



**REQUEST FOR PROPOSALS  
DESIGN BUILD**

**Broadband Middle Mile & Carrier Neutral Location  
COF Project 130-710-77-4730**

**The City of Fruita is soliciting competitive sealed Proposals from qualified Design/Build firms to design and construct Broadband Middle Mile & Carrier Neutral Location services at 900 Kiefer Avenue.**

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**SECTION 1  
INTRODUCTION AND INSTRUCTIONS TO OFFERORS**

**A. DOCUMENTS.** READ THIS REQUEST FOR PROPOSALS (“RFP”) AND ALL ATTACHMENTS TO THIS RFP TOGETHER IN ORDER TO UNDERSTAND YOUR RIGHTS, DUTIES AND OBLIGATIONS UNDER THIS RFP.

**B. TERM OF CONTRACT.** It is intended that this RFP will result in the award of a contract. It is anticipated that a Notice to Proceed will be issued on or around **April 1, 2023**. It is also anticipated that the contract would be completed in 9 months.

**C. QUALIFICATION OF OFFERORS.** Each offeror must have been primarily engaged in a business that delivers goods or provides services similar to those requested in this RFP for at least 24 months prior to the date this RFP is issued. Each Proposal must establish that the offeror is “responsible” and the Proposal is “responsive” to the terms and conditions of this RFP. As defined in the GCPC, “responsible” are: “. . . potential vendors who have submitted bids or proposals and who have the capability to fully perform all contract requirements as well as the experience, integrity, reliability, capacity, facilities, equipment and credit assuring good faith performance. Past performance, financial capabilities, and business management may be included as criteria for determination of a bidder’s ability to satisfy contract requirements.”, and “non-responsive” is to mean a Proposal that does not conform in all material respects to the requirements set forth in the IFB or RFP.

**D. PRINTED FORM OF PROPOSALS.** All Proposals must state the proposed amount for the delivery of the requested services both in words and figures, and be signed in ink by an individual who has actual authority to sign the Contract. If a “Price Schedule” is submitted as part of a Proposal, then it must be signed by an individual who has actual authority to sign the Contract. If a “Delivery Schedule” or “Work Schedule” is submitted as part of a Proposal, then it must also be signed by an individual who has actual authority to sign the Contract. A “Delivery Schedule” or “Work Schedule” must also state the delivery date for all goods or the commencement date for all services that are the subject of this RFP. The Delivery Schedule or Work Schedule must conform to the commencement and completion dates of the Contract. The submitted proposal must be labeled as **“Broadband Middle Mile & Carrier Neutral Location”**.

**E. DELIVERY OF PROPOSALS.** The City of Fruita (City) will only accept electronic proposal submissions. All proposals must be submitted via email to [satkins@fruita.org](mailto:satkins@fruita.org). If the file size of the email exceeds 15 MB, it will need to be submitted alternatively. Alternative methods include, Dropbox, OneDrive, or similar. A delivered submittal on a thumb drive is also acceptable. It is the responsibility of the vendor to ensure that electronic proposals are submitted prior to proposal closing time. Electronic proposals shall be uploaded as a single PDF file.

**F. OPENING OF PROPOSALS.** Proposals will not be publicly opened, but will be electronically opened after the proposal closing time of **1:30 P.M. on Friday, March 17, 2023** in the presence of one or more witnesses in the **City of Fruita Civic Center, 325 E. Aspen Avenue, Fruita, CO 81521**. The name of each proposer and other relevant information, as deemed



appropriate by the City, shall be recorded at the proposal opening. The record and each timely submitted proposal that was received and opened in response to this RFP are public records in accordance with §24-72-201, *et seq.* C.R.S., as amended, and shall be available for public inspection by appointment only.

**G. ACCEPTANCE OF PROPOSALS.** All Proposal information is subject to analysis, legal review, and other required approvals prior to the award of any contract. Therefore, all timely received Proposals shall be unconditionally accepted without alteration or correction, except as may otherwise be authorized by applicable provisions of the City. An offeror may not alter or change any price or other information in a Proposal after it has been opened if the City deems that alteration or change prejudicial to the City or fair competition.

**H. EVALUATION OF PROPOSALS.** Proposals will be evaluated based on the requirements set forth in this RFP, which may include, but is not necessarily limited to, the consideration of such factors or criteria as: inspection, testing, references, quality, price, workmanship, delivery, functionality, and suitability for a particular purpose. Prior to the award of a contract, the City may contact an offeror to: clarify any patent or latent ambiguities in a Proposal; or, to clarify that an offeror clearly understands the requirements of this RFP and that a submitted Proposal conforms to the requirements of this RFP. Proposals may, but are not required to, be judged on the basis of: (a) the offeror's qualifications, (b) the total amount of the Proposal (including any unit prices set forth in that Proposal), (c) warranties, (d) experience, (e) past performance, (f) delivery times, dates, charges, and location, (g) any long-range cost(s), and, (h) any other information that may be requested in this RFP. If a conflict exists between unit prices and total prices in a Proposal, then unit prices shall govern. The City may make such investigations, as it deems necessary, to determine the ability of any offeror to timely and satisfactorily perform the work described in this RFP. An offeror shall furnish to the City all information and data that it may request. The City reserves the right to reject any Proposal if the information submitted by, or the investigation of, an offeror fails to satisfy The City that an offeror is properly qualified to deliver the requested goods or, timely and satisfactorily complete the work described in this RFP within the budget provided by that offeror. The City may reject any or all Proposals it receives for any bona fide reason, including but not limited to submitting a "conditional" or "qualified" Proposal. The City specifically reserves the right to reject any Proposal that is not submitted by a responsible offeror and/or is not otherwise responsive to the terms and conditions of this RFP.

**I. BINDING EFFECT OF SUBMITTED PROPOSALS.** Unless otherwise specified by applicable provisions of the City, all timely submitted Proposals shall be binding upon the submitting offeror for a period of not less than sixty (60) calendar days following the Proposal opening date. The City may request an offeror to extend this period of time if necessary to complete the solicitation and contract award process.

**J. WAIVER OF MINOR INFORMALITIES OR IRREGULARITIES IN PROPOSALS.** The City reserves the right to waive any minor informality or irregularity in a timely submitted Proposal if it is in the best interests of the City or fair competition.

**K. ERRORS IN PROPOSALS.** Any error in a Proposal that is not withdrawn prior to the award of a contract shall not relieve the submitting offeror from any obligation to provide the goods



or services to be acquired through this RFP at the prices stated in that Proposal.

**L. WITHDRAWAL OF PROPOSALS.** An offeror may request in writing to withdraw a Proposal it has submitted at any time prior to the date a contract award is made. If an offeror claims that it has made an error in its Proposal, then clear and convincing written proof of that error must be submitted to the City before that Proposal may be withdrawn.

**M. REJECTION OF PROPOSALS OR CANCELLATION OF REQUEST FOR PROPOSALS.** The City reserves the right to reject, in whole or in part, any timely submitted Proposal that fails to comply with the material terms and conditions of this RFP; or, is otherwise not in the best interests of the City or fair competition. The City reserves the right to cancel this RFP, in whole or in part, at any time, if it is in the best interests of the City or fair competition.

**N. RESIDENT PREFERENCE.** This section does not apply.

**O. DETERMINATION OF NON-RESPONSIBILITY.** If an offeror who otherwise would have been awarded a contract is found to be “not responsible” by the City, then the City shall make a written determination of its findings and promptly send a copy of those findings to the non-responsible offeror. The written determination shall be part of the permanent contract file and is a public record available for inspection pursuant to §24-72-201, et seq., C.R.S., as amended.

**P. AWARD.** All purchase orders or contracts shall be awarded with reasonable promptness by written notice to the most responsive offeror whose Proposal is the best value (i.e., most advantageous) for the City. If all Proposals timely submitted in response to this RFP exceed the amount of funds available to the City, then the City may negotiate an adjustment in the original scope of work and price with the lowest responsible and responsive offeror if time or economic considerations preclude re-solicitation.

**Q. PROTESTS.** An aggrieved offeror may file a written protest of this solicitation or any resulting contract award with the City, the City Manager, or the City Council within seven (7) calendar days of the date the aggrieved offeror knew, or should have known, of the facts giving rise to the claim.

**R. RESERVATION OF RIGHTS.** The City reserves the right to make its selection decision after consideration of any other relevant factors it deems appropriate to that decision. The Fruita City Council reserves all other rights, whether express, implied, or inherent, that it may have as a political subdivision of the State of Colorado.

## SECTION 2 STANDARD TERMS OF THE RFP

**A. SCOPE OF WORK.** The Scope of Work is attached hereto as **Attachment A**, is made a part hereof and is incorporated herein by this reference.

**B. EXAMINATION OF DOCUMENTS.** Each offeror should thoroughly examine, and be familiar with, the specifications and any Scope of Work attached to this RFP. The failure or omission



of an offeror to receive or examine any addendum, document, drawing, form, instrument, plan, specification, statement of work, or any other document shall not relieve that offeror from any performance obligation contained in this RFP.

**C. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION.**

1. By submitting a Proposal, an offeror certifies, and in the case of a joint Proposal, each party thereto certifies as to its own organization, that in connection with this procurement:
  - a. the prices in the Proposal were arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any other competitor;
  - b. unless otherwise required by law, the prices which have been quoted in this Proposal have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to award, either directly or indirectly, to any other offeror or to any other competitor; and
  - c. no attempt has been made by the offeror to induce any other person or firm to submit, or not to submit, a Proposal for the purpose of restricting competition.
2. The person signing the cover page of a Proposal certifies that:
  - a. that person is responsible for that organization's decision as to the prices being offered in the Proposal and that he/she has not participated, and will not participate, in any action contrary to 1.a. through 1.c. above; or
  - b. that person is not responsible for that organization's decision as to the prices being offered in the Proposal but that the person has been authorized in writing to act as the agent with actual authority for the persons responsible for that decision, by certifying that such persons have not participated, and will not participate, in any action contrary to 1.a. through 1.c. above, and as the agent does hereby so certify; and that the agent has not participated, and will not participate, in any action contrary to A (1) through (3) above.
3. A Proposal may be deemed non-responsive and not considered for a contract award if 1.a., 1.c., or 2. above have been deleted or modified. If 1.b. has been deleted or modified, the Proposal may be deemed non-responsive and not considered for a contract award unless the offeror furnishes with its Proposal a signed statement that sets forth in detail the circumstances of the disclosure; and, the City determines that such disclosure was not made for the purpose of restricting competition.

**D. QUESTIONS REGARDING THIS RFP.** Any questions about the terms and conditions of this RFP, or any addendum or attachment hereto, shall be submitted to the City in writing by **3:00 P.M. on Friday, March 10, 2023.** Inquiries received after this date may not receive a response.

**E. INTERPRETATIONS AND ADDENDA.** If it becomes necessary to revise any part of this RFP, then a written "Addendum" shall be issued. The City is not bound by any oral changes, clarifications, or representations made by City employees, unless those oral changes, clarifications, or representations are provided in a written Addendum to this RFP.



**F. REGISTRATION.** This section does not apply.

**G. PROPRIETARY OR CONFIDENTIAL INFORMATION.** All materials submitted in response to this RFP will become a public record and subject to inspection following final selection of an offeror and the award of a contract. Any offeror who requests that material be treated as “proprietary” or “confidential” must clearly identify that material and it must be easily separable from the rest of its Proposal. A written statement must be submitted with the Proposal that clearly states the offeror’s asserted justification(s) for the request. It is not acceptable to label an entire Proposal as “proprietary” or “confidential”.

1. Request for Confidential/Proprietary Classification. The City County neither requests nor encourages the submission of “proprietary” or “confidential” information in response to this RFP. Information submitted will be open for public inspection upon completion of the RFP process and the award of a contract based on this RFP. If an offeror wants the City to treat certain information as “proprietary” or “confidential”, then that offeror shall submit a written statement, as part of its RFP package, to the City. The written statement must comply in all respects with the procedures listed below. Adherence to these procedures remains the SOLE RESPONSIBILITY of an offeror. The written request for classification of certain materials as either “proprietary” or “confidential” will be reviewed and either approved or denied by the City. If denied, an offeror will have the opportunity to withdraw its entire Proposal, or to remove the “proprietary” or “confidential” materials from its Proposal.
2. Procedures for Submission of “Proprietary” Or “Confidential” Information
  - a. A written request for classification of certain materials as either “proprietary” or “confidential” shall be submitted by the offeror with its Proposal documents.
  - b. The written request will be enclosed in an envelope marked “REQUEST FOR PROPRIETARY/CONFIDENTIALITY CLASSIFICATION”, and attached to the cover of the original Proposal with the offeror’s original signature.
  - c. The written request must specifically state and identify by page number, what elements of the Proposal are to remain proprietary or confidential. The request must also identify the basis for the claim that the information is proprietary or confidential. If necessary, the offeror shall include a citation to any applicable federal or state statute the offeror believes grants the offeror the right to have such information classified as either proprietary or confidential.
  - d. Proprietary or Confidential information must be readily identified, marked, separated, and packaged from the rest of the Proposal. Co-mingling of proprietary or confidential information and other information is NOT acceptable. A separate PDF file will suffice.
  - e. The City will make a written determination as to the apparent validity of any request by an offeror to classify certain information as either proprietary or confidential. This written determination will be sent to the offeror.

Proposals not following this procedure may be declared non-responsive by the City and given no



further consideration.

NEITHER COST NOR PRICING INFORMATION, NOR A TOTAL PROPOSAL WILL BE DEEMED “PROPRIETARY” OR “CONFIDENTIAL” BY THE CITY.

**H. CONTRACT PRODUCTS - OWNERSHIP RIGHTS.** All products, written or otherwise, produced as a result of any contract awarded under this RFP shall be the sole property of the City unless otherwise agreed to in writing by the parties. Any exceptions must be outlined in detail. Unsupported exceptions to this requirement may serve as cause to reject a Proposal. Products shall include, but are not necessarily limited to: original materials, including any applications, data, data spreadsheets, designs, documents, electronically or magnetically recorded or stored media of any kind, drawings, hardware, licenses, maps, meeting minutes, notes, reports, software, specifications, or studies that are expressly developed or created by the successful offeror for the City pursuant to this RFP and any resulting contract.

The purchase of licenses for use of an offeror’s software shall not be interpreted to mean the purchase of the actual application or software. Ownership of the specific application and software selected under this RFP shall remain with the selected offeror. Unless expressly authorized in writing by the City, the successful offeror shall not be allowed use of any materials furnished by, or produced for the City for any purpose other than for the completion of the works described herein.

**I. ASSIGNMENT AND DELEGATION.** Except for the assignment of accounts receivable or antitrust claims, the successful offeror may not assign any right or delegate any duty without the prior express written consent of the City.

**J. AUDITS.** The City reserves the right to require the successful offeror to have an audit conducted of its program at least once every three (3) years. If the successful offeror has not had an audit conducted in the three years prior to the award of any contract hereunder, and the City believes in good faith that one is required, then the successful offeror must begin an audit within six (6) months of the date a contract is awarded to that offeror. The City reserves the right to approve the selected auditing firm. A complete copy of the audit must be provided to the City within five (5) working days of its completion. The City will negotiate directly with the successful offeror regarding any exceptions or findings from that audit.

**K. LEGISLATIVE CHANGES.** The City reserves the right to amend any contract awarded pursuant to this RFP in response to any legislative changes which affect that contract.

**L. STANDARD CONTRACT.** This RFP may result in the award of a contract. In that event, the City’s Standard Contract (“Agreement”) will be used. That Agreement is attached to this RFP, made a part hereof, and incorporated herein by this reference. Additionally, this RFP and the winning Proposal will become attachments to that Agreement. If the selected offeror makes exception or requests changes to this RFP or the standard Agreement after the deadline to submit Proposals has passed, and that request results in protracted contract negotiations and probable delay in the commencement of work, then the City reserves the right to cease contract negotiations and exercise its right to offer the contract to the next highest ranked offeror.



**M. USE OF THE TERMS “ATTACHMENT” AND “APPENDIX”**

For the convenience of prospective offerors and members of the evaluation committee, the term “Attachment” will be used exclusively for any City-provided attachments, and the term “Appendix” will be used exclusively for any offeror submitted materials.

**N. CHOICE OF LAW AND VENUE.** The laws of the state of Colorado shall govern the enforcement, execution, formation, interpretation, performance, and validity of this RFP and any contract that results from this RFP. The exclusive venue for any action related to this RFP or any resulting contract is the district court for the Twenty-First Judicial District of the State of Colorado.

**O. EXCEPTIONS TO RFP.** EACH PROPOSAL SUBMITTED IN RESPONSE TO THIS RFP SHALL LIST ANY DEVIATION(S), EXCEPTION(S), OR VARIATION(S) TO OR FROM:

THE TERMS AND CONDITIONS OF THIS RFP, THE TERMS AND CONDITIONS OF ANY ATTACHMENT(S) TO THIS RFP, THE TERMS AND CONDITIONS OF ANY ADDENDUM TO THIS RFP, AND, THE TERMS AND CONDITIONS OF THE PROPOSED CONTRACT. THE SECTION OF A PROPOSAL CONTAINING ANY SUCH DEVIATION(S), EXCEPTION(S), OR VARIATION(S) SHALL BE CLEARLY LABELED “EXCEPTIONS TO RFP”. THE FAILURE OF AN OFFEROR TO NOTE A DEVIATION, MAKE AN EXCEPTION, OR LIST A VARIATION TO THE TERMS AND CONDITIONS OF THIS RFP, ANY ATTACHMENT(S) OR ADDENDA TO THIS RFP, OR THE TERMS AND CONDITIONS OF THE PROPOSED CONTRACT SHALL BE DEEMED AN EXPRESS WAIVER BY THAT OFFEROR OF ANY SUCH DEVIATION, EXCEPTION, OR VARIATION.

**SECTION 3  
STANDARD REQUIREMENTS OF THE RFP**

**A. CERTIFICATION REGARDING ILLEGAL ALIENS.** In accordance with §8-17.5-101 *et seq.* and §24-76.5-101 *et seq.* C.R.S., as amended, each offeror must sign and return the attached “Certification Regarding (the non-employment of) Illegal Aliens”. This Certification must be signed by the same individual who signs the Proposal. The City may deem any Proposal that does not include a properly executed Certification Regarding Illegal Aliens as non-responsive.

1. Each offeror shall execute the certification attached hereto as **Attachment C** in conformance with the provisions of §8-17.5-102(1) and §24-76.5-101, C.R.S., as amended.
2. Each offeror shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services; or enter into a contract with a subcontractor that fails to certify that the subcontractor shall not knowingly employ or contract with an illegal alien who will perform work under this public contract for services.
3. Each offeror shall confirm the employment eligibility of all employees who are





newly hired for employment to perform work under this public contract for services through participation in either the E-Verify Program or the Department Program.

4. Each offeror shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.

5. If an offeror obtains actual knowledge that a subcontractor performing work under this public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall:

a. Notify the subcontractor and the City within three days that the offeror 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 (1), above, the subcontractor does not stop employing or contracting with the illegal alien; except that the offeror 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. Each offeror shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to its authority.

7. Notwithstanding any other provision of this public contract for services, if an offeror violates any provision of this paragraph, the City may terminate this public contract for services and that offeror shall be liable for all actual and consequential damages resulting from that termination.

8. Except where exempted by federal law and except as provided in §24-76.5-103(3), C.R.S., as amended, any offeror receiving City funds under this public contract for services must confirm that any individual natural person eighteen (18) years of age or older is lawfully present in the United States pursuant to §24-76.5-103(4), C.R.S., as amended, if such individual applies for public benefits provided under this public contract for services. If an offeror has verified that the County has accomplished such confirmation prior to the effective date of this public contract for services, the offeror is relieved of responsibility under this paragraph.

**B. AFFIDAVIT REGARDING NON-COLLUSION.** Each offeror must sign and return the attached “Non-Collusion Affidavit”, attached hereto as Attachment D. This Affidavit must be signed by the same individual who signs the Proposal. This Affidavit must be signed in front of a notary public. The City reserves the right to reject any Proposal if evidence of collusion exists between offerors. The City may decline to accept future Proposals from any offeror determined to have engaged in collusive activities for a period of time not to exceed five (5) years. By submitting a Proposal in response to this RFP, each offeror certifies that it is not a party to any collusive action or any action that may be in violation of the federal Sherman Antitrust Act. The City may deem any



Proposal that does not include a properly executed Non-Collusion Affidavit as non-responsive.

**C. COMPLIANCE WITH APPLICABLE FEDERAL, STATE, COUNTY, AND MUNICIPAL LAWS.** All offerors must comply with all federal, state, county, and municipal laws applicable to this RFP, including but not limited to: health, labor, and licensing laws. The laws of the state of Colorado shall govern as to the effect, enforcement, interpretation, and validity of this RFP, its award, and any contract that results from this RFP. The exclusive venue for any action related to this RFP is the Mesa County seat of the Twenty First Judicial District of the State of Colorado.

**D. INSPECTION AND ACCEPTANCE.** The City reserves the right to inspect all goods and services provided pursuant to this RFP prior to accepting those goods or services. The City reserves the right to withhold any payment for any goods delivered or services performed that do not conform to this RFP. The City may require the delivery of substitute goods or the performance of substitute services if it concludes, in good faith, that the original goods or services are defective. Re-delivery or re-performance shall be at no cost to The City. The City may withhold all, or any part, of any payment because of defective tender or performance. Repeated violations of this provision may result in the unilateral termination of the purchase order or contract by The City for cause.

**E. NON-DELEGATION AND NON-ASSIGNMENT.** The successful offeror shall not delegate any duties or obligations of this RFP and any resulting purchase order or contract without the prior, express, written consent of The City. Except for accounts receivable, the successful offeror shall not assign any rights of this RFP or any resulting purchase order or contract without the prior, express, written consent of The City.

**F. SAFETY WARRANTY.** All offerors expressly warrant that all services that may be performed pursuant to this RFP shall conform to all applicable rules or regulations of the United States Department of Labor as codified in the Occupational Safety and Health Act of 1970 (OSHA). Failure, without good cause, to comply with any applicable OSHA regulation by a contractor may constitute grounds for termination for cause of that contractor.

**G. INSURANCE.** The insurance requirements for each offeror who submits a Proposal in response to this RFP are included in Section 16 of the attached Sample Contract.

**H. TAXES.** The City is exempt from federal excise taxes and state retail taxes. Therefore, each Proposal price must be net, exclusive of any calculations for such taxes.

**I. TERMINATION DUE TO LACK OF FUNDS.** The City may terminate any contract that results from this RFP, in whole or in part, if The City determines in good faith sufficient funds will not be available to complete the work. Termination due to lack of funds shall be effected by the delivery of a written notice of termination at least fifteen (15) calendar days before the effective date of termination. The written notice shall specify the extent to which delivery or performance is terminated and the date upon which such termination shall be effective.



#### **SECTION 4 PROPOSAL FORMAT**

**A. PROPOSAL.** A “Proposal” is a responsive, conforming, unconditional, complete, legible and properly executed offer from a qualified responsible party interested in providing the services outlined in this RFP. It shall be the sole responsibility of the offeror to ensure that its Proposal is in the proper form and in the City’s possession at the designated location on or before the scheduled time on the due date for receipt of Proposals. Proposals will not be returned unless the RFP is cancelled prior to the submittal due date. If this RFP is canceled, then Proposals will be returned unopened, or opened for identification purposes only. Any Proposal received AFTER the submittal due date and time will be returned unopened, or opened only for identification purposes to return that Proposal to that offeror.

**B. PROPOSAL FORMAT.** Proposals shall be formatted to 8 ½ X 11 inch paper, single spaced in no less than 12-point font. Each Proposal shall contain a table of contents to assist in the evaluation and review of that Proposal. Proposals should be thorough. However, Proposals should not contain redundant information. A Proposal may provide additional materials in appendices attached to that Proposal. Proposal sections should be tabbed, clearly identifiable, and contain the following Parts:



## PART I – MAIN PROPOSAL DOCUMENT

1. **Introductory Letter.** The Introductory letter shall be printed on the offeror’s letterhead and addressed to:

**Sam Atkins**  
**City Engineer**  
**City Of Fruita**  
**325 E. Aspen Avenue**  
**Fruita, CO 81521**  
**Phone: (970) 858-8377**  
[satkins@fruita.org](mailto:satkins@fruita.org)

The Introductory Letter shall contain the following information:

- a. a listing of all firms involved in preparing and submitting the Proposal;
- b. a certification that the information and data submitted in the Proposal is true and complete to the best knowledge, information, and belief of the authorized signatory for that Proposal;
- c. the name, telephone number and e-mail address of a single contact person representing the offeror regarding the Proposal;
- d. the title, printed name and signature of the person authorized to commit the offeror for this procurement;
- e. an express statement by the offeror that it consents to the incorporation of its Proposal into any resulting contract;
- f. an express acknowledgement that the Proposal meets all terms and conditions detailed in this RFP;
- g. an express acknowledgement that the offeror has received and reviewed all addenda that may be issued as part of this RFP.

2. **Original Proposal.** A signed, original Proposal with a table of contents must be placed immediately behind the Introductory Letter.

3. **Appendices.** Supporting visuals, diagrams or other documentation or information must be appropriately referenced in the offeror’s Proposal and appear at the end of that Proposal. The last appendix may contain offeror provided information not contained in other sections of the Proposal.

4. **Affidavits, Certificate of Good Standing, Licenses, and Certificate of Insurance.** A signed Certification [Regarding the Non-Employment of] Illegal Aliens, a signed Non-Collusion Affidavit, a “Certificate of Good Standing” from the Colorado Secretary of State’s office, if the offeror is a domestic of foreign corporation or limited liability company, current licenses for any professional(s) licensed by the state of Colorado who will perform work if a contract were awarded, and a current Certificate of Insurance (ACORD 25 or equivalent) shall be placed at the end of this Part.



## **PART II – COSTS AND PRICE**

Part II of the Proposal shall contain the cost and pricing information for that Proposal. In accordance with paragraphs C. and D. of Section 2 of this RFP, this Part of the Proposal shall include a complete description of all costs associated with the provision of the services described in this RFP.

### **SECTION 5 EVALUATION OF PROPOSALS**

**A. SELECTION COMMITTEE.** An evaluation of each timely submitted Proposal will be made by an appointed, impartial selection committee utilizing the evaluation criteria defined in this RFP. The objective of the selection committee is to select the Proposal that clearly demonstrates that the offeror is responsible and responsive to the terms and conditions of this RFP; and, is the “most advantageous”, i.e., “best value” to the City taking into consideration experience, past performance, cost and price, and any other relevant evaluation factors. Numeric scoring of Proposals may be used in some aspects of the evaluation process to identify the strengths and weaknesses in a Proposal. During the evaluation phase, each selection committee member will independently review each Proposal and assign a score for each evaluation factor. The evaluation of each Proposal will be based upon a comparison between the information submitted by an offeror and the specific evaluation criteria outlined below. The selection committee will then meet to discuss the Proposals and select the Proposal which is the most advantageous to The City. The selection committee may modify scores if necessary based on those discussions. The scores of each selection committee member will then be averaged for each Proposal. The final decision of the selection committee will be a business decision.

**B. EVALUATION CRITERIA.** The selection committee will utilize various evaluation criteria. These evaluation criteria may, but are not required to include: delivery schedules, times, and locations, inspection, testing, quality, workmanship, functionality, suitability for a particular purpose, warranties, an offeror’s qualifications, experience, and past performance, as well as the total amount of the Proposal (including any unit prices in that Proposal), any long-range cost(s), and, any other information that may be requested in this RFP.

**C. PROPOSAL SCORING.** The factors listed below are designed to incorporate the specific evaluation criteria. Proposals should be submitted in the format requested in this RFP providing sufficient detail to allow the selection committee to determine whether the submitted Proposal evidences: an understanding of the City’s needs, requirements and contract terms and conditions; an ability to meet the City’s needs; requirements, and contract terms and conditions; the experience and resources necessary to carry out the contracted work in a timely and satisfactory manner; and all costs that are reasonable and consistent with the offered services to meet the City’s needs and requirements.



## PROPOSAL FORMAT AND CONTENT

**The City discourages overly lengthy and costly proposals, however, in order for the City to evaluate proposals fairly and completely, proposers should follow the format set herein and provide all of the information requested.**

### **Introductory Letter – No Points:**

Proposals must include an Introductory Letter containing the following information:

- a. A listing of all firms involved in preparing and submitting the Proposal.
- b. A certification that the information and data submitted in the Proposal is true and complete to the best knowledge, information, and belief of the authorized signatory for that Proposal.
- c. The name, telephone number and e-mail address of a single contact person representing the offeror regarding the Proposal.
- d. The title, printed name and signature of the person authorized to commit the offeror for this procurement.
- e. An express statement by the offeror that it consents to the incorporation of its Proposal into any resulting contract.
- f. An express acknowledgement that the Proposal meets all terms and conditions detailed in this RFP.
- g. An express acknowledgement that the offeror has received and reviewed all addenda that may be issued as part of this RFP.

A proposer's failure to include these items in their proposals may cause their proposal to be determined as non-responsive and the proposal may be rejected.

### **Understanding of the Project – Maximum 10 Points**

Proposers must provide a comprehensive narrative statement that illustrates their understanding of the requirements of the project and the project schedule.

### **Experience and Qualifications – Maximum 25 Points**

Provide an organizational chart specific to the personnel assigned to accomplish the work called for in this RFP; illustrate the lines of authority; designate the individual responsible and accountable for the completion of each component and deliverable of the RFP.

Provide a narrative description of the organization of the project team including any subcontracted work, clearly identifying responsible parties.

Provide a personnel roster that identifies each person who will actually work on the contract and provide the following information about each person listed;

- [1] Title,
- [2] Job qualifications and/or resume,
- [3] Location where work will be performed,



Proposers must include a list of a least five (5) projects within the last five (5) years which your team has provided and/or is providing design and construction which are similar to this project. References should include project name, project location/address, size and description of the project, date completed, final construction cost and the Owner contact person name and telephone number.

**Price Proposal – Maximum 25 Points**

Provide an overall "not to exceed" lump sum price for all design/build services proposed. It is the intent of the City to design and construct economical facilities that achieve all of the scope of work requirements while being very cost-effective. In addition, proposers must complete Attachment B – Bill of Materials for the Fiber Lateral. These total lateral costs should be included in the overall “not to exceed” price for the project. This Bill of Materials is a general list of items needed and not intended to be the only elements of the project. The Proposal shall be a complete turnkey cost for providing a Fiber Lateral and Carrier Neutral Location facility.

The City will use the “low cost ratio” method using lowest projected cost, within the competitive range, divided by the proposers projected costs, LPC/PPC to equate fee schedule points.

LPC: Lowest Projected Cost

PPC: Proposers Projected Cost

**Proposed Work Plan and Approach – Maximum 20 Points**

The proposer must clearly show their recommended design and construction plan that will achieve the scope of work requirements as well as accomplishing those goals within budget. The proposer shall prepare a description of their management and organizational approach and methods for performing the scope of work. This should include the proposed effort for completing the work on schedule and within budget.

Specifically, proposer should address material supply chain issues affecting project schedules and solution to overcoming fiber optic cable availability. Provide performance “track record” showing the ability to bring similar projects successfully to completion within schedule and budget.

**Project Schedule – Maximum 20 Points**

The proposer shall prepare a written CPM schedule identifying major tasks, durations, critical path, etc. from the date of Notice to Proceed through the date of Final Completion. The schedule shall identify all major activities for the design and construction of onsite and offsite improvements, agency review, approvals, permits, etc. from NTP to Final Completion. **The anticipated NTP date is 1/1/2023.**

**Evaluation Criteria:**

The Selection Committee will review and evaluate the written proposals, designs, and schedules based upon the proposer’s demonstrated experience and qualifications in the



scope of services required. All proposals will be reviewed to determine if they are responsive.





Each proposal will be awarded points for each of the categories stated, and each category will be rated from excellent to poor with a percentage attached to the rating. The maximum points will be multiplied by the percentage for each category, providing for a **maximum total score of 100**.

**Presentations:**

Proposers may be required to make a presentation to the Selection Committee.

**D. DISCUSSIONS.** After all Proposals have been evaluated, the selection committee may elect to hold discussions with those offerors the selection committee has determined are most reasonably likely to be selected for a contract award. The decision to hold discussions with offerors rests in the sole discretion of the selection committee. Offerors with whom the selection committee desires to hold discussions must come within the “competitive range” as that term is defined below. Offerors in the competitive range will be notified if the selection committee elects to hold discussions with selected offerors.

**E. COMPETITIVE RANGE DETERMINATION.** If the selection committee decides not to make a contract award based solely on a review of submitted Proposals, then those offerors whose Proposals are in the competitive range (those most responsive to the requirements of the RFP and reasonably susceptible of being selected for a contract award) will be provided an opportunity to enter into discussions with the selection committee. The same evaluation criteria will be employed and each selection committee member will be given the opportunity to modify the original Proposal scores of that selection committee member after discussions have concluded. To assist the City in making its determination of offeror responsibility, offerors in the competitive range may be required to submit: an audited financial statement, a financial statement reviewed by a certified public accountant, a financial statement prepared by a third-party, or another financial statement prepared in the routine course of that offeror's business for the previous three years.

**F. OPTIONAL ORAL PRESENTATION.** After evaluating the Proposals, the selection committee, in its sole discretion, may request oral presentations from offerors in the competitive range. The purpose of oral presentations and/or system demonstrations is to:

1. Allow an offeror the opportunity to present its Proposal to the selection committee in person.
2. Allow an offeror the opportunity to demonstrate its proposed business solution.
3. Allow the City the opportunity to obtain further clarification of various aspects of a Proposal and to resolve any uncertainties in a Proposal.
4. Resolve possible mistakes in a Proposal by calling such perceived errors to the attention of an offeror without disclosing information concerning other offerors' Proposals.
5. Allow the City the opportunity to ask specific questions of an offeror regarding its Proposal. An offeror should not, however, prepare its Proposal with the assumption that an opportunity for an oral presentation or revisions will be



allowed. Rather, the offeror's most favorable Proposal should be submitted as its initial written submission. The oral presentation may include (a) discussion(s) for the purpose of clarification and to ensure full understanding of, and responsiveness to, the solicitation requirements.

After all oral presentations have been made the selection committee will again discuss their individual comments and scores.

**G. BEST AND FINAL OFFERS.** After discussions have been held and any optional oral presentations made, the selection committee may request all offerors in the competitive range to make a "Best and Final Offer" ("BAFO"). If BAFOs are requested by the selection committee, then a date will be set in writing by The City for their submission. Offerors in the competitive range will not, however, be allowed to make comprehensive Proposal revisions (i.e. a complete rewrite will not be allowed). BAFOs are not mandatory, they are only an opportunity to revise if necessary. If no BAFO is submitted, the original Proposal will be considered.

## **SECTION 6 SPECIAL TERMS AND CONDITIONS OF THIS RFP**

**A. SUBMISSION OF WRITTEN QUESTIONS.** Written questions regarding the RFP or its attachments must be submitted to the City by **3:00 P.M.** on **Friday, December 9, 2022.** Questions submitted should be directed to:

**Sam Atkins**  
**City Engineer**  
**City Of Fruita**  
**325 E. Aspen Avenue**  
**Fruita, CO 81521**  
**Phone: (970) 858-8377**  
**[satkins@fruita.org](mailto:satkins@fruita.org)**

**Please do not contact any other departments or personnel with questions or for information regarding this solicitation.**

**B. OPTIONAL SOLICITATION PRE-BID CONFERENCE AND SITE VISIT.**  
An **optional** solicitation site visit will be held as follows:

**Date:** Wednesday, November 16, 2022

**Time:** 1:00 PM MST

**Location:** Fruita City Shops Building, 900 Kiefer Avenue, Fruita, CO 81521



**Offerors are cautioned that in no event shall failure to familiarize themselves with the requirements of this solicitation or to resolve ambiguous or inconsistent terms or conditions of this solicitation or proposed contract constitute grounds for a claim of any kind after contract award.**

**SECTION 7  
ATTACHMENTS TO THE RFP**

**A. ATTACHMENTS.** The following documents are attached to this RFP:

ATTACHMENT A	SCOPE OF WORK
ATTACHMENT B	BILL OF MATERIALS
ATTACHMENT C	IMMIGRATION CERTIFICATION
ATTACHMENT D	NON-COLLUSION AFFIDAVIT
ATTACHMENT E	STATEMENT OF QUALIFICATIONS
ATTACHMENT F	SAMPLE AGREEMENT

These documents are incorporated into and made a part of this RFP and any resulting purchase order or contract.



**FRUITA**  
COLORADO

**Attachment A**

**Design/Build  
Broadband Middle Mile & Carrier Neutral Locations  
RFP**

**Scope of Work**

The City of Fruita is soliciting competitive sealed proposals from qualified Design/Build firms to design and construct Broadband Middle Mile & Carrier Neutral Location services to the City Shops building located at 900 Kiefer Avenue.

**Purpose**

In accordance with the City Council policy directives, The City of Fruita is seeking to improve the City's communications network infrastructure. The City of Fruita intends to develop an open-access middle mile lateral line from fiber located in CDOT's I-70 right of way to the City's shops where a carrier neutral location (CNL) site would be constructed to allow providers of last mile service the infrastructure needed to deploy high performance broadband to a greater number of end users.

This RFP focuses on the implementation of improved broadband capabilities in the Fruita area. Fruita is NOT seeking lease or IRU of dark fiber from offeror, but rather seeks to construct and own both lateral and CNL.

**Summary**

Fruita, in coordination with NEO Connect and Region 10, has identified the following CNL site location:

1. City Shops – 900 Kiefer Ave.

The intent is to connect this CNL site to existing fiber along the I-70 corridor. Fruita will partner with Region 10 to light up this fiber. The lateral fiber route location is shown on the following page.

# Fruita Fiber Route



## **Description**

The services solicited by this request will include a full range of basic and specialty professional services, including but not limited to fiber optic final design and engineering, permitting, turnkey fiber optic construction of the lateral fiber as well as facilitation to construct the CNL facility improvements (security/access, HVAC redundancy, electrical, fire sprinkler adjustments, lighting, security cameras, flooring, and all racking and equipment necessary for a turnkey, carrier-ready site). The selected firm will act as the owner's representative, prepare construction documents, perform all required testing, training of systems, and project closeout. Respondents are to complete lateral deliver cable.

The Design/Builder shall provide all labor, materials, fiber, tools, equipment, and design services necessary for design and construction of the laterals and CNL improvements.

The Design/Builder engineer who prepares the construction documents shall be a professional engineer licensed in Colorado. The professional seal indicating such license shall appear on the final construction documents. The engineer whose seal is shown will be known as the Engineer of Record.

The Design/Builder shall, without additional expense to the City, be responsible for obtaining any necessary licenses and permits, and for complying with any federal, state, county, and municipal laws, codes, and regulations applicable to the design and performance of the work. The Design/Builder shall adhere to the pertinent requirements and regulations of the City of Fruita as well as all Federal, State, and local laws and regulations.

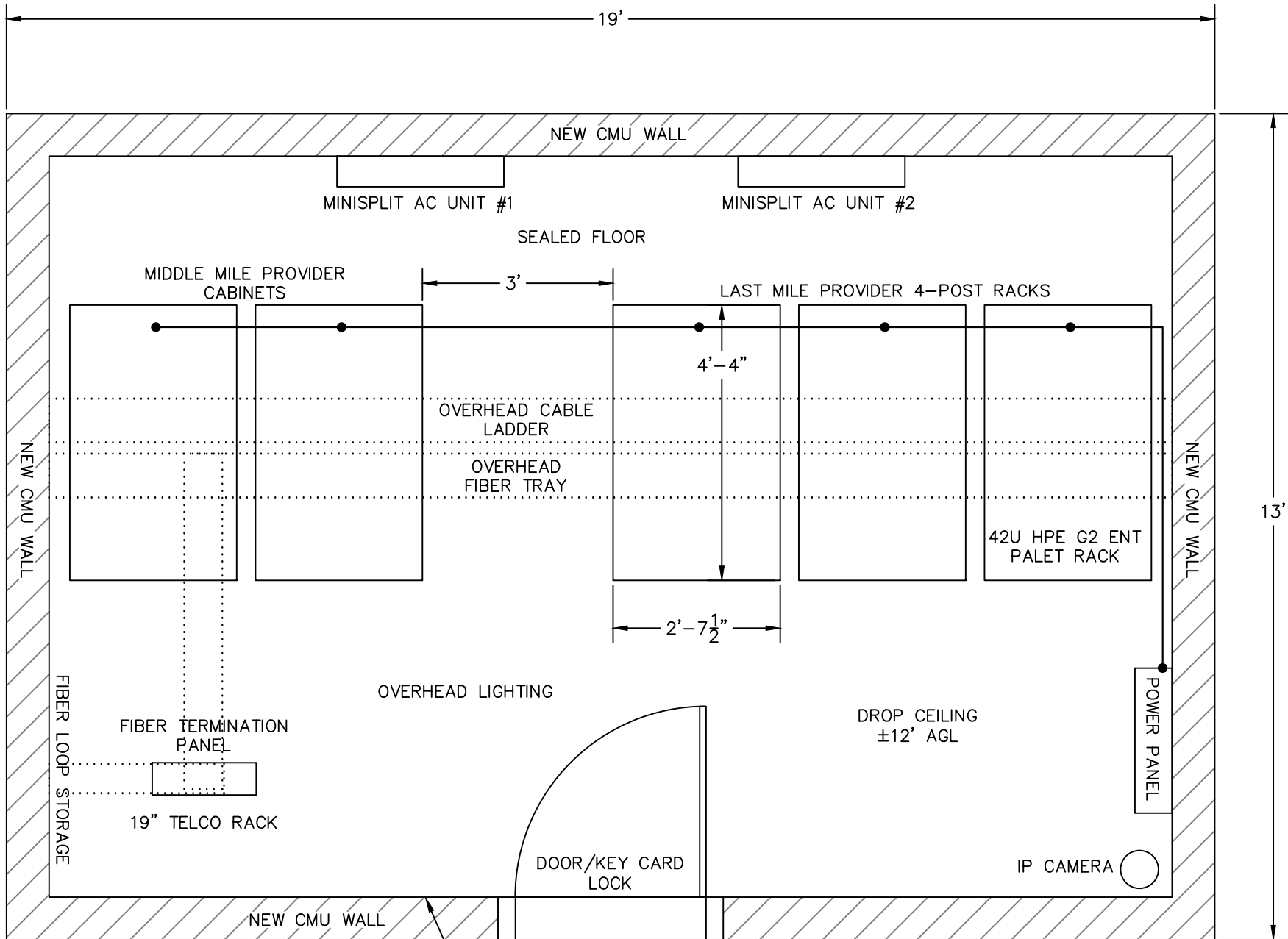
The design of the improvements shall consider and include all requirements of zoning laws, right-of-way easements, environmental and erosion control regulations, laws relating to landscaping, open space, minimum distance from property line, maximum height of building, etc. The Design/Builder shall consult with appropriate officials of Federal, state, county, and local authorities and submit plans under the rules prescribed by those authorities having jurisdiction.

The Design/Builder shall fully investigate each CNL facility and coordinate with City staff to ensure the most beneficial improvement designs. Design/Builder shall contemplate several meetings throughout the design.

All drawing and plan set submittals shall be phased for review at 50%, 90%, and final construction. Review submittals shall be submitted as needed for design and engineering questions and responses.

### **Carrier Neutral Locations**

The CNL site should be fully inspected by the Design/Builder to determine facility access issues, engineering & design needs, permitting and construction costs, and final build-out requirements. Building improvements should include facility security/access, HVAC redundancy, electrical, fire sprinkler adjustments, lighting, security cameras, flooring, and all racking and equipment necessary for a turnkey, carrier-ready site. The drawing on the next page shows a proposed concept for the site.



FINISH INTERIOR WALLS WITH VAPOR BARRIER,  
 1" FOAM INSULATION AND 1/2" SHEET ROCK



The awarded Design/Builder shall be responsible for all trades and shall prepare all drawings, specifications, and calculations as required to obtain the required approvals and permits from the authority having jurisdiction to construct and allow approved carriers to occupy these facilities. The intent is to allow access to each CNL site with minimal interaction or interruption of existing County employees occupying the facilities.

The interior architecture should resemble a standard commercial office space and include the components mentioned above and noted on the CNL Concept Plan.

- Walls and ceilings – paint over hard gypsum drywall
- Lighting – LED lighting is anticipated
- Doors/hardware – must be commercial steel door
- Floor finish – sealed concrete or epoxy finish to minimize dust
- Signage – building identification signage
- FF&E – racking and equipment to build-out the space to be carrier-ready. Suggested equipment links include:
  - <https://www.chatsworth.com/en-us/products/cabinets-enclosures-containment/server-and-network/colocation/e-series-isp-co-location-cabinet>
  - <https://www.panduit.com/en/home.html>
  - <http://www.wilsoncabling.net/>

### **Operations and Maintenance and Locating Services**

Fruita would also request the respondent to provide a cost to provide operations and maintenance and locating services at a cost per mile per year.

**City of Fruita  
Broadband Middle Mile & Carrier Neutral Location  
Bill of Materials**

<u>No.</u>	<u>Item</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Extension</u>
<b>Lateral</b>					
1	Engineering	LS	1		
2	Construction Surveying	LS	1		
3	Bore 2 x 1.25" Conduits	LF	4260		
4	Railroad Bore	LF	700		
5	Install Hand Holes (installation only)	EA	16		
6	Install XL Hand Holes (installation only)	EA	1		
7	Install Test Stations	EA	17		
8	1.25" Conduit	LF	9372		
9	6" Sched. 40 Steel Casing	LF	800		
10	Concrete LG Handholes	EA	16		
11	Concrete XL Handholes	EA	1		
12	Marker Post and Test Station	EA	17		
13	144 ct Single Jacket Single Armor Fiber	LF	5961		
14	Splicing	LS	1		
15	Terminating	LS	1		
16	Fiber Termination Materials (All Strands)	LS	1		
17	Fiber Testing	LS	1		
18	Permitting Labor	LS	1		
19	Permitting Fee (including Railroad)	LS	1		
20	Environmental Materials	LS	1		
21	Construction Management	LS	1		
22	Traffic Control	LS	1		
23	Copper Tracer Wire	LF	9372		
				Subtotal	

**Carrier Neutral Location**

1	Engineering	LS	1		
2	Building Permit	LS	1		

3	13' x 19' x 9' Communication Building	LS	1		
4	Concrete Materials and Labor	LS	1		
5	Electrical	LS	1		
6	Access Control	LS	1		
7	Gas Feeder	LS	1		
8	Generator	EA	1		
9	Construction Management	LS	1		
Subtotal					

### Racks & Wire Management

1	4-Post Racks	EA	3		
2	Middle Mile Cabinet	EA	2		
3	Minisplit AC Unit	EA	2		
4	Fiber Terminal Panel	EA	1		
5	Overhead Cable Ladder	LS	1		
6	IP Camera	EA	1		
Subtotal					

### Building Access

1	Materials	LS	1		
2	Excavation + Labor	LS	1		
Subtotal					
Total					

### Optional Bid Item

1	Annual Operations Maintenance of Fiber Lateral	Mile	144		
2	Annual Location Services for Fiber Lateral per 811 Call	EA	50		
Subtotal					
Total					

## ILLEGAL ALIEN CERTIFICATION

Pursuant to Colo. Rev. Stat. § 8-17.5-101 *et. seq.*, the City of Fruita cannot enter into or renew a public contract for services with a vendor/contractor who knowingly employs or contracts with an illegal alien to perform work under the contract or who knowingly contracts with a subcontractor who knowingly employs or contracts with an illegal alien to perform work under the contract.

In accordance with the mandatory provisions of Colo. Rev. Stat. § 8-17.5-101 *et. seq.*, Vendor/Contractor certifies that it has not knowingly employed or contracted with an illegal alien to perform work under this Agreement, and that the Vendor/Contractor will participate in the E-Verify Program or the Department Program [as defined in Colo. Rev. Stat. § 8-17.5-101(3.3)] in order to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement. Vendor/Contractor further certifies that it will not enter into a contract with a subcontractor who fails to certify to Vendor/Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

Vendor/Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program. Vendor/Contractor shall not use the E-Verify Program or the Department Program to undertake pre-employment screening of job applicants while the Agreement is being performed.

If Vendor/Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Vendor/Contractor shall:

- a. Notify the subcontractor and the City of Fruita within three days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- b. Terminate the subcontract if within three days of receiving actual notice the subcontractor does not stop employing or contracting with the illegal alien, except that Vendor/Contractor shall not terminate 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.

Vendor/Contractor shall comply with any reasonable request by the Department of Labor and Employment (hereinafter referred to as the "Department") made in the course of an investigation that the Department is undertaking pursuant to C.R.S. § 8-17.5-102(5).

If Vendor/Contractor violates the provisions of this paragraph, the City of Fruita may terminate the contract for breach and Vendor/Contractor shall be liable for actual and consequential damages.

If Vendor/Contractor is a natural person eighteen years of age or older, Vendor/Contractor hereby swears or affirms under penalty of perjury that the Vendor/Contractor (i) is a citizen of the United States or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of CRS 24-76.5-101 *et seq.*, and (iii) shall produce one of the forms of identification required by CRS 24-76.5-103 prior to the effective date of this Agreement.

I, \_\_\_\_\_, certify that:

Name of Vendor

1. I have carefully read and understand the Illegal Alien Certification regarding the Illegal Aliens Check required by the City of Fruita.
2. None of the employees who will be performing the work are illegal aliens as defined herein. I declare under penalty of perjury that the foregoing is true and correct.

Executed at \_\_\_\_\_, Colorado, on \_\_\_\_\_ Date

Signature \_\_\_\_\_

Typed or Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

## **NON-COLLUSION AFFIDAVIT**

I hereby attest that I am the person responsible for the final decision as to the price(s) and amount of my firm's bid for this project, or the person with this responsibility has given me written authorization, attached hereto, to make the following statements on his/her behalf and on behalf of my firm:

I further attest that:

1. In arriving at the price(s) and amount of my firm's bid, my firm and I acted independently and did not engage in any consultation, communication or agreement having the purpose or effect of restricting competition in the bidding for this project.

2A. My firm and I have not disclosed any price(s) or amount(s) of my firm's bid to any other prime bidder or potential prime bidder, and my firm and I will not make any such disclosure prior to the bid opening.

2B. No other prime bidder or potential prime bidder has disclosed any price(s) or amount(s) of its bid to my firm or me.

3A. My firm and I have not attempted and will not attempt to solicit, cause or induce any other prime bidder or potential prime bidder to refrain from bidding for this project, to bid higher than my firm's bid, to bid lower than my firm's bid, or to submit any high, low or other form of a noncompetitive or complementary bid for this project.

3B. No prime bidder or potential prime bidder has solicited my firm or me to refrain from bidding for this project. No prime bidder or potential prime bidder has solicited my firm or me to bid higher than another prime bid, to bid lower than another prime bid, or to submit any high, low or other form of a noncompetitive or complementary bid for this project.

4. My firm and I have not reached any understanding, made any agreement, or engaged in any consultation, communication or discussion concerning my firm's bidding higher than another prime bid, my firm's bidding lower than another prime bid, or my firm submitting any high, low, or other form of a noncompetitive or complementary bid for this project. My firm and I are submitting my firm's bid in good faith and not pursuant to any such understanding, agreement, consultation, communication or discussion.

5. My firm has not afforded to award a subcontract, has not offered to award any other agreement pertaining to the purchase or sale of services or materials, and has not offered to pay money or anything else of value in consideration of a promise from another prime bidder or potential prime bidder to refrain from bidding, to bid higher than my firm, to bid lower than my firm, or to submit any high, low or other form of a noncompetitive or complementary bid for this project.

6. No prime bidder or potential prime bidder has offered to award my firm a subcontract, to award my firm any other agreement pertaining to the purchase or sale of services or materials, or to pay my firm money or anything else of value in consideration of a promise from my firm to refrain from bidding, to bid higher than another prime bid, to bid lower than another prime bid, or to submit any high, low or other form of a noncompetitive or complementary bid for this project.

7. I have made a diligent inquiry of all the members, officers, employees and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's bid for this project. I have been advised by each of them that he/she has not engaged in any communication, meeting, discussion, agreement, understanding or other conduct inconsistent with any of the statements and representations made in this affidavit.

8. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as a fraudulent concealment from Garfield County, of the true facts relating to the submission of bids for this project.

**I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING STATEMENTS AND ATTESTATIONS ARE TRUE, ACCURATE AND COMPLETE.**

\_\_\_\_\_  
(Please Type Contractor's Firm or Company Name)

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
(Please type name of 2nd Contractor's Firm or Company Name, if Joint Venture)

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SUBSCRIBED AND SWORN TO before me in the County of \_\_\_\_\_,  
State of Colorado, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My commission expires on: \_\_\_\_\_.

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

**Note: This document must be signed in ink.**



**Attachment E**

**Broadband Middle Mile & Carrier Neutral Locations  
COF Project 130-710-77-4730**

**Statement of Qualifications**

**COMPANY INFORMATION**

Legal Name of Company: \_\_\_\_\_

Trade Name, if any, of Company: \_\_\_\_\_

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

City, State & Zip Code: \_\_\_\_\_

Principal Owner/Officer Name: \_\_\_\_\_

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

Federal Employer Identification Number: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

Company E-mail Address: \_\_\_\_\_

Contact: \_\_\_\_\_

Contact E-mail Address: \_\_\_\_\_

## COMPANY HISTORY

If a Colorado corporation or limited liability company, is the company in “good standing” with the Colorado Secretary of State? \_\_\_\_\_yes \_\_\_\_\_no

If a foreign corporation or limited liability company, is the foreign corporation or limited liability company registered to do business in Colorado and in “good standing” with the Colorado Secretary of State? \_\_\_\_\_yes \_\_\_\_\_no

How long has the company been in business in Colorado? \_\_\_\_\_years.

How long has the company been in business in Garfield County? \_\_\_\_\_years.

Has the company, or any officer or director acting in an official capacity, ever been successfully sued? \_\_\_\_\_yes \_\_\_\_\_no

If yes, complete the chart below, and any additional pages if necessary:

<u>Court</u>	<u>Case Number</u>	<u>Year</u>	<u>Judgment</u>	<u>Amount</u>
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Has the company, or any of its officers or directors, ever been disbarred, suspended, or disqualified from any public procurement? \_\_\_\_\_yes \_\_\_\_\_no.

If yes, complete the chart below, and any additional pages if necessary:

<u>Agency</u>	<u>Agency Number</u>	<u>Year</u>	<u>Length of Disqualification</u>
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Has the company, or any of its officers or directors, ever been involved in a voluntary or involuntary bankruptcy proceeding? \_\_\_\_\_yes \_\_\_\_\_no

If yes, complete the chart below, and any additional pages if necessary:

<u>Court</u>	<u>Case Number</u>	<u>Year</u>	<u>Judgment</u>	<u>Amount</u>
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If required for a project, has the company ever been denied bonding?

\_\_\_\_\_yes \_\_\_\_\_no

If yes, complete the chart below, and any additional pages if necessary:



**Company Name**                      **Type of Bond Year**                      **Stated Reason**

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(Attach additional sheets if needed to fully respond to the above questions.)

## PREVIOUS WORK EXPERIENCE

List the dollar amount of the smallest and largest projects your company has worked on as a prime contractor: \_\_\_\_\_

List the dollar amount of the smallest and largest projects your company has worked on as a subcontractor: \_\_\_\_\_

Has your company ever performed services similar to the services that are the subject of this RFP for municipal entities in the State of Colorado? \_\_\_\_\_yes \_\_\_\_\_no

If yes, what was the total dollar amount of that work in a 12 month period? \_\_\_\_\_.

Provide the municipal entity. \_\_\_\_\_

Has your company ever performed work for the City of Fruita in the last five years as either a prime contractor or subcontractor? \_\_\_\_\_yes \_\_\_\_\_no

If yes, what was/were the projects (attach additional sheets if necessary)?

<u>Department/Elected Office</u>	<u>Project</u>	<u>Year</u>
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## REFERENCES

<u>Name</u>	<u>Telephone Number</u>	<u>Company Name</u>	<u>Relationship</u>
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## CERTIFICATION

The undersigned, as an authorized officer/owner of the company, states that the undersigned has actual authority to sign this Statement of Qualifications; and, to the best of my knowledge, information, and belief, the information submitted in this Statement of Qualifications is true and accurate as of the date of this Statement of Qualifications is submitted.

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

Signature: \_\_\_\_\_

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

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

# **Broadband Middle Mile & Carrier Neutral Location Project**

THIS CONTRACT is made this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between the City of Fruita, herein after referred to as the “City” or “Owner”, and *CONTRACTOR NAME HERE*, herein after referred to as the “Contractor”.

## **RECITALS:**

WHEREAS, the City desires to obtain services of a Contractor for the purpose of pedestrian, drainage and other utility improvements through rights-of-way and easements owned by the City of Fruita, and

WHEREAS, this Contract sets forth the Design, Special Provisions, Budget, and List of Submittals, herein after referred to as the “Project”, and

WHEREAS, the Contractor is a licensed qualified construction contractor, capable of providing the professional services required, and

WHEREAS, the Contractor is willing and able to provide the Owner with these services, has negotiated acceptable pricing for the project consistent with the Scope of Services, and

NOW THEREFORE, in consideration of the terms of this contract, the parties agree as follows:

### **1. SCOPE OF SERVICES**

- 1.1. The Contractor shall provide to the City the services for the Broadband Middle Mile and Carrier Neutral Location per the scope of service outlined in the Request for Proposals (RFP) and Contractors submitted response by reference included herein, pursuant to the pricing, representations, and acknowledgements stated in the Contractor’s response to the RFP dated \_\_\_\_\_, 2022.
- 1.2. Such services shall include contracting for, coordinating, and scheduling other Contractors or sub-contractors as needed to accomplish the work described in the Project Plans, Contract Documents including the Special Provisions and the Bid Schedule, irrespective of whether the work performed by these subcontractors are explicitly identified within the proposal.
- 1.3. All engineering work shall be completed by, or under the direct supervision of a Professional Engineer licensed in the State of Colorado.

- 1.4. Specific deliverables, and a schedule for these deliverables, are shown on the Construction Drawings or as described in The Special Provisions.
- 1.5. In case of any conflict between the Contractor's representations and the Project Specifications, the Project Specifications shall control.
- 1.6. Contractor shall be responsible for ensuring the safety of the public during the performance of the work, in accordance with the Manual on Uniform Traffic Control Devices and the requirements of the City, and for maintaining access through the area in which the work is to be performed, except as otherwise agreed to or excluded within the drawings, specifications, special provisions, or other contract documents.
- 1.7. The cost of the performance, payment and warranty bonds as described in Section 16.3.8 shall not exceed 2.5 percent of the amount set forth in Section 6.1.

## **2. DELIVERABLES AND SCHEDULE**

- 2.1. All Deliverables shall be submitted to the City as specified in The Proposal.

## **3. COMPENSATION**

- 3.1. The Contractor shall be compensated for the services defined in the Scope of Services according to the rate schedules provided by the City of Fruita, attached hereto and incorporated herein by reference as Bid Schedule. Subcontracting expenses for other professional engineering services, specifically including geotechnical engineering services and surveying services shall be billed and paid at rates not exceeding the rates proposed and submitted by the Contractor. The Contractor is free to select sub-consultants, but commits to billing rates not exceeding those submitted as part of the proposal process.
- 3.2. All rates shall be fixed at the rates shown on the Bid Schedule, throughout the original term of this Agreement.
- 3.3. Specific provisions concerning billing rates for travel time, direct costs, and other reimbursable items applicable to this project shall be billed at a rate as shown on the Bid Schedule.
- 3.4. The City agrees to pay, and Contractor agrees to accept, amount for the Scope of Services identified in this contract, as bid by the contractor in the amount of *cost in text* dollars and *cost cents* (\$XXX,XXX.XX).

- 3.5. With the approval of the City of Fruita, compensation for individual task items may exceed the proposed dollar amounts shown on the Bid Schedule, so long as the amount referenced is in the form of approved change orders with appropriate signatures by both parties of this contract.
- 3.6. Additional services or modifications of services and associated adjustments of compensation, which are within the scope of this project, shall be agreed to via a formal written Change Order by the Contractor and City of Fruita, and approved by the Fruita City Manager, (as may be required) prior to execution or performance of the Additional Services.
- 3.7. Material and/or labor costs that exceed the Bid Schedule, use of Alternate Bid Items, or other services / modifications shall be processed by Change Orders and approved by the City of Fruita prior to execution or performance of the Additional Services.
- 3.8. Payment under this Section by the Owner shall be due thirty (30) days from the date of receipt of invoice from the Contractor.

#### **4. REPRESENTATION, DURATION, AND TERMINATION**

- 4.1. In order to induce the City to enter into this Agreement, the Contractor makes the following representations:
  - 4.1.1. The Contractor has familiarized itself with the nature and the extent of the work, the locality, all physical characteristics of the area, including without limitation, improvements, soil conditions, drainage, topography, and all other features of the terrain, and with the 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, or apply in any manner whatsoever to the work.
  - 4.1.2. Contractor has carefully considered all physical conditions at the site and existing facilities affecting cost, progress, or performance of the work.
  - 4.1.3. Contractor has given the City written notice of all conflicts, errors, or discrepancies that it has discovered in the contract documents and such documents are acceptable to the Contractor.
- 4.2. The Contractor accepts the relationship of trust and confidence established between it and the City by this Agreement. Contractor covenants with the City to furnish its best skill and judgment and to cooperate with the City's Project Manager and all other persons and entities in furthering the interests of the City. Contractor agrees to furnish efficient business administration and

superintendence and to use its best efforts to furnish at all times an adequate supply of workers and materials, and to perform the work in the best way and in the most expeditious and economical manner consistent with the interests of the City.

- 4.3. The City's Project Manager and point of contact for the purposes of this contract is the following or such other person as the City may designate in writing:

Sam Atkins  
City Project Manager  
325 E. Aspen Ave., Suite 155  
Fruita, CO 81521  
(970) 858-8377

**5. TIME OF COMPLETION, LIQUIDATED DAMAGES, AND INCENTIVES FOR EARLY COMPLETION:**

- 5.1. No work shall be commenced by the Contractor until after a pre-construction meeting of the Contractor, the City Engineer, and other City representatives as appropriate. All work shall be performed Monday through Friday, during daylight hours only, except as agreed to in writing by the City.
- 5.2. Prompt completion of the work is essential to the City. Time is of the essence in all respects regarding this Agreement and the work. Contractor shall carry out construction of the project with all due diligence in compliance with the schedule submitted at the beginning of the project. All construction work shall be substantially complete prior to **September 30<sup>th</sup>, 2023**.

Substantial completion of the work shall be defined by the date in which all deliverables have been accepted and the contractor has completed construction.

Project Final Completion is defined as the Date of Signature of City Engineering on the Notice of Final Acceptance and Warranty of work. Date of Final Completion shall be by **October 15<sup>th</sup>, 2023**.

- 5.3. Liquidated Damages. **The City and Contractor agree there will be liquidated damages assessed on this project in the amount of \$500 per calendar day.** When weather conditions exist such that the Contractor cannot reasonably perform work activities for a given day, the contract time will be extended.
- 5.4. Incentive for Early Completion. It is in the best interest of the Contractor to complete the work as early as possible, however there will not be any monetary incentive for early completion.

## **6. PRICE OF WORK.**

- 6.1. The City agrees to pay, and Contractor agrees to accept, in full payment for the performance of this Agreement, *Written Cost Here* dollars and *Cost* cents (\$XXX,XXX.XX).
- 6.2. The amount set forth in Section 6.1 above shall not include the following: costs of delays, rework, overruns, and/or other costs specifically excluded by the drawings, specifications, or other bid documents;

## **7. SCOPE OF PAYMENT.**

- 7.1. The Contractor shall accept the compensation, as herein provided, in full payment for furnishing all materials, equipment, labor, tools, and incidentals necessary to complete the work and for performing all work contemplated and embraced under this Agreement. Compensation shall also include loss or damage caused by the nature of the work, the action of the elements, or any unforeseen difficulties which may be encountered during the prosecution of the work, for all expenses incurred in consequence of the suspension or discontinuance of the work as herein specified, and for any infringement of patent, trademark, or copyright. Compensation shall be for completing the work according to the contract documents. Neither the payment of any estimate or progress payment nor the payment of any retained percentage shall relieve the Contractor of any obligations to correct any defective work or material. No funds, payable under this Agreement or any part thereof, shall become due and payable, if the City so elects, until the Contractor shall satisfy the City that it has fully settled or paid for all materials and equipment used in or upon the work and labor done in connection therewith. The City may pay any or all such claims or bills, wholly or in part, and deduct the amount or amounts so paid from any funds due Contractor. In the event the surety on any contract, performance bond, payment bond, or warranty bond given by the Contractor becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in the state revoked, the City may withhold payment of funds due Contractor until the Contractor has provided a bond or other security to the satisfaction of the City in lieu of the bond so executed by such surety.

## **8. PROGRESS PAYMENTS AND RETAINAGE.**

- 8.1. By the 5th day of each month, Contractor shall submit to the City for review and approval, an application for payment fully completed and signed by Contractor covering the work completed through the last day of the prior month and accompanied by such supporting documentation as is required by these contract documents, including without limitation, time sheets, invoices, receipts, bills of lading, and all other documents the City may require. Materials



on hand but not complete in place may not be included for payment at the discretion of the City. Each subsequent application for payment shall include an affidavit of Contractor providing that all previous progress payments received on account of the work have been applied to discharge in full all of Contractor's obligations reflected in prior applications for payment.

- 8.2. Retainage shall be withheld from a contract exceeding one hundred fifty thousand dollars. Notwithstanding the progress payments, it is the intent and purpose of the City to withhold at least five percent (5%) of the contracted amount deducted from each payment to the Contractor as retainage in accordance with Article 91, Title 24, C.R.S.

## **9. OWNERSHIP OF PLANS, SPECIFICATIONS, AND DOCUMENTS.**

- 9.1. Except for Contractor's executed set, all of the plans and the contract documents are the property of the City. Contractor shall be provided plans, specifications, permits, and other documents and materials required to perform the work. The plans and specifications are not to be used on other work, and all sets shall be returned to City at the completion or cessation of the work or termination of this Agreement.

## **10. NO PERSONAL LIABILITY.**

- 10.1. In carrying out any of the provisions of this Agreement or in exercising any power or authority thereby, there shall be no personal liability of the City, its governing body, staff, consultants, officials, attorneys, representatives, agents, or employees.

## **11. OBSERVATION OF ALL LAWS.**

- 11.1. It is assumed that Contractor is familiar with all federal, state, and local laws, codes, ordinances, and regulations which in any manner affect those engaged or employed in the work or the material or equipment used in or upon the site or in any way affect the conduct of the work or construction of the project. No pleas or claims of misunderstanding or ignorance by Contractor shall in any way serve to modify the provisions of the Agreement. Contractor shall at all times observe and comply with all federal, state, county, local, and municipal laws, codes, ordinances, and regulations in any manner affecting the conduct of the work or the project. It is not the responsibility of Contractor to determine that this Agreement and the contract documents are in accordance with applicable laws, statutes, building codes, and regulations; however, if Contractor knows, or should have reason to know, that any of the contract documents are at variance therewith in any respect, Contractor shall promptly notify the City in writing, and any necessary changes shall be made as provided herein.

## **12. AGREEMENT PROVISIONS PREVAIL.**

12.1. The intent and purpose of this Agreement and the construction documents is to complement each other; however, the terms and provisions of this Agreement shall prevail regarding differences in, discrepancies with, or conflicts of, terms or provisions contained in other contract documents.

## **13. CONTRACTOR'S RESPONSIBILITY FOR WORK.**

13.1. Until the final acceptance of the work by the City in writing, Contractor shall have the charge and care thereof, and shall take every necessary precaution against injury or damage to any part thereof by the effects of the elements or from any other cause. Contractor, at its own expense, shall rebuild, repair, restore, and correct all injuries or damages to any portion of the work occasioned by any causes before its completion and acceptance. In case of suspension of work from any cause whatsoever, Contractor shall be responsible for all materials and shall properly store same, if necessary, and shall provide suitable drainage, barricades, and warning signs where necessary. Contractor shall correct or replace, at its own expense and as required by City, any material which may be destroyed, lost, damaged, or in any way made useless for the purpose and use intended by the contract documents, plans, and specifications prior to final acceptance of the work, or portions thereof. Contractor shall be relieved of the responsibilities provided in this section upon final acceptance of the work by City, except no such relief shall apply to damages or injuries caused by or related to actions of Contractor or its subcontractors.

## **14. TERMINATION OF CONTRACTOR'S RESPONSIBILITY.**

14.1. The project will be considered complete when all work has been finished, the final inspection made, and the work accepted by City in writing, and all claims for payment of labor, materials, or services of any kind used in connection with the work thereof have been paid or settled by Contractor or its surety. Contractor will then be released from further obligation except as set forth in the surety bond, and except as required in this Agreement and the contract documents regarding the Contractor's guaranty of work.

## **15. INDEMNIFICATION**

- 15.1. To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the City, and its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the Work, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the Contractor or any subcontractor of the Contractor, or any officer, employee, or agent of the Contractor or any subcontractor, or any other person for whom Contractor is responsible. The Contractor shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands, and to bear all other costs and expenses related thereto, including court costs and attorneys' fees. The Contractor's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City.

## **16. INSURANCE AND BONDS**

- 16.1. The Contractor shall not commence work under this Agreement until it has obtained all insurance required by the contract documents and such insurance has been approved by City. The Contractor shall not allow any subcontractor to commence work on this project until all similar insurance required of the subcontractor has been obtained and approved. For the duration of this Agreement, the Contractor must maintain the insurance coverage required in this section.
- 16.2. The Contractor agrees to procure and maintain, at its own cost, the following policy or policies of insurance. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the contract documents by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
- 16.3. Contractor shall procure and maintain, and shall cause each Subcontractor of the Contractor to procure and maintain (or shall insure the activity of Contractor's Subcontractors in Contractor's own policy with respect to), the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained from the date of commencement of the Work. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- 16.3.1. Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws

for any employee engaged in the performance of Work under this contract, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - each employee.

- 16.3.2. Comprehensive 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.
- 16.3.3. 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 Contractor's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.
- 16.3.4. The policies required above, except for the Workers' Compensation insurance and Employers' Liability insurance, shall be endorsed to include the City, and its officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by Contractor. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under each of the policies required above.
- 16.3.5. Certificates of insurance 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 subject to review and approval by the City. Each certificate shall identify the Project and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least 30 days prior written notice has been given to the

City. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

- 16.3.6. 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 the City may immediately terminate the contract, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Contractor to the City upon demand, or the City may offset the cost of the premiums against any monies due to Contractor from the Owner.
- 16.3.7. The parties hereto understand and agree that the City 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, ' 24-10-101 et seq., 10 C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.
- 16.3.8. For all contracts exceeding \$50,000 in value, Contractor shall furnish a performance and payment bond, at least equal to the contract price, as security for the faithful performance and payment of all Contractor's obligations under the contract documents. Contractor shall also furnish a cash warranty or warranty bond in an amount equal to ten percent of the final Contract value, which shall remain in effect for the duration of the guaranty period provided in Section 19. At the Contractors option, the Performance and Payment bonds may be rolled over and substituted for the Warranty Bond, so long as these bonds remain in effect for the duration of the guaranty period provided in Section 19. If a cash warranty is provided, said cash shall be deposited with the City Clerk during the guaranty period provided in Section 19. All bonds shall be in the forms prescribed by the contract documents and be executed by such sureties as (i) are licensed to conduct business in the State of Colorado and (ii) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570, amended, by the Audit Staff, Bureau of Account, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act. If the surety on any bond furnished by the Contractor is declared bankrupt or becomes insolvent, or its right to do business in

Colorado is terminated, or it ceases to meet the requirements of clauses (i) and (ii) of this section, Contractor shall, within five (5) days thereafter, substitute another bond and surety, both of which shall be acceptable to the City.

**17. EVIDENCE OF SATISFACTION OF LIENS.**

17.1. Contractor shall provide City with written evidence that all persons who have done work or furnished material under this Agreement and are entitled to liens therefore under any laws of the State of Colorado have been fully paid or are not entitled to such liens. Final payment shall not be made to Contractor until the City is reasonably satisfied that all claims or liens have been satisfied by Contractor.

**18. ACCEPTANCE OF WORK.**

18.1. No act of the City, or of any representative thereof, 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 Notice of Final Acceptance and Warranty issued by the City. No waiver of any breach of this contract by City or anyone acting on their behalf shall be held as a waiver of any other subsequent breach thereof. Any remedies provided herein shall be cumulative.

**19. GUARANTY OF WORK.**

19.1. Contractor agrees to guaranty all work under this Agreement for a period of one year from the date of final acceptance by the City. 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 Agreement, as reasonably determined by City, then the Contractor shall, when notified by City, immediately place such guaranteed work in a condition satisfactory to City. The City shall have all available remedies to enforce such guaranty, except that City shall not have any work performed independently to fulfill such guaranty and require Contractor to pay City such sums as were expended by the City for such work, unless the City has first given notice to the Contractor of the deficiency and given the Contractor a reasonable opportunity to cure the same.

## 20. DEFAULT / BREACH OF CONTRACT.

20.1. If the Contractor fails to mobilize to the job site, fails to perform work in a continuous and timely manner, performs Work in a manner substantially contrary to the specifications and design drawings, performs additional work without a valid change order or other authorization, performs Force Account work without authorization, fails to obtain necessary permits, is found in violation of any State or Federal environmental law, or fails to maintain a safe work environment, the City may, at its sole option and discretion, find the Contractor in Default and material Breach of this Contract. In such instances, the City shall document to the Contractor the nature of the Breach, and may, at its option, specify a remedy and required timeframe in which to cure the Breach, or may terminate the Contract. If the City chooses to terminate the Contract, the City reserves and retains all rights granted under State Law, and City Ordinances, to withhold payments for completed work, call bonds, hire replacement Contractors, or take other measures deemed in the best interest of the City.

## 21. FINAL APPLICATION FOR PAYMENT.

21.1. After Contractor has completed all such corrections to the satisfaction of Project Manager and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, marked-up record documents, and other documents, Contractor may make application for final payment following the procedure for progress payments. The final application for payment shall be accompanied (except as previously delivered) by:

- i. All documentation called for in the Contract Documents, including but not limited to the evidence satisfactory to the City of the continuation of completed operations insurance and any insurance coverage written on a claims-made basis at final payment and one year thereafter;
- ii. The consent of surety to final payment and that the performance bond shall remain in effect throughout the guarantee period;
- iii. Complete and legally effective claim releases signed by all suppliers and subcontractors in the form provided in the Contract Documents certifying that all outstanding claims for payment have been paid. The Contractor shall not receive final payment due under the Agreement until the Contractor obtains and files the foregoing items (i), (ii), and (iii).

21.2. **LIENS:** Colorado Statutes do not provide for any right of lien against public facilities. In lieu thereof, ' 38-26-107, Colorado Revised Statutes, as amended,

provides adequate relief for any claimant having furnished labor, materials, rental machinery, tools, equipment, or services toward construction of the particular public work in that final payment may not be made to a Contractor until all such creditors have been put on notice by publication of such pending payment and given opportunity to stop payment to the Contractor in the amount of such claims. Pursuant to ' 38-26-107, C.R.S., any supplier may bring a suit and file a notice of lis pendens against the City within ninety (90) days after the date set for final settlement. If any such supplier or person files any such claim and notice of lis pendens, the City shall withhold retained amounts from final payments to the Contractor as are necessary to satisfy fully such claims. References to liens appearing in this Article shall be deemed as references to claims made pursuant to C.R.S ' 38-26-101 et seq. unless the context requires otherwise.

## **22. FINAL PAYMENT AND ACCEPTANCE.**

22.1. If, on the basis of Project Manager's observation of the Work during construction and final inspection, and Project Manager's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Project Manager is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Project Manager will, within FOURTEEN days after receipt of the final Application for Payment, indicate in writing Project Manager's recommendation of payment and present the Application to the City Council for payment. At the same time Project Manager will also give written notice to Contractor that the Work is acceptable. Otherwise, Project Manager will return the Application to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application. Upon receipt of the Project Manager's recommendation for payment and the final Application for Payment, the City shall order the publication of Notice of Final Payment as required by C.R.S. ' 38-26-107(1) and shall make final payment in accordance with C.R.S. ' 38-26-107(3).

## **23. DELAYED COMPLETION.**

23.1. If, through no fault of Contractor, final completion of the Work is significantly delayed and if Project Manager so confirms, the City shall, upon receipt of Contractor's final Application for Payment and recommendation of Project Manager, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by the City for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required by the Contract Documents, the written consent of the surety to the payment of the balance due for that portion of the



Work fully completed and accepted shall be submitted by Contractor to Project Manager with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**24. COSTS AND ATTORNEY'S FEES.**

24.1. In addition to the indemnification provisions of this Agreement and the contract documents, and provided that the City is not in material default of this Agreement or the direct cause of litigation, the Contractor shall be responsible for and pay the City for all of the costs, expenses, and attorneys' fees "including legal assistants fees" related to litigation or other forms of dispute resolution arising out of any matter related to this Agreement, the contract documents, including performance and payment bonds, or the work.

**25. CHANGE ORDERS.**

25.1. The City shall use reasonable efforts to grant or deny change orders within twenty-four hours and not later than seventy-two hours of request of the Contractor. The Project Manager shall be authorized to approve individual change orders which do not exceed \$10,000.00. Any change orders which increase the price of the work above \$10,000.00 shall be approved by the City Manager.

Change Orders must be processed and approved by the City before additional materials, equipment, and / or labor are expended.

**26. NO ASSIGNMENT.**

26.1. This Agreement shall not be assigned by the Contractor without the prior written approval of the City.

**27. GOVERNING LAW.**

27.1. This Agreement shall be deemed entered into in Mesa County, Colorado, and shall be governed by the laws of the State of Colorado. The parties agree to the jurisdiction and venue of the courts of Mesa County in connection with any dispute arising out of or in any matter connected with this Agreement.

**28. SUBCONTRACTING.**

28.1. It is understood and agreed that the employment of the Contractor by the City for the purposes of said project shall be exclusive, but the Contractor shall have the right to employ such assistance as may be required for the performance of

the project. Said Contractor shall be responsible for the compensation, insurance, and all clerical detail involved in the employment of said assistance.

## **29. EQUAL OPPORTUNITY EMPLOYER.**

- 29.1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.
- 29.2. The Contractor shall be in compliance with the appropriate provisions of the American with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal regulation. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of any purchase order or contract and with any new purchase order or contract issued by the City.

## **30. INDEPENDENT CONTRACTOR.**

- 30.1. Contractor and any persons employed by Contractor for the performance of work hereunder shall be independent contractors and not employees or agents of the City. Nothing herein shall be construed as establishing a quality standard for any individual, or as establishing any right on the part of the City to oversee the actual work of the Contractor or to instruct any individual as to how the work will be performed.
- 30.2. Contractor shall have the right to employ such assistance as may be required for the performance of work under this Agreement. Said Contractor shall be responsible for the compensation, insurance, and all clerical detail pertaining to such assistants, and shall be solely responsible for providing any training, tools, benefits, materials, and equipment.
- 30.3. THE PARTIES HERETO UNDERSTAND THAT THE CONTRACTOR AND THE CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS ARE NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS UNDER ANY WORKERS' COMPENSATION INSURANCE POLICY OF THE CITY, AND THAT CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE

INCOME TAX AND OTHER APPLICABLE TAXES AND OTHER AMOUNTS  
DUE ON ANY MONEYS PURSUANT TO THIS AGREEMENT.

DRAFT

