

UNIFIED-FORM CONSTRUCTION CONTRACT
(Project Name)
405 Argentine Street, Georgetown, Colorado

THIS Contract is made DATE, between Clear Creek County, Colorado, a body corporate and politic acting by and through its Board of County Commissioners (“County”), and (CONTRACTOR) (“Contractor”).

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

Section 1. Scope of Work. Contractor shall, in a good and workmanlike manner and at its own cost and expense, furnish all labor, materials and equipment and do all work necessary and incidental to performing the (PROJECT NAME) (“Project”) as specified in the bid documents, the Contractor’s Proposal (attached) and this Contract (“Work”). Contractor shall perform the Work in strict accordance with the Contract Documents.

Section 2. Contract Documents. The Contract Documents, which comprise the entire agreement and contract between County and Contractor, consist of this Contract and Invitation for Bids, Bid, Project Specifications and Drawings, Bonds, Notice of Award, Notice to Proceed, and any modifications, change orders or other such revisions properly authorized after the execution of this Contract.

Section 3. Price. County shall pay Contractor for the performance of the Work and completion of the Project the sum \$(PRICE) (“Contract Price”). The funds appropriated for this Project are equal to or in excess of the Contract Price.

Section 4. Changes to Contract Price. The Contract Price may be changed only by a written change order executed by both parties. Pursuant to the provisions §24-91-103.6, C.R.S., and notwithstanding anything to the contrary contained elsewhere in the Contract Documents, no change order or other form of order or directive by County, and no amendment to this Contract, requiring additional compensable work to be performed which work causes the aggregate amount payable under the Contract to exceed the amount appropriated for the original Contract, shall be of any force or effect unless accompanied by a written assurance by County 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. Also pursuant to the provisions of §24-91-103.6, C.R.S., any form of order or directive by the County requiring additional compensable work to be performed, the County shall reimburse the Contractor for its costs on a periodic basis for all additional directed work performed until a change order is finalized, but not before the Contractor has submitted an estimate of cost to the County for the additional compensable work.

Section 5. Commencement and Completion of Performance. Contractor shall commence the Work within one calendar days after the County gives its Notice to Proceed, and will complete the Work not later than March 31, 2011. The dates of beginning and for completing the Work are essential conditions of this Contract. In the event Contractor fails to timely commence or timely complete the Work, County may take over the Work and prosecute the same to completion. Contractor shall proceed with the Work at such rate of progress to insure full completion within the contract time. If Contractor fails to complete the Work within the contract time, or extension of time granted by the County, then Contractor shall pay to County, as liquidated damages and not as penalty, the sum of three hundred dollars (\$300.00) for each calendar week that Contractor is in default. If Contractor promptly gives County notice of delays in the performance of the Work due to unforeseeable causes beyond the control and without the fault of Contractor from unforeseen conditions, acts of God or of the public enemy, acts of County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and

abnormal and unforeseeable weather, and County agrees, the completion date will be extended for the delay period, which will be Contractor's sole remedy for the delay.

Section 6. Times and Methods of Payment.

A. Progress Payments: County will make monthly progress payments on account of the Contract Price on the basis of Contractor's applications for payments. All progress payments will be on the basis of the progress of the Work. If the County objects to any invoices submitted by Contractor, the County will so advise Contractor in writing giving the reason within fourteen (14) days of receipt of the invoice.

B. Retainage Withheld Against Progress Payments: Before final completion, progress payments will be in an amount equal to:

1. 90% of the Work completed, until 50% of the Work is performed, after which no additional retainage will be withheld if the Contractor is satisfactorily performing the Work , and
2. 90% of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made, as provided in §24-91-103, CRS.

C. Final Payment: Upon final completion and acceptance by County, County will pay the remainder of the Contract Price. The final payment shall not be made until after final settlement of this Contract has been duly advertised by publication of notice thereof at least twice in a public newspaper of general circulation published in Clear Creek County, the Board of County Commissioners has held a public hearing thereon, and County has complied with the requirements of §38-26-107, CRS.

Section 7. Final Acceptance.

A. Final Acceptance, When, and Affect on Warranties: Final acceptance of the Project shall follow inspection and approval of Contractor's performance by County, along with inspection by appropriate governmental officials pursuant to local, state and federal requirements. County's determination of the acceptability of Contractor's performance for conformity with this Contract shall be conclusive and binding upon Contractor. Final acceptance by the County is subject to the provisions of this Contract, and in no manner affects or releases any warranties by Contractor, manufacturers of Project equipment or suppliers of Project materials.

B. Project Must be Claim Free for Final Acceptance: The Project, when presented to County for final acceptance, shall be delivered free from any and all claims or encumbrances whether then in existence or later established by law, statute, ordinance or otherwise. No claim or encumbrance against the Project or the Project site shall be outstanding or otherwise unsettled at the time of final acceptance. The right to assert any claim or encumbrance against the Project, after final acceptance by County and final payment to Contractor, is hereby waived by Contractor on behalf of itself and any subcontractor.

Section 8. Contractor's Obligations Are Absolute. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. Neither the recommendation of any progress or final payment nor the payment by County to Contractor, nor any use or occupancy of the Work or any part thereof by County, nor any act of acceptance by County, nor any correction of defective Work by County, shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents.

Section 9. Contractor's Representations.

In order to induce County to enter into this Contract Contractor makes the following representations:

A. Contractor has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions, and federal, state, and local laws, ordinances, rules and regulations that in any manner may affect cost, progress, or performance of the Work.

B. Contractor has made, or caused to be made, examinations, investigations, and tests and studies of such reports and related data as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time, and in accordance with other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports, or similar data are, or will be required by Contractor for such purposes.

C. The contract time for the completion of the Work is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the Work during the period the Work is to be performed.

Section 10. Bonds. **If the Contract Price exceeds Fifty Thousand Dollars**, Contractor shall deliver to the County a bond or bonds securing payment for all labor and materials used or contracted for in performance of (commonly known as payment bonds), and securing the performance of (commonly known as performance bonds), the Work under this Contract. Bonds required by this Contract shall be issued in a penal sum not less than 125% of the Contract Price by sureties licensed to do business in Colorado and satisfactory to County, in its discretion, and in forms satisfactory to the County, in its discretion. The bonds (and original powers of attorney, if applicable) shall be delivered before Contractor may commence the Work; and County shall have no liability or obligation hereunder unless and until the bonds have been so delivered. The bonds shall be valid for at least one year after completion of the Work.

Section 11. Insurance.

A. Contractor shall obtain and maintain during the life of this Contract, and shall cause any subcontractor to obtain and maintain during the life of this Contract, the minimum insurance coverages listed below. The insurance shall be obtained from insurers acceptable to the County who are licensed to do insurance business in Colorado, and in forms acceptable to the County. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by the Contractor under this Contract.

1. **Workers' Compensation and Employer's Liability** Insurance: Workers' Compensation must be maintained as required by law. Employer's Liability is required for minimum limits of \$100,000 each accident/\$500,000 disease-policy limit/\$100,000 disease-each employee.
2. **Commercial General Liability** Insurance, including broad form property damage (including products and completed operations) for all damages arising out of injury to or destruction of property, including the County's property, with a limit of liability of not less than two million dollars (\$2,000,000) combined single limit per occurrence.
3. **Protective Liability and Property Damage** Insurance covering the liability of County, including any employee, officer or agent of County, with respect to all operations under the Contract by the Contractor or his subcontractors.
4. **Comprehensive Automobile Liability** Insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate with respect to each of the Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the services.

B. Certificates of insurance acceptable to the County shall be delivered to County before commencement of the Work. These certificates must contain provisions naming the County as an additional insured (except as to worker's compensation) and that coverage afforded under the policies will not be cancelled or terminated until at least thirty days prior written notice has been given County. Contractor shall not permit any of his subcontractors to start Work until all required insurance have been obtained and certificates with the proper endorsements have been delivered to County; and County shall have no liability or obligation hereunder unless and until the certificates have been so delivered. . Failure of Contractor to comply with the foregoing insurance requirements shall in no way waive County's rights hereunder.

C. The insurance provided by Contractor shall be primary to insurance carried by County.

D. All policies shall contain waiver of subrogation and rights of recovery against County.

Section 12. Indemnification. Contractor, to the fullest extent permitted by law, shall defend, indemnify and hold harmless County, its officers, employees, agents and their insurers, 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 arises out of or is in any manner connected with this Contract, to the extent that such injury, loss or damage is attributable to the act, omission, error, professional error, mistake, negligence or other fault of Contractor, Contractor's employees, subcontractors or anyone else employed directly or indirectly by Contractor, Contractor's employees or subcontractor. Contractor, to the fullest extent permitted by law, shall defend, investigate, handle, respond and provide defense for and defend against any such liability, claims or demands at the sole expense of Contractor, or at the option of County, Contractor agrees to pay County or reimburse County for defense costs incurred by County in connection with any such liability, claims, or demands. Contractor, to the fullest extent permitted by law, shall defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not such liability, claims or demands alleged are groundless, false or fraudulent. This indemnification provision is intended to comply with §13-21-111.5(6), CRS, and shall be read as broadly as permitted to satisfy that intent. Nothing in this indemnification agreement shall be construed in any way to be a waiver of County's immunity protection under the Colorado Governmental Immunity Act, § 24-10-101, et seq., CRS.

Section 13. Protection of the Work. Contractor shall be solely responsible for the protection of the Work until its final acceptance by County. Contractor shall have no claim against County because of any damage or loss to the Work, and shall be responsible for the complete restoration of damaged Work to its original condition. In the event Contractor's Work is damaged by another party, not under his supervision or control, Contractor shall make his claim directly with the party involved. If a conflict or disagreement develops between Contractor and another party concerning the responsibility for damage or loss to Contractor's Work, such conflict shall not be cause for delay in Contractor's restoration of the damaged Work.

Section 14. Taxes, Licenses, Permits and Regulations.

A. In all operations connected with the Project, Contractor shall pay all fees, charges and taxes imposed by law and shall obtain all licenses and permits necessary for completion of the Project, paying all fees therefor unless otherwise specified by County. County shall assist Contractor to determine which licenses and permits are required for completion of the Project.

B. County is exempt from Colorado state sales and use taxes on materials to be permanently incorporated in the Work. Accordingly, taxes for which County is exempt shall not be included in the Contract Price. County shall, upon request, furnish Contractor with a copy of its Certificate of Tax Exemption. Contractor shall take all steps reasonably necessary to implement County's tax exemption.

C. Contractor shall comply with all laws, ordinances, codes, rules and regulations of all governmental authorities, whether local, state or federal, relating to the performance of work on the Project.

Section 15. Colorado Labor. Contractor shall comply with §8-17-101 et seq., CRS. Colorado labor shall be employed to perform the work to the extent of not less than eighty percent of each type or class of labor in the several classifications of skilled and common labor employed on the Project. "Colorado labor" means any person who is a resident of the state of Colorado, at the time of employment, without discrimination as to race, color, creed, sex, age, or religion except when sex or age is a bona fide occupational qualification.

Section 16. Warranties.

A. Contractor warrants that all Work furnished under the Contract is free from defects in workmanship for a period of one year after final acceptance by County, and that materials and equipment furnished under the Contract will be new and of good quality. Contractor shall remedy or replace all defects at Contractor's expense, and at no expense to County. Should Contractor fail to proceed promptly in accordance with this warranty, County may have such work performed at Contractor's expense. This section does not relieve Contractor from liability for defects in workmanship which become known after one year.

B. Contractor will diligently assist County in applying for, and repairing or replacing, those materials covered under manufacturer's warranties.

Section 17. Clean-Up. Contractor shall keep the premises/work site and surrounding area free from accumulation of debris and trash related to the Work. Contractor shall frequently clean up all refuse or scrap materials resulting from the progress of the Work. Upon completion of the Work and prior to final inspection, Contractor shall remove from the construction site all refuse, unused materials, and any other materials belonging to Contractor or subcontractors. Failure of the Contractor to clean and restore the site satisfactorily will result in the County doing so, and the cost will be charged to the account of Contractor.

Section 18. Equal Employment Opportunity. Contractor agrees to comply with the letter and spirit of the Colorado Anti-Discrimination Act, §24-34-401, et seq., CRS, and all applicable local, state and federal laws respecting discrimination and unfair employment practices. In all solicitations by Contractor for any Work related to this Contract to be performed under a subcontract, either by competitive bidding or negotiation, Contractor shall notify each potential subcontractor of Contractor's obligations under this Contract, and of all pertinent regulations relative to nondiscrimination and unfair employment practices.

Section 19. Termination. The performance of the Work may be terminated at any time in whole, or in part, by County for its convenience. Any such termination shall be effected by delivery to Contractor of a written notice ("Notice of Termination") specifying the extent to which performance of the Work is terminated and the date upon which termination becomes effective. After receipt of a Notice of Termination, and except as otherwise directed by County, Contractor shall, in good faith, and to the best of its ability, do all things necessary, in implementation thereof, to assure the efficient, proper closeout of the terminated Work (including the protection of County's property). In the event of such termination, there shall be an equitable reduction of the Contract Price to reflect the reduction in the Work and no cost incurred after the effective date of the Notice of Termination shall be treated as a reimbursable cost unless it relates to carrying out the unterminated portion of the Work or taking closeout measures.

Section 20. Independent Contractor.

A. Contractor is an independent contractor for all purposes in performing under this Contract; Contractor and its agents and employees are not agents or employees of County for any purpose. Contractor shall be responsible for employing and directing such personnel and agents as it requires to perform the services purchased under this Contract, shall exercise complete authority over its personnel and agents, and shall be fully responsible for their actions.

B. Contractor acknowledges that it is not entitled to unemployment insurance benefits or workers' compensation benefits from County, its elected officials, agents, or any program administered or funded by County. Contractor shall be entitled to unemployment insurance or workers' compensation insurance only if unemployment compensation coverage or workers' compensation coverage is provided by Contractor, or some other entity that is not a party to this Contract. Contractor is obligated to pay federal and state income tax on any monies earned pursuant to this Contract.

Section 21. Limitation on County's Obligations (TABOR). The other provisions of this Contract notwithstanding, County shall have no obligations under this Contract for any Work performed or any financial obligation payable after December 31 of the current fiscal year except pursuant to a lawful appropriation therefor adopted as provided in the Colorado Local Government Budget Law.

Section 22. Notice. Any notice and all written communications required under this Agreement shall be (i) personally delivered, (ii) mailed in the United States mails, first class postage prepaid, or (iii) transmitted by facsimile machine together with a hard copy conveyed by delivery or mail, to the appropriate party at the following addresses:

To Contractor:

Name	<u>Click here to enter text.</u>
Address	<u>Click here to enter text.</u>
City, State, Zip	<u>Click here to enter text.</u>
Telephone	<u>Click here to enter text.</u>
Fax	<u>Click here to enter text.</u>

To County:

Clear Creek County
C/O Craig E. Abrahamson, P.E., Owner's Representative
Clear Creek Technical Services, Inc.
P.O. Box 194
Georgetown, CO 80444
telephone: 303-569-2850
fax: 1-866-656-4561

Mailed notices will be deemed given three business days after the date of deposit in a regular depository of the United States Postal Service, and FAX notices will be deemed given upon transmission, if during business hours, or the next business day. Either party can change its address for notice by notice to the other in accordance with this paragraph.

Section 23. Assignment. Contractor shall not assign any interest in this Contract to any person or entity without the prior written consent of County. Subject to County's consent, the terms of this Contract shall inure to and be binding upon the successors and assigns of the parties hereto.

Section 24. Third Party Beneficiaries. The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to County and Contractor, and nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the parties to this Contract that any person receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

Section 25. Amendment. No amendment, modification, or alteration of this Contract shall be binding upon the parties hereto unless the same is in writing and approved by the duly authorized representatives of each party hereto.

Section 26. Severability. If any provision of this Contract shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Contract.

Section 27. Waiver. No waiver by either party of any right, term or condition of this Contract shall be deemed or construed as a waiver of any other right, term or condition, nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Contract.

Section 28. Counterparts. This Contract may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.

Section 29. Entirety. This Contract constitutes the entire agreement between the parties concerning the subject matter herein, and all prior negotiations, representations, contracts, understandings, or agreements pertaining to such matters are merged into, and are superseded by, this Contract.

IN WITNESS WHEREOF, the parties have executed this Contract on the day and year first above written.

CLEAR CREEK COUNTY, COLORADO, by and through its Board of County Commissioners:

By: _____
Tom Breslin, County Administrator
(per delegation of authority in the minutes of
the Board for _____, 2011)

CONTRACTOR:

By: _____

Name: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this _____ day of _____, 2011, by _____ as the _____ of _____.

My commission expires: _____

(S E A L)

Notary Public