Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation conducted pursuant to Section 8-17.5-102 (5), Colorado Revised Statutes to ensure that the Contractor is complying with this Section.

E. Breach. If the Contractor violates a provision of this Section, the Authority may terminate the Contract for a breach of the Contract. If the Contract is so terminated, the Contractor shall be liable for actual and consequential damages to the Authority. The Authority shall notify the Colorado office of the Secretary of State if the Contractor violates a provision of this Section and the Authority terminates the Contract.

F. Department Program. If the Contractor participates in the Department Program, in lieu of the E-Verify Program, the Contractor shall notify the Department and the Authority of such participation. The Contractor shall, within twenty (20) days after hiring an employee who is newly hired for employment to perform work under the Contract, affirm that the Contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. Sec. 1324a, and not altered or falsified the identification documents for such employees. The Contractor shall provide a written, notarized copy of the affirmation, similar in form as attached hereto as Attachment 2, to the Authority.

**7. INDEMNIFICATION.** The Contractor shall indemnify, defend and hold harmless the Authority and each of the governmental entities that is now or may in the future become a party to the Authority's Establishing Contract, and each of its directors, employees, agents and consultants, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys' fees), and liabilities, of, by or with respect to third parties ("any claims") to the extent they arise from or may be alleged to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Contractor or any of its subcontractors or material suppliers, agents or employees, in connection with this Contract and/or the Contractor's Work hereunder. Further, the Contractor hereby agrees to indemnify, defend and hold harmless the Authority and each of its directors and employees from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs and expenses (including reasonable attorneys' fees) and liabilities of, by or with respect to, third parties ("any claims"), arising directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Contractor, its employees, subcontractors, material suppliers or agents or employees, or the agents or employees of any subcontractors or material suppliers which causes or allows to continue a condition or event which deprives the Authority or any of its directors or employees of its sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., Colorado Revised Statutes. Nothing in this Contract or in any actions taken by the Authority pursuant to this Contract shall be deemed a waiver of the Authority's sovereign immunity under the Colorado Governmental Immunity Act. Provided, however, that such Contractor shall not be liable for any claim, loss, damage, injury or liability arising out of negligence of the Authority, its directors, employees, agents and consultants. The obligations of the indemnifications extended by the Contractor to the Authority under this Section shall survive termination or expiration of this Contract.

The Contractor's defense, indemnification and insurance obligations shall be to the fullest extent permitted by law and nothing in this Contract shall be construed as requiring the Contractor to defend in litigation, indemnify or insure the Authority against liability for damage arising out of the death or bodily injury to persons or damage to property caused by the negligence or fault of the Authority or any third party under the control or supervision of the Authority.

Insurance coverage requirements specified in this Contract in no way lessen or limit the obligations of the Contractor under the terms of this Section. The Contractor shall obtain, at Contractor's own expense, additional insurance, if any, required to satisfy the terms of this Section.

**8. PROJECT WARRANTIES.**

A. The Contractor's warranties in respect of the Work are as follows: the Contractor warrants to the Authority that the Work shall be fit for its intended purposes, that materials and equipment furnished under this Contract shall be of good quality and new, or as otherwise expressly agreed to herein, and that all Work shall be free from defects and that all Work shall meet all of the requirements of this Contract (the "Project Warranties"). Any Work not conforming to the Project Warranties, including substitutions not properly approved and authorized, shall be considered defective. The Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

B. The Contractor shall promptly correct any Work rejected by the Authority for failing to conform to the Project Warranties. The Contractor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for the Authority's expenses made necessary thereby.

C. Project Warranties shall commence on the date all punch list items have been corrected and the Authority has acknowledged final acceptance. Notwithstanding the foregoing provisions of this Section, if this Contract is terminated prior to completion of the Work, Project Warranties in respect of all Work performed under this Contract by the Contractor prior to such termination shall be deemed to commence on the date immediately preceding the effective date of such termination.

D. If at any time within one (1) year after the date on which the Project Warranties commenced, any portion of the Work is found to be not in accordance with the Project Warranties, the Contractor shall correct it promptly after receipt of written notice from the Authority to do so.

## **9. TERMINATION.**

### **A. Types of Termination.**

1. Events of Default and Termination For Cause. The Contractor shall be immediately in default hereunder (an "Event of Default") upon the occurrence of any of the events described below:

- a. Any breach of the terms and conditions of this Contract.
- b. Failure to perform the Work under this Contract, or significant delay or discontinuance of performance of the Work.
- c. Lack of financial responsibility (including failure to obtain and maintain insurance) for loss or damage to the Authority or its property.
- d. Dishonesty, embezzlement or false reporting of any material financial information, including but not limited to invoices.
- e. Insolvency, bankruptcy or commission of any act of bankruptcy or insolvency; or assignment for the benefit of creditors.
- f. Any attempt by the Contractor to assign its performance of this Contract without the consent required by Section 11.
- g. Termination of any subcontract for any substantial Work without the prior written consent of the Authority.

In addition to any other rights provided herein, upon an Event of Default, the Authority shall have the right in its sole discretion to immediately terminate this Contract and further performance of the Work, in whole or in part, by delivery to the Contractor of written notice of termination specifying the extent of termination and the effective date of termination.

2. Termination Not For Cause. In addition to any other rights provided herein, the Authority shall have the right in its sole discretion to terminate, upon thirty (30) days advance notice, not for cause, this Contract and further performance of the Work, in whole or in part, by

delivery to the Contractor of written notice of termination specifying the extent of termination and the effective date of termination.

B. Any Other Remedies Allowed by Law. The Authority shall be entitled to any other remedies allowed by law in addition to the remedies provided in this Section.

C. Payment and Liabilities Upon Termination.

1. Termination for Cause. If an Event of Default has occurred, the Contractor shall be liable to the Authority for any actual damages for losses, including, but not limited to, any and all costs and expenses reasonably incurred by the Authority or any party acting on the Authority's behalf in completing the Work or having the Work completed (excluding changes in the Work by the Authority following such Event of Default). The Authority shall determine the total cost of the Work satisfactorily performed by the Contractor prior to the effective date of termination for cause. All reasonable damages, losses, costs and charges incurred by the Authority, including attorney's fees and costs, relating to obtaining and mobilizing another contractor, of completing the Work and of retaining another contractor's acceptance of full responsibility for all obligations of the Contractor under this Contract shall be deducted from any monies due or which may become due to the Contractor. The Authority shall determine the total amount due and shall notify the Contractor in writing of the amount the Contractor owes the Authority or the amount the Authority owes the Contractor.

2. Termination Not For Cause. After termination not for cause, the Contractor shall submit a final termination settlement invoice to the Authority in a form and with a certification prescribed by the Authority. The Contractor shall submit the invoice promptly, but no later than thirty (30) days from the effective date of termination, unless extended in writing by the Authority upon written request of the Contractor within such thirty-day period. If the Contractor fails to submit the invoice within the time allowed, the Authority's payment obligations under this Contract shall be deemed satisfied and no further payment by the Authority to the Contractor shall be made.

D. Contractor's Obligations Upon Termination. After receipt of notice of termination, for cause or not for cause, and unless otherwise directed by the Authority, the Contractor shall immediately proceed as follows:

1. Stop work on the Work as specified in the notice of termination; and
2. Take any action that may be necessary, or that the Authority may direct, for the protection and preservation of the Work and property related to this Contract that is in the possession of the Contractor and in which the Authority has or may acquire an interest.

**10. OWNERSHIP OF MATERIALS AND RISK OF LOSS.** The Authority shall be deemed the owner of all materials brought onto the site of the Work and or otherwise incorporated into the Work at such time as the Authority has paid for those materials, and shall be deemed the owner of all materials paid for by the Authority regardless of whether those materials were brought onto the site of the Work and or otherwise incorporated into the Work, unless the Authority rejects

such materials in writing. Until final acceptance, the risk of loss or damage to the Work shall reside with the Contractor.

**11. ASSIGNMENT.** Neither the Authority nor the Contractor may assign this Contract or parts hereof or its rights hereunder without the express written consent of the other party.

**12. EQUAL OPPORTUNITY EMPLOYMENT POLICY OF THE AUTHORITY.** It is the policy of the Authority to provide equal opportunity through employment, promotion and other contracting opportunities, without regard to race, color, religion, sex or national origin. The Contractor shall abide by this policy.

**13. PAYMENT OF TOLLS.** The Contractor understands and agrees that the Contractor, its subcontractors, vendors and employees shall pay all tolls incurred by them during the term of this Contract.

**14. CONSTRUCTION DEFECT.** The Contractor specifically waives all provisions of part 8 of article 20 of title 13, Colorado Revised Statutes, regarding construction defects in the Work. The rights and remedies of the Authority provided in this Contract are in addition to and not limited by any rights or remedies afforded by law.

**15. RETAINAGE.** If this Contract is for an amount in excess of One Hundred Fifty Thousand Dollars (\$150,000.00), the Authority's payments shall be subject to retainage and in accordance with Colorado law.

**16. PROTECTION OF PERSONAL INFORMATION AND DATA.**

A. **Confidentiality.** The Contractor hereby acknowledges and agrees that Contractor may have access to personal information and personal data, including, but not limited to Cardholder Data (as that term is defined in the PCI-DSS), personally identifiable information, usage, traffic, velocity, or behavioral information during the performance of this Contract (collectively the "Personal Data"). The Contractor hereby agrees that the Personal Data is confidential information of the Authority and the Authority's customers and that during the performance of this Contract and for all time subsequent to completion of the Work under this Contract, not to use or disclose to anyone, except as required in the performance of this Contract or by law, or as otherwise authorized by the Authority, any and all Personal Data that the Contractor collects, accesses, stores, processes, transmits, receives, or otherwise possesses as a result of the performance of this Contract. The Contractor agrees that, if the Authority so requests, it will execute a confidentiality agreement, in a form acceptable to the Authority, and will require any employee or sub-consultant performing work under this Contract or receiving any Personal Data to execute such a confidentiality agreement. Upon the termination, cancellation, or expiration of this Contract for any reason, or upon the request of the Authority, all Personal Data, together with any copies made thereof, in addition to any media upon which such Personal Data or copies thereof is stored, whether electronic, magnetic, hard copy or in any other form, shall be returned to the Authority or, if requested by the Authority, destroyed in the manner designated by the Authority and certified destroyed by the Contractor in writing.

B. Compliance with Laws. In connection with its performance of the Work under this Contract, the Contractor: (a) acknowledges that the Contractor is responsible for the privacy, integrity, and security of any and all Personal Data that the Contractor, at any time, collects, accesses, stores, processes, transmits, receives, or otherwise possesses; (b) shall comply with all: (i) applicable laws, and (ii) rules, regulations, standards, and security requirements of the PCI Security Standards Council and any credit or debit card provider, gift card provider, or other stored value and loyalty program card provider, including, but not limited to, American Express, Visa, U.S.A., Inc., MasterCard International, Inc., Discover Financial Services, LLC, and JCB International (collectively the “Payment Brand”), including, without limitation, the Payment Card Industry Data Security Standard, as such may be amended, modified, supplemented, or replaced from time to time (the “PCI-DSS”), in each case, as such may be amended, modified, supplemented, or replaced from time to time; and (c) shall develop, implement, maintain, update and keep current in light of changes in relevant technology all reasonable and appropriate security measures and safeguard, in compliance with all applicable laws, to protect Personal Data against any unauthorized disclosure or use and any anticipated or reasonably foreseeable threats or hazards to its privacy, integrity, and security ((a), (b), and (c) are collectively the “Security Requirements”).

C. Documentation. If requested by the Authority, the Contractor shall, not less than once per year, provide the Authority with such evidence, information, and documentation, including, but not limited to any audits required by law, as is reasonably necessary to demonstrate and confirm the Contractor’s compliance with the Security Requirements and the requirements of this Section.

D. Notice and Cooperation. If at any time the Contractor: (a) discovers or otherwise becomes aware that the Contractor is no longer in compliance with or has violated, any of the Security Requirements, or (b) of any unauthorized disclosure of Personal Data, or any unauthorized intrusion, penetration, or security breach involving the Contractor’s systems or facilities (each of (a) and (b), a “Security Breach”), the Contractor shall: (i) immediately notify the Authority in writing of such Security Breach and furnish the Authority with the full details of such Security Breach; and (ii) cooperate with the Authority in any effort, action, or proceeding to protect the Personal Data and to mitigate and/or remediate the impact of the Security Breach, as such may be deemed necessary by the Authority and/or required by applicable laws including, without limitation, breach notification laws. In the event of any Security Breach, or at any time if requested by the Authority, the Contractor shall permit the Authority, any designated agent of the Authority, a Payment Card Industry (“PCI”) representative, and/or a PCI approved third party (individually or collectively, the “PCI Auditor”), to conduct a thorough review of the Contractor’s books, records, files, computer processors, equipment, systems, physical and electronic log files, and facilities relating to the Work, to investigate or remediate a Security Breach or validate and confirm the Contractor’s compliance with the Security Requirements (the “Audit”). The Contractor shall provide the PCI Auditor with full cooperation and access to enable such Audit. If any Audit identifies any failure of the Contractor to comply with the Security Requirements, the Contractor shall promptly repair and/or remedy any such failure and deliver written notice of such efforts and remedy to the Authority.

E. Indemnification. The Contractor hereby acknowledges and agrees that the indemnification obligations of the Contractor set forth in Section 7 of this Contract are applicable to (a) a Security Breach, or (b) failure to comply with the requirements of this Section.



F. Breach. The Contractor agrees that if the Contractor violates any provision of this Section, such violation will constitute a breach of this Contract and the Authority may terminate the Contract in accordance with Section 9 of this Contract or exercise any other remedies allowed by law.

G. Survival. The obligations under this Section will survive the termination of this Contract.

**17. SUBCONTRACTORS**. To the extent that the Contractor engages subcontractors to perform, or otherwise provide support to assist the Contractor to perform, any portion of the Work performed under this Contract (each a “Permitted Subcontractor”), then: (a) the Contractor shall remain responsible for the services, tasks, functions, and responsibilities performed by Permitted Subcontractors to the same extent as if such services, tasks, functions, and responsibilities were performed directly by the Contractor and, for purposes of this Contract, such Work shall be deemed Work performed by the Contractor; (b) the Contractor shall maintain a current and accurate list of all Permitted Subcontractors and shall provide such list to the Authority upon the Authority’s request; (c) the Contractor shall not share or disclose, or engage a Permitted Subcontractor to collect, access, store, process, transmit, receive, or otherwise possess any Personal Data or confidential information of the Authority, unless and until such Permitted Subcontractor has agreed in writing to protect such Personal Data and or confidential information of the Authority in a manner equivalent to that required of the Contractor under this Contract, and then only on a need-to-know basis; (d) the Contractor shall cause such Permitted Subcontractors to comply with the obligations and restrictions associated with the services, tasks, functions, and responsibilities performed by such Permitted Subcontractors that are applicable to the Contractor under this Contract, including, without limitation, those obligations set forth Section 16; and (e) the Contractor shall obtain from each Permitted Subcontractor such evidence, information, and documentation as is reasonably necessary to demonstrate and confirm the Permitted Subcontractor’s compliance with the Security Requirements and the requirements of Section 16, and shall provide such evidence, information, and documentation to the Authority.

**18. MISCELLANEOUS PROVISIONS**.

A. Independent Contractor. The Contractor is an independent contractor and, nothing herein contained shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the Authority. The Authority is concerned only with the results to be obtained.

B. Time is of the Essence. The performance of the Work of the Contractor shall be undertaken and completed in accordance with this Contract and in such sequence as to assure its expeditious completion in light of the purposes of this Contract. It is agreed that time is of the essence in the performance of this Contract.

C. Notices. Any notices or other communications required or permitted by this Contract or by law to be served on, given to, or delivered to either party hereto, by the other party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered

to the party to whom it is addressed or in lieu of such personal services, when received in the United States' mail, first-class postage prepaid addressed to:

The Authority:

E-470 Public Highway Authority  
22470 East 6th Parkway  
Aurora, CO 80018  
Attn: Executive Director

The Contractor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Either party may change its address for the purpose of this Section by giving written notice of such change to the other party in the manner provided in this Section.

D. Headings. The headings and captions in this Contract are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Contract.

E. Controlling Law and Venue. The parties hereto agree that exclusive jurisdiction and venue for the resolution of any dispute relating to this Contract or any Work to be provided hereunder shall lie in the state courts of the State of Colorado.

F. No Waiver. No waiver of any of the provisions of this Contract shall be deemed to constitute a waiver of any other of the provisions of this Contract, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

G. Binding Contract. This Contract shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the parties hereto.

H. Entire Contract. This Contract constitutes the entire agreement between the parties and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Contract are of no force and effect.

I. Severability. The invalidity or unenforceability of any portion or previous version of this Contract shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Contract and the balance of this Contract shall be construed and enforced as if this Contract did not contain such invalid or unenforceable portion or provisions.

J. Counterpart Execution. This Contract may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

K. Contract Modification. The Contract Documents may not be amended, altered, or otherwise changed except by a written agreement signed by the parties.





**ATTACHMENT 1**

**CERTIFICATION REGARDING ILLEGAL ALIENS**

To: E-470 PUBLIC HIGHWAY AUTHORITY

I, \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, the prospective "Contractor" for that certain Contract for \_\_\_\_\_ services to be entered into with the E-470 Public Highway Authority, do hereby certify on behalf of said Contractor that, as of the date of this Certification, Contractor does not knowingly employ or contract with an illegal alien who will perform work under this Contract and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program pursuant to Section 8-17.5-102(5)(c), Colorado Revised Statutes in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract.

Executed on the \_\_\_\_ of \_\_\_\_\_, 20\_\_.

**CONTRACTOR:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**ATTACHMENT 2**

**AFFIRMATION OF LEGAL WORK STATUS**

Pursuant to Colorado Revised Statute § 8-17.5-102(5)(c)(II)

Employee Name: \_\_\_\_\_  
Last First Middle

Date of Birth: \_\_\_\_\_ Date of Hire: \_\_\_\_\_

In accordance with Colorado Revised Statute § 8-17.5-102(5)(c)(II), I have:

\_\_\_\_\_ examined the legal work status of the above named employee.

\_\_\_\_\_ retained file copies of the documents required by 8 U.S.C. sec. 1324a.

\_\_\_\_\_ not altered or falsified the identification documents for the above named employee.

Employer Name / Designated Representative: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Official Title

\_\_\_\_\_  
Employer Phone Number

STATE OF \_\_\_\_\_ )

)

ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by \_\_\_\_\_ and \_\_\_\_\_, as \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

## **EXHIBIT A**

### **PROJECT DESCRIPTION AND SCOPE OF WORK**

The Project location is at the E-470/US-85 Interchange located at approximately mile marker 36 in Adams County, Colorado. The project scope involves transporting inert fill material, by conveyor belt through a box culvert to be installed in this contract, to fill Sandy Acres Lake, and coordination with the Authority staff, all as described in the Contract Documents.

**EXHIBIT B**  
**WORK ORDER PROCEDURE**  
**Not Included**



## EXHIBIT C

### LIQUIDATED DAMAGES

The "Liquidated Damages" shall collectively include all of the following paragraphs (if and as indicated), in the versions which are in effect on the date this Contract is executed, which are incorporated herein by this reference:

- |    |             |   |   |
|----|-------------|---|---|
| 1. | Paragraph A | Failure to complete Work on time          | Included: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| 2. | Paragraph B | Exceeding load restrictions               | Included: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| 3. | Paragraph C | Failure to timely perform traffic control | Included: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| 4. | Paragraph D | Damages to fiber optic line               | Included: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |

The Contractor and the Authority acknowledge and agree that at the time of execution of this Contract, the occurrence of one or more of the conditions and circumstances set forth in this Exhibit "C" constitutes a breach of this Contract and are events which will cause damages to the Authority which are difficult to ascertain as of the effective date of this Contract. Therefore, the Contractor and the Authority, agree to liquidated damages as set forth below:

A. Failure to Complete Work on Time. In the event that the Contractor, in the performance of the Work, should exceed the calendar days or completion date set forth in Section 4 of the Contract, the Contractor understands and agrees that as a result of such event, the Authority will suffer substantial losses and damages, which the parties are unable to ascertain at the time of contracting. Such losses and damages may include additional engineering, operation, maintenance, legal, accounting and administrative costs, reduced public confidence and adverse public relations which would reduce future toll revenues. The Contractor agrees to pay the Authority, as liquidated damages for exceeding the term of the Contract, those amounts set forth in accordance with the schedule listed below, which the parties hereby agree are a reasonable estimate of the Authority's losses.

Liquidated damages will be assessed for exceeding the term of the Contract based on the following schedule:

<b>Original Contract Amount (\$)</b>		<b>Liquidated Damages per Calendar Day (\$)</b>
<b>From More Than</b>	<b>To And Including</b>	
0	150,000	67
150,000	250,000	174
250,000	500,000	430
500,000	1,000,000	1,086
1,000,000	2,000,000	1,778
2,000,000	4,000,000	2,363
4,000,000	10,000,000	3,240
10,000,000	-	3,240 plus 583 Per Each Additional 1,000,000 Contract Amount or Part Thereof Over 10,000,000

B. Exceeding Load Restrictions. In the event that, in the performance of the Work, the gross weight of any of the Contractor's vehicles or any vehicle operated by any subcontractor or material supplier which transports material to the Project should exceed the legal limit, and such material is inadvertently accepted and the material incorporated into the project, the Contractor understands and agrees that as a result of such event, the Authority will suffer substantial losses and damages, which the parties are unable to ascertain at the time of contracting. Such losses and damages may include additional engineering, operation, maintenance, legal, accounting and administrative costs, reduced public confidence and adverse public relations which would reduce future toll revenues. The Contractor agrees to pay the Authority, as liquidated damages for exceeding the legal load restriction limits, those amounts set forth in accordance with the schedule listed below, which the parties hereby agree are a reasonable estimate of the Authority's losses.

Liquidated damages will be assessed for the overweight portion of the load based on the following schedule:

<b>Overweight (Pounds)</b>	<b>Liquidated Damages per overweight per load (Dollars)</b>
0-3000	20
3001-4000	40
4001-5,000	82
5,001 - 6,000	130
6,001 - 7,000	226
7,001 - 8,000	376
8,001 - 9000	582
9,001- 10,000	842
Over 10,000	\$870 plus \$164 for each 1,000 lbs. Over 10,000 lbs.

C. Failure to Timely Perform Traffic Control. In the event that the Contractor, in the performance of the Work, should exceed the working time limitations for traffic control (as more particularly described below), the Contractor understands and agrees that as a result of such event, the Authority will suffer substantial losses and damages, which the parties are unable to ascertain at the time of contracting. Such losses and damages may include additional engineering, operation, maintenance, legal, accounting and administrative costs, reduced public confidence and adverse public relations which would reduce future toll revenues. The Contractor agrees to pay the Authority, as liquidated damages for failure to timely perform traffic control resulting in exceeding the working time limitations as set forth below, those amounts set forth in accordance with the schedule listed below, which the parties hereby agree are a reasonable estimate of the Authority's losses.

Liquidated damages will be assessed for failure to timely perform traffic control based on the following schedule:

<b>INCIDENT</b>	<b>LIQUIDATED DAMAGE</b>	<b>TOTAL LIQUIDATED DAMAGES</b>
1st	Notice to Stop Work	
2nd	\$150	\$150
3rd	300	450
4th	600	1,050
5th	1,200	2,250
6th	1,200	3,450
7th and each additional incident	1,200	Increased by \$1,200 per incident

D. Damages To Fiber Optic Line. In the event that the Contractor, in the performance of the Work, damages the Authority's fiber optic lines the Contractor understands and agrees that as a result of such event the Authority will suffer substantial losses and damages which the parties are unable to ascertain at the time of contracting. Such losses and damages may include the loss of telecommunication services to the Authority's electronic toll collection system and to other points of connection, the cost to repair the fiber optic lines, as well as loss of revenue incidental to the operation of E-470, reduced public confidence and adverse public relations. The Contractor and the Authority therefore wish to liquidate such damages at the time of entering into this Contract. Accordingly, the Contractor and the Authority agree to the following:

1. At least 24 hours prior to any subsurface excavation, the Contractor shall notify the Authority so that the Authority may locate and mark fiber optic lines at the Work site and so that the Authority may have a representative standing by at the time of excavation. The Contractor will not be responsible for liquidated damages under this paragraph, nor for any costs to repair the fiber optic line nor for any other consequential losses incurred by the Authority as the result of any damage to the fiber optic line, if the location of the fiber optic line is further from the location identified by the Authority than acceptable under the Utility Notification Center of Colorado standards. In any event, the Contractor shall notify the Authority of any cutting of or damage to the fiber optic line immediately.

2. If the Contractor, any of its subcontractors or any other party working on the site at the Contractor's request or authorization, cuts or damages the fiber optic lines for any reason other than an Authority location error as defined in subparagraph 1. above, such as the Contractor's failure to obtain locations of the lines before proceeding, or the Contractor damaging the line in spite of obtaining correct locations in advance, and notifies the Authority Command Center or other authorized Authority representative within one (1) hour of the cutting of or damage to the fiber optic line, the Contractor shall be responsible for all actual damages incurred by the Authority as the result of the cutting of or damage to the fiber optic line, including the cost to repair the fiber optic line, all lost revenues and all other damages suffered by the Authority, which costs and damages shall be documented in accordance with standard time and materials procedures, up to a maximum of Fifty Thousand Dollars (\$50,000.00) per day.

3. If for any reason the Contractor causes the fiber optic line to be cut or damaged and fails to notify the Authority of such cutting or damage within one (1) hour of the cutting or damage, the Contractor agrees to pay the Authority as liquidated damages for damages to the fiber optic lines, the toll collection system and other consequential damages, the amount of Fifty Thousand Dollars (\$50,000.00) per day, which amount the Parties hereby agree is a reasonable estimate of the Authority's losses.

**EXHIBIT D**  
**INSURANCE**

The Contractor shall obtain insurance for the Contract as provided herein:

A. General Requirements. The Contractor shall acquire and maintain in full force and effect, during the entire term of the Contract, including any extensions thereof, and at any time thereafter necessary to protect the Authority, its directors, employees, agents, consultants and the Contractor from claims that arise out of or result from the operations under this Contract by the Contractor or by a subcontractor or a vendor or anyone acting on their behalf or for which they may be liable, the coverages set forth in Section B of this Exhibit D. All insurance is to be placed with insurance carriers licensed in the State of Colorado with an A.M. Best and Company rating of no less than A-(X) or as otherwise accepted by the Authority. The Authority and its respective directors, officers, employees, and agents shall be named as an additional insured as provided in Section C of this Exhibit D. The Contractor shall request its insurer to amend or endorse its insurance policy to provide that the insurer will give the Authority sixty (60) days written notice prior to the cancellation, non-renewal or material modification of any policy of insurance obtained to comply with this Exhibit D. In addition, Contractor shall immediately upon receipt provide the Authority with a copy of any notice of cancellation, non-renewal or material modification of any policy of insurance obtained to comply with this Exhibit D.

B. Minimum Insurance Coverages:

1. Workers' compensation insurance in accordance with applicable law, including employers' liability with minimum limits of one-hundred thousand dollars (\$100,000) each accident, five-hundred thousand dollars (\$500,000) Disease-Policy Limit, one-hundred thousand dollars (\$100,000) Disease each employee.

2. Commercial general liability insurance in the amount of one-million dollars (\$1,000,000) combined single limit bodily injury and property damage, each occurrence; two-million dollars (\$2,000,000) general aggregate, and one-million dollars (\$1,000,000) products and completed operations aggregate. Coverage shall be on an ISO 1996 Form (CG 0001 or equivalent), include all major divisions of coverage and be on a comprehensive basis, including:

- (a) Premises and operations;
- (b) Personal injury liability;
- (c) Contractual liability;
- (d) Property damage;
- (e) Products and completed operations;
- (f) Independent contractors coverage;
- (g) Explosion, collapse and underground (for contractors only);
- (h) Contractors' limited pollution coverage (for contractors only); and,
- (i) Endorsement CG 2-503 or equivalent; general aggregate applies on a per project basis (for contractors only).

3. Commercial automobile liability insurance in the amount of one-million dollars (\$1,000,000) combined single limit bodily injury and property damage, each accident covering owned, leased, hired, non-owned, and employee non-owned vehicles used at the project site.

4. Builder's Risk Insurance. A blanket builder's risk insurance policy on an "all risk" basis (Special Covered Cause of Loss Form) for the project including (1) coverage for any ensuing loss from faulty workmanship or defective materials; (2) coverage against damage or loss caused by earth movement, flood, fire, theft, vandalism, and malicious mischief, collapse, false work, including increased cost of construction, architects fees and expenses, soft costs and operational testing, (3) coverage for removal of debris and demolition (4) transit coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item, (5) policy is to include as insured the Authority, the Contractor, and all subcontractors, and (6) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a "completed value" form insuring probable maximum loss.

5. Professional Liability. Coverage in the amount of One Million Dollars (\$1,000,000) each claim and in the aggregate covering the negligent acts or omissions of the Contractor and/or its subcontractors in the performance of the Services (for professionals only).

6. Excess Liability Coverage. Excess liability coverage inclusive of general liability, automobile liability and employers liability in the amount of at least Five Million Dollars(\$5,000,000) combined single limit bodily injury and property damage, each occurrence: and Five Million Dollars (\$5,000,000) in the aggregate. Separate aggregates need to be structured as found in the underlying coverages.

7. All coverages specified herein shall waive any right of subrogation against the Authority and its directors, officers and employees.

C. Additional Insured Parties. The Authority and its respective directors, officers, employees, and agents shall be names as additional insured on all policies (with the exception of workers' compensation insurance and professional liability coverage). Professional liability coverage shall be endorsed to include contractual liability coverage, insured contract coverage or similar coverage for the professional service performed under this Contract.

D. Certificates of Insurance. Prior to commencing any work under the Contract, the Contractor shall provide the Authority with a certificate or certificates evidencing the coverages identified on the face of the certificate with the contract number for this Contract, the name of the project and a copy of the additional insured endorsement. If the Contractor subcontracts any portion(s) of the Work, such subcontractor(s) shall be required to furnish certificates evidencing workers' compensation and employers' liability insurance, commercial general liability insurance coverage, and automobile liability insurance, in amounts satisfactory

to the Authority and the Contractor and containing the "additional insured", "waiver of subrogation" and "cancellation" conditions found in this Exhibit D. If the coverage required expires during the term of this Contract, the Contractor and its subcontractor(s) shall provide replacement certificate(s) evidencing the continuation of the required policies at least fifteen (15) days prior to expiration.

E. Additional Provisions. Each liability policy and, where required, umbrella/excess liability policy is to contain, or be endorsed to contain, the following:

1. The Contractor's insurance coverage shall be primary insurance with respect to the Authority and its directors, officers and employees. Any insurance maintained by the Authority or its directors, officers and employees shall be in excess of the Contractor's insurance and shall not contribute to it.

2. The Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to limits of liability.

F. Failure to Comply with Reporting Provisions. Any failure on the part of the Contractor to comply with reporting provisions or other conditions of the policies shall not affect the obligation of the Contractor to provide the required coverage to the Authority (and its directors, officers and employees).

G. Claims-Made Policies. If any policy is a claims-made policy, the policy shall provide the Contractor the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than two years. The Contractor agrees to purchase such an extended reporting period if needed to ensure continuity of coverage. The Contractor's failure to purchase such an extended reporting period as required by this Section shall not relieve it of any liability under this Contract. If the policy is a claims-made policy, the retroactive date of any such policy shall be not later than the date this Contract is executed by the parties hereto. If the Contractor purchases a subsequent claims-made policy in place of any prior claims-made policy, the retroactive date of such subsequent policy shall be no later than the date this Contract is executed by the parties hereto.

H. No Limitation on Other Obligations. The procuring of required policies of insurance shall not be construed to limit the Contractor's liability hereunder or to fulfill the indemnification provisions and requirements of this Contract. The Contractor shall be solely responsible for any deductible losses under the policy.

I. Additional Risks and Hazards. If the Authority requests in writing that insurance for risks other than those described herein or for other special hazards be included in property insurance policies, the Contractor shall obtain such insurance, if available, in a form and for a cost approved by the Authority, and the cost thereof shall be charged to the Authority.

## **EXHIBIT E**

### **PAYMENT AND PERFORMANCE BOND**

A. General Requirements.

1. Pursuant to Section 38-26-106, Colorado Revised Statutes, the Contractor shall execute bonds as follows:

(a) A contractor who is awarded a contract for more than fifty thousand dollars for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation, or other public works for this state, or for any county, city and county, municipality, school district, or other political subdivision of the state, before entering upon the performance of any such Work included in the Contract, shall duly execute, deliver to, and file with the board, officer, body, or person by whom the contract was awarded a good and sufficient bond, or other acceptable surety, approved by the contracting board, officer, body, or person, in a penal sum not less than one-half of the total amount payable under the terms of the contract. Except that, for a public works contract having a total value of five hundred million dollars or more, a bond or other acceptable surety, including but not limited to a letter of credit, may be issued in a penal sum not less than one-half of the maximum amount payable under the terms of the contract in any calendar year in which the contract is performed. The contracting board, office, body, or person shall ensure that the contract requires that a bond or other acceptable surety, including but not limited to a letter of credit, be filed and current for the duration of the contract.

(b) A bond or other acceptable surety shall be duly executed by a qualified corporate surety or other qualified financial institution, conditioned upon the faithful performance of the contract, and, in addition, shall provide that, if the contractor or his or her subcontractor fails to duly pay for any labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by such contractor or his or her subcontractor in performance of the Work contracted to be done or fails to pay any person who supplies laborers, rental machinery, tools, or equipment, all amounts due as the result of the use of such laborers, machinery, tools, or equipment, in the prosecution of the work, the surety or other qualified financial institution will pay the same in an amount not exceeding the sum specified in the bond together with interest at the rate of eight percent per annum. Unless a bond or other acceptable surety is executed, delivered, and filed, no claim in favor of the contractor arising under the contract shall be audited, allowed, or paid. A certified or cashier's check or a bank money order made payable to the treasurer of the State of Colorado or to the treasurer or other officer designated by the governing body of the contracting local government may be accepted in lieu of a bond or other acceptable surety.

2. Every bond shall have a term that ends six (6) months after termination of the Project Warranties



**EXHIBIT F**  
**SCHEDULE OF VALUES**

**PAYMENT PERFORMANCE AND WARRANTY BOND**

**E-470 PUBLIC HIGHWAY AUTHORITY**

**E-470 SANDY ACRES LAKE INFILL**

**CONTRACT NO. 14C402**

STATE OF \_\_\_\_\_ )  
 )  
 ) .ss.  
COUNTY OF \_\_\_\_\_ )

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, \_\_\_\_\_, (hereinafter called "Principal"), and \_\_\_\_\_, a corporation duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Surety (hereinafter called "Surety"), are held and firmly bound unto E-470 Public Highway Authority, a political subdivision of the State of Colorado, as Owner and Obligee (hereinafter called "Owner" or "Obligee"), in the penal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made to the Obligee, the Principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-named Principal and Owner have executed a Contract dated \_\_\_\_\_ for the E-470 Sandy Acres Lake Infill (hereinafter, the "Contract"), which is by reference made a part hereof;

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall (1) faithfully perform all covenants, obligations and provisions of said Contract on Principal's part and satisfy all claims and demands incurred for the same (including but not limited to the provisions for payment of Liquidated Damages (as defined in the Contract Documents, which term is defined in the Contract) during the original term thereof and, any extensions thereof that may be granted by the Owner with or without notice to the Surety; (2) fully indemnify and save harmless the Owner from all costs and damages which said Owner may suffer by reason of failure so to do, including but not limited to Liquidated Damages; (3) fully reimburse and repay said Owner all outlay and expenses which said Owner may incur in making good any default, including but not limited to Liquidated Damages; (4) if the Principal shall pay all persons, firms and corporations all just claims due them for the payment of all laborers and mechanics for labor performed, for all materials and equipment furnished, and for all materials and equipment used or rented in the performance of the Contract, and (5) if the Principal shall keep the Project (as defined in the Contract Documents) constructed under this Contract in good repair, in accordance with the warranties (as defined in the Contract Documents), for a period of two (2) years from date the Owner grants final acceptance for the Project (the "Warranties"), then this obligation is null and void; otherwise it shall remain in full force and effect.

In accord with the foregoing, the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder or to the Specifications accompanying same shall in any way affect its obligation on this Bond; and the Surety does hereby waive any notice of any change, extension of time, alteration or addition to the terms of the Contract, the Project to be performed thereunder or the Specifications accompanying same, whether or not it increases the Contract Amount (as defined in the Contract Documents).

Whenever Principal shall be, and is declared by Owner to be in default under the Contract, the Surety shall promptly remedy the default, or shall promptly, subject to Owner's concurrence, perform and complete the Contract in accordance with its terms and conditions, which may include obtaining a Bid or Bids for completing the Work (as defined in the Contract Documents) covered by the Contract and the execution of a new Contract between the Owner and a new contractor approved by Owner. The Surety shall pay the costs of completion of the Project covered by the Contract up to an amount equal to the amount of this Bond, as increased or decreased by Change Orders (as defined in the Contract Documents) which increase or decrease the value of the Contract Amount.

If the Principal fails to pay for any labor performed, for any materials and equipment furnished, and for any materials and equipment used or rented in the performance of the Contract, the Surety shall pay the same in an amount not exceeding the cost of the Contract Work together with interest at eight percent (8%) per annum until paid.

If the Principal fails to keep the Project constructed under this Contract in good repair, in accordance with the Warranties, the Surety shall pay the costs to perform the same.

Any suit under this Bond must be instituted, or notice of intent to commence such suit received by Surety, not later than (1) one year after expiration of the warranty period under the Contract.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Owner named herein or the successors and assigns of Owner and to all persons, firms and corporations for all just claims due them for the payment of all laborers and mechanics for labor performed, for all materials and equipment furnished, and for all materials and equipment used or rented in the performance of the Contract.

It is expressly understood and agreed that any alterations which may be made in the terms of said Contract or in the Work to be done under said Contract, or any extension(s) of time for the performance of the Contract, or any forbearance on the part of either the Owner or the Principal to each other, shall not in any way release the Principal and the Surety, or either of them, their successors or assigns from their liability hereunder, notice to the Surety of any such alteration, extension or forbearance being hereby expressly waived by the Surety.

**[Remainder of page intentionally left blank.]**

Signed and sealed this day of \_\_\_\_\_, 20\_\_.

PRINCIPAL:

ATTEST:

\_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

SURETY:

ATTEST:

\_\_\_\_\_

By \_\_\_\_\_

Attorney-in-Fact with Power of Attorney attached  
hereto and incorporated herein

**IMPORTANT: Surety companies executing this Bond must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Colorado.**