

## CONSTRUCTION CONTRACT

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20XX, by and between the **COUNTY OF MONTROSE, Colorado**, by and through its Board of County Commissioners (hereinafter called "Owner" or "County"), and \_\_\_\_\_, (hereinafter called "Contractor"), for the Construction Project known as:

The Owner's Representative (OR) is \_\_\_\_\_.

The Owner and Contractor agree as follows:

### **ARTICLE 1 THE WORK:**

The Contractor shall complete all the work on the \_\_\_\_\_ as specified in the Scope of Work included and also contained in the RFP attached hereto and incorporated herein. The Work is generally described as \_\_\_\_\_.

### **ARTICLE 2 TIME OF COMMENCEMENT AND COMPLETION:**

- 2.1 The Work to be performed under this Contract shall be commenced upon receipt of a Notice to Proceed and completed by \_\_\_\_\_. Start date is anticipated to be on or about \_\_\_\_\_.
- 2.2 Except as otherwise required for the safety or protection of persons or the Work or property at the Work Site or adjacent thereto, all Work at the Site shall be performed between the hours of 7 AM and 5:30 PM, Monday through Friday, unless otherwise provided in writing by Owner or OR, such consent not to be unreasonably withheld.

### **ARTICLE 3 CONTRACT AMOUNT AND BASIS:**

The Owner shall pay the Contractor the amount of \$\_\_\_\_\_ for the satisfactory performance of the Work, subject to additions and deductions by Change Order as provided in the General Conditions, the following:

The unit price set forth on the Bid Schedule shall be the basis for the contract price. Payment at the unit price will be based on actual measured quantities in the Work, or planned quantities as stipulated in the Project Special Provisions, except where the unit is a lump sum, in which case payment will be based upon the lump sum price as stated.

The Owner states, pursuant to C.R.S. 24-91-103.6(2)(a), that the amount of money appropriated for this Contract is equal to or in excess of the contract amount set forth in this Contract.

Pursuant to C.R.S. 24-91-103.6(2)(b), the Owner shall not issue any change order or other directive requiring additional compensable work to be performed under this Contract, which work causes the aggregate amount payable under the contract to exceed the appropriated amount for the original contract, unless the Contractor is given written assurance by the Owner that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in the Contract.

#### **ARTICLE 4 PROGRESS PAYMENTS:**

Based upon Applications for Payment submitted to the OR by the Contractor and Certificates for Payment issued by the OR to the Owner, the Owner shall make progress payments to the Contractor as follows:

Monthly progress payment requests shall be remitted within thirty (30) days of issuance of Certificates for Payment by the OR to the Owner.

Ten percent (10%) of each amount certified for payment shall be retained by the Owner until final payment.

**(note CRS 24-91-103 requires retainage for public improvement projects in excess of \$150,000)**

#### **ARTICLE 5 FINAL PAYMENT:**

After completion of the Work, provided the Contract be then fully performed, subject to the provisions of Article 16 herein, the Owner shall publish a Notice of Final Settlement twice at least 10 days prior to the date of Final Settlement. The Owner shall withhold from final payments any amounts as required pursuant to C.R.S. § 38-26-107.

#### **ARTICLE 6 CONTRACT DOCUMENTS:**

6.1 The Contract Documents include:

- Construction Contract
- Project Special Provisions, if applicable
- Blueprints provided by Owner/OR and any applicable Drawings
- Addenda, if applicable
- Change Orders, if applicable

- Modifications, if applicable
- Written Interpretations of the Contract Documents, if applicable
- Performance Bond, as provided in Article 13 hereinbelow, if applicable
- Payment Bond, as provided in Article 13 hereinbelow, if applicable
- Materials Bond, as provided in Article 13 hereinbelow, if applicable
- Notice to Proceed
- Request For Proposals Package, Notice of Award, and signed copy of contract with the Board of County Commissioner's signature
- Certification of EEO Compliance
- Contractors Performance Capability Statement
- Owner's Request for Proposals, attached
- Contractor's Proposal, \_\_\_\_\_, attached
- Contractor's Certification of Immigration Compliance, C.R.S. 18-17.5-101, *et seq.*

Contract standards include:

1997 Uniform Building Code & Montrose County Design Variables

- 6.2 The aforementioned documents form the Contract and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, materials, equipment and other items as provided in Paragraph 10.2 necessary for the proper execution and completion of the Work and the terms and conditions of payment therefore, and also to include all Work which may be reasonably inferable from the Contract Documents as being necessary to produce the intended results.
- 6.3 Two copies of the Contract Documents shall be signed by the Owner and the Contractor. If either the Owner or the Contractor do not sign the Drawings, Specifications, or any of the other Contract Documents, the OR shall identify them. By executing the Contract, the Contractor represents that he has visited the site and familiarized himself with the local conditions under which the Work is to be performed.
- 6.4 The term Work as used in the Contract Documents includes all labor necessary to produce the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in such construction.
- 6.5 In the event that any of the covenants or provisions of this Contract shall conflict with any of the provisions of the Request for Proposals or the Contractor's proposal, then this Contract shall control and shall be the governing document. In the event that the Request for Proposals conflicts with the Contractor's proposal then the Request for Proposals shall control, it being the intent that the work under the project is defined in this Contract and the Request for Proposals.

**ARTICLE 7**  
**OWNER'S REPRESENTATIVE (OR)**

- 7.1 The OR will provide general administration of the Contract and will be the Owner's representative during construction and until issuance of the final Certificate for Payment.
- 7.2 The OR shall at all times have access to the Work wherever it is in preparation and progress.
- 7.3 The OR will make periodic visits to the site to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of on-site observations, the OR will keep the Owner informed of the progress of the Work, and will endeavor to guard the owner against defects and deficiencies in the Work of the Contractor. The OR will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The OR will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.
- 7.4 Based on such observations and the Contractor's Applications for Payment, the OR will determine the amounts owing to the Contractor and will issue Certificates for Payment in accordance with Article 16.
- 7.5 The OR will be, in the first instance, the interpreter of the requirements of the Contract Documents. The OR will make decisions on all claims and disputes between the Owner and the Contractor.
- 7.6 The OR will have authority to reject Work not conforming to the Contract Documents.

**ARTICLE 8  
OWNER:**

- 8.1 The Owner shall provide labor and equipment to establish sewer, water, electric, and telephone lines as necessary.
- 8.2 The Owner has secured all necessary temporary easements or real property acquisitions necessary for the Project and shall advise Contractor of the boundaries of Owner's easements or property.
- 8.3 The Owner shall issue all instructions to the Contractor through the OR.

**ARTICLE 9  
CONTRACTOR:**

- 9.1 The Contractor shall perform the work as an Independent Contractor pursuant to

this Agreement.

- 9.2 The Contractor shall supervise and direct the Work, using Contractor's best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.
- 9.3 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, expertise, materials, freight/delivery equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.
- 9.4 The Contractor shall at all times enforce strict discipline and good order among his employees, and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.
- 9.5 The Contractor shall comply with all OSHA and all applicable trade-related rules and regulations.
- 9.6 The Contractor warrants to the Owner and the OR that all materials and equipment incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards may be considered defective.
- 9.7 The Contractor shall pay all sales, consumer, use and other similar taxes required by law and shall secure all permits, and licenses necessary for the execution of the Work at Contractor's expense. The Owner is exempt from state and local sales and use taxes. Contractor shall take steps to obtain such exemption from the Colorado Department of Revenue pursuant to C.R.S. § 39-26-114(1)(a) XIX and 114(d).
- 9.8 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work, and shall notify the OR if the Drawings, Specifications and Provisions are at variance therewith.
- 9.9 The Contractor shall be responsible for the acts and omissions of all Contractor's employees and all Sub-Contractors, their agents and employees and all other persons performing any of the Work under a contract with the Contractor.
- 9.10 The Contractor shall review, stamp with his approval and submit all samples and shop drawings as directed for approval of the OR for conformance with the design concept and with the information given in the Contract Documents. The Work shall be in accordance with approved samples and shop drawings.

9.11 The Contractor at all times shall keep the premises free from accumulation of waste materials and debris caused by Contractor's operations. This provision is imperative. At the completion of the Work, Contractor shall leave the Project site in a neat and orderly condition.

**ARTICLE 10  
SUBCONTRACTS:**

10.1 A Subcontractor is a person who has a contract with the Contractor to perform any of the Work at the site.

10.2 Unless otherwise specified in the Contract Documents or in the Instructions to Bidders, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the OR in writing a list of the names of Subcontractors proposed for the principal portions of the Work. The Contractor shall not employ any Subcontractor to whom the OR or the Owner may have a reasonable objection. The Contractor shall not be required to employ any Subcontractor to whom he has a reasonable objection. Contracts between the Contractor and the Subcontractor shall be in accordance with the terms of this Agreement and shall include the General Conditions of this Agreement insofar as applicable.

**ARTICLE 11  
DECISIONS ON DISPUTES:**

11.1. The provisions of this Article shall govern the procedures to be followed in the event of a dispute.

11.2 Representative shall be the initial interpreter of the requirements of the Contract Documents and judge the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and changes in the Work and Contract Times will be referred initially to the OR in writing with a request for a decision. Written notice of each such claim, dispute or other matter will be delivered by the Contractor to the OR promptly after the occurrence or event giving rise thereto. The OR will render a decision in writing promptly after receipt of the submittal, allowing sufficient time for review of the matter. The OR's decision on such claim, dispute or other matter will be final and binding upon the Contractor.

11.3 When functioning under these provisions, the OR will remain impartial to both the Contractor and the County, and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

**ARTICLE 12  
ROYALTIES AND PATENTS:**

The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof.

**ARTICLE 13  
PERFORMANCE AND PAYMENT BONDS:**

A Performance Bond, Payment Bond and Materials Bond shall be submitted by Contractor for all as indicated in Article 6. Each bond shall be in the amount of the One Hundred Percent (100%) of contract sum and shall either be in the form supplied by Owner or shall be in such other form as approved by Owner. The bond shall make reference to this Contract, and may be drawn against in an appropriate amount as determined by the Owner in its sole discretion, when any damages to the Owner result from the Contractor's services pursuant to this Contract, or Contractor's malfeasance, misfeasance, or breach in the performance hereof. The purpose of the bond is to secure the performance of and the compliance with this Contract by and between the Contractor and Owner; the bond shall not be transferable. Each bond shall comply with the requirements of C.R.S. §§ 38-26-105 and 106.

**(note CRS 38-26-105 and 106 require a payment and performance bond (or money order or certified check payable to Montrose County Treasurer to hold) in the amount of at least 50% of the contract price for county public improvement projects in excess of \$50,000)**

**ARTICLE 14  
DELAY:**

- 14.1 All of the Work will be completed and ready for final payment by the date specified in this Agreement.
- 14.2 If the Contractor is delayed at any time in the progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in transportation, unavoidable casualties, causes beyond the Contractor's control, or by any cause which the OR may determine justifies the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the OR may determine.

**ARTICLE 15  
PAYMENTS:**

- 15.1 Payments shall be made as provided in Article 4 of this Contract.
- 15.2 Payments may be withheld on account of (1) defective Work not remedied, (2) claims asserted or evidence which indicates probable assertion of claims, (3) failure of the Contractor to make payments properly to Sub-Contractors or for labor, materials, or equipment, (4) damage to another Contractor or Owner, or (5) unsatisfactory prosecution of the Work by the Contractor.

15.3 Final payment shall not be due until (1) the Contractor has delivered to the Owner a bond, a clean irrevocable letter of credit, cash or other security satisfactory to the Owner indemnifying Owner against any claim which has been asserted by anyone for labor, materials, equipment or otherwise arising out of the contract or on account of any claim which either Owner or Contractor believes may be asserted, (2) the Owner has inspected and approved the Work as complying with the contract, (3) written consent of surety, if any is given, (4) any manufacturers or suppliers warranties and equipment literature, and any as built plans required are delivered to Owner, and (5) the Owner and Contractor have complied with all requirements for Final Settlement imposed by applicable law.

## **ARTICLE 16**

### **PROTECTION OF PERSONS AND PROPERTY AND RISK OF LOSS:**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. He shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the Work and other persons who may be affected thereby, (2) all the Work and all materials and equipment to be incorporated therein, and (3) other property at the site or elsewhere. Contractor shall bear all risk of loss to the work, or materials or equipment for the work due to fire, theft, vandalism, or other casualty or cause, until the work is fully completed and accepted by the Owner. He shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. All damage or loss to any property caused in whole or in part by the Contractor, any Sub Contractor, any Sub-Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor.

## **ARTICLE 17**

### **INDEMNIFICATION AND INSURANCE:**

#### Indemnification

17.1 The Contractor shall indemnify and hold harmless the Owner and the OR and their respective officers, agents and employees, insurers, and self-insurance pool, from and against all liability, claims and demands, on account of injury, loss or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any way connected with this Contract, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Contractor or any Subcontractor of the Contractor, or any officer, employee, representative, or agent of the Contractor or any Subcontractor of the Contractor, or which arise out of any

worker's compensation claim of any employee of the Contractor or any Subcontractor of the Contractor.

- 17.2 The Contractor agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Contractor, or at the option of the Owner, agrees to pay the Owner or reimburse the Owner for defense costs incurred by the Owner in connection with, any such liability, claims or demands. In carrying out any of the provisions of this Contract or in exercising any power or authority thereby, there shall be no personal liability of the Owner or the Owner's Representative, or officials, attorneys, employees and agents thereof.
- 17.3 The Contractor also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether any such liability, claims or demands alleged are groundless, false or fraudulent. The obligation of these provisions shall not extend to any injury, loss or damage which is caused by the act, omission or other fault of the Owner

#### Insurance

- 17.4 The Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Contractor pursuant to Section 18.1. Such insurance shall be in addition to any other insurance requirements imposed by this contract or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section 18.1 by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
- 17.5 Contractor shall procure and maintain, and shall cause any Subcontractor of the Contractor to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to Owner. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant to Section 18.1. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- (a) Worker's Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this contract. Evidence of qualified self-insured status may be substituted for the Workmen's Compensation requirements of this paragraph.
  - (b) Commercial General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and

ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

- (c) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each occurrence and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) aggregate with respect to each of Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Contractor has no owned automobiles, the requirements of this Paragraph shall be met by each employee of the Contractor providing services to the Owner under this contract.
- (d) Professional/Contractor Liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate.

17.6 The policy required by paragraphs (b) and (c) above shall be endorsed to include Owner and the Owner's Representative, and officers and employees thereof, as additional insureds. Every policy required above shall be primary insurance and any insurance carried by Owner, its officers, or its employees, or carried by or provided through any insurance pool of Owner, shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement to any policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under any policy required above.

17.7 The certificate of insurance provided by Owner shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by Owner prior to commencement of the contract. No other form of certificate shall be used. The certificate shall identify this Contract and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to Owner. Any statement of the certificates which describe this 30-day prior written notice as being less than obligatory shall be stricken and initialed by the insurance agent completing the certificates. The completed certificate of insurance shall be sent to Owner.

- 17.8 Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which Owner may immediately terminate this contract, or at its discretion Owner may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by Owner shall be repaid by Contractor to Owner upon demand, or Owner may offset the cost of the premiums against any monies due to Contractor from Owner.
- 17.9 Owner reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- 17.10 The parties hereto understand and agree that Owner is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, as amended, or otherwise available to Owner, its officers, or its employees.
- 17.11 The Agreement shall not be executed, and no notice or authorization to proceed shall be given to Contractor until the Certificates required above, are submitted and approved by the Owner.

**ARTICLE 18**  
**PROPERTY INSURANCE:**

- 18.1 Unless otherwise provided, the Contractor shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interest of the Owner, the Contractor, Subcontractors and Sub-Subcontractors in the Work and shall insure against the perils of Fire, Theft, Extended Coverage, Vandalism and Malicious Mischief. Such policy shall be an "all-risk" Builders Risk policy.
- 18.2 Any insured loss is to be adjusted with the Owner and made payable to the Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any mortgagee clause.
- 18.3 The Contractor shall file a copy of all such policies with the Owner prior to the commencement of the Work.
- 18.4 The Owner and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance provided under this paragraph. The Contractor shall require similar waivers by Subcontractors and Sub-Subcontractors.

**ARTICLE 19**

## **ACCEPTANCE OF THE WORK:**

- 19.1 The Contractor shall correct any Work that fails to conform to the requirements of the Contract Documents where such failure to conform appears during the progress of the Work, and shall remedy any defects due to faulty materials, equipment or workmanship which appear within a period of one year from the Date of Final Settlement of the Contract or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents. The provisions of this Article apply to Work done by Subcontractors as well as to Work done by direct employees of the Contractor, and are in addition to any other remedies or warranties provided by law.
- 19.2 No act of the Owner or the Owner's Representative, either in superintending or directing the Work, or any extension of time for the completion of the Work, shall be regarded as an acceptance of such Work or any part thereof, or of materials used therein, either wholly or in part. Acceptance shall be evidenced only by the final certificate of the Owner. Before any final certificate shall issue, Contractor shall execute an affidavit on the certificate that it accepts the same in full payment and settlement of all claims on account of Work done and materials furnished under this Contract, and that all claims for materials provided or labor performed have been paid or set aside in full. No waiver of any breach of this Contract by the Owner or anyone acting on Owner's behalf shall be held as a waiver of any other subsequent breach thereof.
- 19.3 Contractor agrees to guarantee all work under this Contract for a period of one year from the date of Final Settlement by the Owner. If any unsatisfactory condition or damage develops within the time of this guaranty due to materials or workmanship that are defective, inferior, or not in accordance with the Contract, as reasonably determined by the Owner or the OR, then the Contractor shall, when notified by the Owner or OR, immediately place such guaranteed Work in a condition satisfactory to the Owner or OR

## **ARTICLE 20 CHANGES IN THE WORK:**

- 20.1 The Owner without invalidating the Contract may order Changes in the Work consisting of additions, deletions, or modifications with the Contract Sum and the Contract Time being adjusted accordingly.
- 20.2 All such changes in the Work shall be authorized by written Change Order signed by the Owner.
- 20.3 The Contract Sum and the Contract Time may be changed only by Change Order.

20.4 The cost or credit to the Owner, if any, from a Change in the Work shall be determined by unit prices if specified in the contract documents, or by mutual agreement.

**ARTICLE 21  
TERMINATION BY THE CONTRACTOR:**

If the OR fails to issue a payment for a period of thirty days through no fault of the Contractor, or if the Owner fails to make payment thereon for a period of thirty days from issuance of a payment, the Contractor may, upon fourteen days' written notice to the Owner and the OR, terminate the Contract, provided however, that OR or Owner shall first have an opportunity to remit such payment within the fourteen day period following written notice.

**ARTICLE 22  
TERMINATION BY THE OWNER:**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Owner may, after fourteen days' written notice to the Contractor and without prejudice to any other remedy Owner may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor or, at Owner's option, may terminate Contractor's work under the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method Owner may deem expedient, and if the unpaid balance of the Contract Sum exceeds the expense of finishing the Work, such excess shall be paid to the Contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the Owner. These rights and remedies are in addition to any right to damages or other rights and remedies allowed by law.

**ARTICLE 23  
PERMITS:**

Contractor shall obtain and pay for all necessary permits and licenses relative to the Project.

**ARTICLE 24  
CONDITIONS OF THE WORK SITE:**

24.1 The information and data shown or indicated in the Contract Documents with respect to existing underground facilities at or contiguous to the site is based upon information and data furnished to the County by the owners of such underground facilities. The County shall not be responsible for the accuracy or completeness of any such information or data, to the extent that it does not concern County-owned facilities.

24.2 Contractor shall be responsible for reviewing and checking all such information and data, locating all underground facilities as shown or indicated in the Contract Documents, coordination of the Work with the owners of such facilities, and the safety and protection of all such underground facilities, and repairing any damage thereto resulting from the Work.

**ARTICLE 25  
SAFETY:**

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connections with the Work. The Contractor shall take all reasonable safety precautions and provide all reasonable protection to prevent damage, injury, or loss to all employees and Subcontractors at the work site and all other persons affected by the Work, all materials and equipment in the care and custody of the Contractor or Subcontractor, all Work, and all property at the work site.

**ARTICLE 26  
LIQUIDATED DAMAGES:**

26.1 Owner and Contractor recognize that time is of the essence here and the Owner will suffer financial loss if the Work is not complete within the time specified above, plus any extensions thereof allowed. If the Contractor fails to perform the Work within the specified time set forth in the Contract Documents as adjusted pursuant to this Article, the Owner and Contractor agree that as liquidated damages, and not as a penalty, for delay in performance the Contractor shall pay the Owner in the amount stipulated below for each and every calendar day that expires after \_\_\_\_\_ where the Work is not complete and ready for Final Payment, the Owner shall have the right to deduct liquidated damages from any amount due or that may become due to the Contractor, or to collect such liquidated damages from the Contractor or the Surety. The Owner has the option to enforce liquidated damages or to waive such damages.

26.2 The liquidated damages herein specified shall only apply to Contractor's delay in performance. Liquidated damages are intended only to compensate the Owner for additional personnel efforts in administering the Contract after normally scheduled completions dates, Owner inconvenience, lost opportunities, and lost confidence in government and morale of government when work is not completed on time.

26.3 Such damages are uncertain in amount and difficult to measure and prove accurately. By executing this Contract, the Contractor agrees that the liquidated damages specified herein are reasonable in amount and are not disproportionate to actual anticipated damages. Liquidated damages do not include any sums of money to reimburse the Owner for extra costs which the Owner may become obligated to pay on other contracts which are delayed or extended because of Contractor's failure to complete the Work within the time period as specified

herein, including costs associated with the delay or interference with the Project. Liquidated damages are not intended to include litigation costs or attorney fees incurred by the Owner, or other incidental or consequential damages suffered by the Owner due to the Contractor's performance. If the Owner charges liquidated damages to the Contractor, this shall not preclude the Owner from commencing an action against the Contractor for other actual harm resulting from the Contractor's performance, including but not limited to, costs associated with the delay or interference with the Project.

- 26.4 In order to recover liquidated damages, the Owner is under no obligation to prove the actual damages sustained by the Owner due to the Contractor's delay in performance. The parties agree that liquidated damages shall be computed according to the following schedule, based upon the Contract Price, inclusive of any applicable changes thereto, for each and every day that completion of the Work shall be delayed:

**TOTAL CONTRACT PRICE**

<u>From</u>	<u>To and Including</u>	<u>Liquidated Damages/per day</u>
\$0	\$500,000	\$300.00
\$500,000	\$1,000,000	\$500.00
\$1,000,000	(and above)	\$800.00

**ARTICLE 27**

**SPECIAL/MISCELLANEOUS PROVISIONS:**

- 27.1 Each Party hereto agrees to cooperate in all reasonable respects necessary to consummate the transactions contemplated by this Contract, and from time to time to do such acts and things and execute and deliver such documents and instruments as may reasonably be required in order to implement the transactions contemplated hereby. Each Party hereto agrees to cooperate in the execution of subsequent Addenda, or to re-execute an amended version of this Agreement, in the event that a Party discovers: 1) a clerical error; or 2) a misinterpretation of the law; or 3) an error as to form; when such error(s) obviate or hinder the consideration, performance, or enforcement of this Agreement.
- 27.2 This contract is governed by the laws of the State of Colorado and any action to enforce any of the provisions, obligations or covenants of this contract shall be commenced only in a court of proper jurisdiction in Montrose County, Colorado.
- 27.3 Contractor shall not assign this contract. The provisions of the contract are binding on the heirs, successors or assignees of the parties.
- 27.4 The rights and remedies available under this contract shall be in addition to any rights and remedies allowed by law.

- 27.5 No failure to enforce any provision of the contract on account of any breach thereof, shall be considered as a waiver of any right to enforce provisions of this contract concerning any subsequent or continuing breach.
- 27.6 If any provision of this Agreement is declared by any court of competent jurisdiction to be invalid for any reason, such invalidity shall not effect the remaining provisions. On the contrary, such remaining provisions shall be fully severable, and this Agreement shall be construed and enforced as if such invalid provisions never had been inserted in this Agreement.
- 27.7 The terms of this agreement shall remain in full force and effect following final payment.
- 27.8 Contractor shall comply with the requirements of Colorado Revised Statutes 8-17.5-101, *et seq.* and shall abide by the certification attached hereto as For Services Addendum.
- 27.9 Sole Source Contracts. To the extent this contract may be construed to be a "sole source contract" within the meaning of sections 15 through 17 of Article XXVIII of the Colorado Constitution, and to the extent these constitutional provisions have not been enjoined or invalidated by a court of competent jurisdiction, the requirements and limitations of these constitutional provisions are hereby incorporated in this contract.

**BOARD OF COUNTY COMMISSIONERS  
COUNTY OF MONTROSE, COLORADO**

By: \_\_\_\_\_  
David White, Chairman

Attest: \_\_\_\_\_  
Deputy Clerk and Recorder

**CONTRACTOR:**

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

\_\_\_\_\_  
Printed name

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

## ADDENDUM

### NOTIFICATION OF IMMIGRATION COMPLIANCE REQUIREMENTS AND CERTIFICATION BY CONTRACTOR

\_\_\_\_\_, (“Contractor” herein) acknowledges that Contractor has been notified of the immigration compliance requirements of C.R.S. § 8-17.5-101, *et.seq.* (House Bill 06-1343), and hereby **CERTIFIES** that:

1. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under the public contract for services; 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 the public contract for services;
3. The Contractor has verified or attempted to verify through participation in the basic pilot program that the Contractor does not employ any illegal aliens and, if the Contractor is not accepted into the basic pilot program prior to entering into a public contract for services, that the Contractor shall apply to participate in the basic pilot program every three months until the Contractor is accepted or the public contract for services has been completed, whichever is earlier. This provision shall not be required or effective in a public contract for services if the basic pilot program is discontinued;
4. The Contractor acknowledges that the Contractor is prohibited from using basic pilot program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed;
5. If the Contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall be required to:
  - (A) Notify the subcontractor and the contracting state agency or political subdivision within three 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 days of receiving the notice required pursuant to subparagraph (A) of this Section 5 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 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
6. Contractor is required to comply with any reasonable request by the State Department of Labor and Employment (“Department” herein) made in the course of an

investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).

7. If Contractor violates a provision of the public contract for services required herein 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 County.

8. The County is obligated to notify the office of the secretary of state if a contractor violates a provision of this Addendum and the County terminates the contract for such breach. Based on this notification, the secretary of state shall maintain a list that includes the name of the Contractor, the state agency or political subdivision that terminated the public contract for services, and the date of the termination. A contractor shall be removed from the list if two years have passed since the date the contract was terminated, or if a court of competent jurisdiction determines that there has not been a violation of the provision of the public contract for services required pursuant to Section I. An agency or political subdivision shall notify the office of the secretary of state if a court has made such a determination. The list shall be available for public inspection at the office of the secretary of state and shall be published on the internet on the website maintained by the office of the secretary of state.

9. The Department may investigate whether a contractor is complying with the provisions of a public contract for services required pursuant to Section I. The Department may conduct on-site inspections where a public contract for services is being performed, request and review documentation that proves the citizenship of any person performing work on a public contract for services, or take any other reasonable steps that are necessary to determine whether a contractor is complying with the provisions of a public contract for services required pursuant to Section I. The Department shall receive complaints of suspected violations of a provision of a public contract for services (this Addendum) and shall have discretion to determine which complaints, if any, are to be investigated. The results of any investigation shall not constitute final agency action. The Contractor is hereby notified that the Department is authorized to promulgate rules in accordance with article 4 of title 24, C.R.S., to implement the provisions of C.R.S. § 8-17.5-101, *et. seq.*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20XX.

[CONTRACTOR]

By

\_\_\_\_\_ [Printed Name]