

City of Fruita

Department of Public Works
Engineering Division

Bid Documents and Construction Specifications for

2024 Road Overlay Project



FRUITA
COLORADO

March 11, 2024

Bidding Instructions

PROJECT: **2024 Road Overlay Project**

OWNER: City of Fruita
325 E. Aspen Avenue.
Fruita Colorado 81521
Phone: (970) 858-9558

PROJECT MANAGER: Tom Nankervis tnankervis@fruita.org

These Instructions are general in nature and may be amended or supplemented by the City. By submitting a Bid, the Offeror warrants that it is familiar with all provisions of the Bid Instructions, Bid Schedule, the Drawing Set, Construction Specifications, Special Provisions, and the Draft Construction Contract, and agrees to comply with them. **Bid submittal requirements are listed in Section 8 below.**

1.0 General Scope of Work

This project consists of the milling and asphalt overlay of approximately 25,500 SY of streets around Fruita. In most areas, after the mill, a leveling course is laid and is then followed by a 1.5" or 2" thick asphalt overlay. Numerous valve and manhole lids will be adjusted to match the finished grade of the pavement. Street striping is also included. In addition to the work listed above, a pre- and post-construction survey of several survey monuments will be performed and submitted to the City.

2.0 Form of Bid and General Description of Bid and Award Process

The Bid Schedule is attached to these Instructions. In general, work tasks such as mobilization, testing, and field survey work will be bid and paid on a fixed price lump sum basis. Most other items will be bid and paid on a unit price basis. Estimated quantities are shown on the Bid Schedule. Actual quantities may be either more or less than those shown on the Bid Schedule. Unit Pricing for all unit price items provides a basis of payment for changes in quantities associated with the relevant work tasks.

There will be no pre-bid meeting for this project. Bidders are requested to submit all questions via email or other electronic means prior the date listed below.

All questions requiring a response prior to the bid opening shall be submitted in writing prior to 12:00 p.m. **Tuesday, March 19, 2024.** An Addendum addressing questions and clarifications will be issued **by the end of day on Wednesday, March 20, 2024.**

Bids must be mailed attention to Public Works, 325 E. Aspen Avenue, Fruita, CO 81521 or hand-delivered to the main administrative counter in the Fruita Civic Center attention to Public Works, 325 E. Aspen Avenue, Fruita, CO 81521 by **1:00 PM on Monday, March 25, 2024.** Bids will be opened and read publicly at that time. Evaluation of the bids and selection of a winning bid will be based strictly on the lowest cost, responsive and responsible, Base Bid. Please see section 8.0 for a description of required submittals for

determining responsiveness. Any bid deemed non-responsive will be eliminated from further consideration and the bid will not be read. Responsive bids will have their Base Bid read aloud.

The City expects to issue a Notice of Award by the end of day on **Wednesday, March 27, 2024** and have a signed Contract by **the following week**.

A Draft Construction Contract is included in the Bid materials. Bidders must provide any objections or suggested changes in contract language at the time of bid opening. The City will negotiate and finalize contract language with the successful low bidder, issue a Notice to Proceed, and hold a Pre-Construction Meeting as soon as a Contract is signed and Performance and Payment Bonds are received.

While it is the intention of the City to award and construct the entire project as reflected by the Base Bid, the City reserves the right to delete work or reduce quantities, select alternatives, and/or otherwise modify the scope of work, either prior to or after Contract execution. This will not change the selection process.

3.0 General Description of Construction Process and Site-Specific Requirements

Immediately after the Notice to Proceed, Contractor shall prepare a proposed construction schedule and submit it to the City Project Manager for approval. A Pre-Construction meeting shall be held after the Notice to Proceed with the General Contractor's Project Manager and Field Supervisor(s), City Project Manager, City Public Works Director, Materials Testing Firm, and any other major subcontractors desired by the General Contractor.

4.0 Schedule of Bid and Construction Activities

The tentative schedule of project activities including construction is included in the **Special Provisions**.

5.0 Addenda

Any interpretations, corrections, or changes to these Bidding Instructions, the Scope of Services, or extensions to the bidding deadlines or other dates will be made by a written Addendum to the Bidding Instructions by the Project Manager, who shall have sole authority to issue and authorize addenda. Addenda will be added to the Bidding Instructions retained at City Offices, and emailed to all firms who have picked up Bid Packets or provided the city with their email if the Bid Packets were obtained on line. All addenda shall be acknowledged on the Bid Schedule.

All questions about the meaning or intent of the Bidding Instructions are to be submitted via email to the Project Manager (Tom Nankervis tnankervis@fruita.org). Interpretation or clarifications deemed necessary by the City in response to such questions will be issued by addenda and emailed to all parties recorded by the City as having received Bidding Instructions. Questions received after the deadline listed in Section 2 Form of Bid and General Description of Bid and Award Process above will not be answered prior to the bid opening. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

6.0 Exceptions and Substitutions

Offerors are responsible for reviewing these Bidding Instructions and the attached Draft Construction Contract in their entirety. Offerors may take exception to any provision contained therein but do so at their own risk. The City reserves the right to accept or reject any or all exception, substitution, or alternative. When offering an exception, substitution, or alternative, Offeror shall state these exceptions on a separate sheet of paper.

7.0 Confidential Materials

All materials submitted in response to this RFP will become public record in accordance with the Open Records Act and will be subject to inspection after contract award, with the following exceptions:

- a. Company Financial Disclosures
- b. Confidential Proprietary Information. Any information requested to be considered as Confidential Proprietary Information must be clearly identified as a “**Confidential Disclosure**”, be placed in a separate envelope, and include a justification for the request. Neither Unit Prices nor the total bid will be considered confidential or proprietary.
- c. All bids, excluding any confidential materials, become the property of the City of Fruita upon receipt, and will only be returned to the Offeror at the City’s option.

8.0 Required Submittals

- a. Each Bid shall contain a completed and signed Bid Schedule. Bid Schedules will not be considered complete unless all spaces for inserting either unit prices or total prices are filled in. Lump Sums and Unit Costs will be considered contractual obligations. The total Base Bid will be used for bid comparison purposes in determining the lowest responsive bidder. Any blank on the Bid Schedule that is not filled in with a number shall be assumed to be zero.
- b. The Bid Schedule shall be signed by a principal of the company having the authority to enter into contractual relationships on behalf of the company.
- c. Each Bid shall include a copy of insurance certificates or other evidence of the following minimum insurance requirements:
 - i. 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.

- ii. 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.
 - iii. 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.
- d. Each Bid shall include a Bid Bond or other guarantee equal to 5% of the Total BASE BID as listed on the bottom of the Bid Form. The Bid Bond or other security of the three lowest responsive bidders shall be retained until the successful bidder executes the Contract and furnishes the required Contract security, but not longer than 45 days. The Bid Bond or other guarantee of other bidders shall be returned within seven days.
- e. Each Bid shall include a list of objections or suggested changes in the language of the Draft Construction Contract. Bidders may use the form provided or put this information in their own format.
- f. Each Bid shall be submitted in a sealed envelope, and clearly marked on the outside **2024 Road Overlay Project Bid**.
- g. Altering and Withdrawing Biddings. Any handwritten alteration to a bid must be initialed by the signer of the bid, guaranteeing authenticity. Bids cannot be altered or amended after the submission deadline but may be withdrawn entirely at any time prior to the execution of the final Contract.
- h. Information detailing the qualifications of the firm or team is not required, but may be requested after the bid opening.
- i. **Bid Deadline.** All Bids must be received in the main administrative counter in the Fruita Civic Center 325 E. Aspen Avenue, Fruita, CO. 81521 no later than the time and date shown in **Section 2 - Form of Bid and General Description of Bid and Award Process**. Late or unsigned bids will not be accepted or considered.
- j. **Responsiveness.** At the Bid Opening, each bid will be evaluated for responsiveness according to the checklist below. The City reserves the right to waive minor discrepancies in form or content of the bids, but the minimum requirements for responsiveness must be met. Any missing item from the checklist below is cause for rejection of the entire bid.

- i. Signed Bid Form
- ii. Acknowledgement of any and all Addenda
- iii. Total BASE BID amount
- iv. Bid Bond
- v. Insurance Certificates – Workman’s Comp, Liability

9.0 Conflict of Interest

No City public official and/or City employee shall have a direct financial interest in any firm submitting a Bid under this Request. Any indirect interest in an Offer or firm by a City public official and/or City employee by virtue of blood or marriage shall be disclosed within the Bid.

10.0 Only One Bid Accepted

More than one bid proposal from an individual, firm, partnership, or corporation under the same or different names will not be considered. Evidence that any primary Offeror has an interest in more than one Bid for the same Work will be cause for rejection of all such bids. Evidence of collusion or other illegal activities between firms will be considered sufficient cause for the rejection of all Bids so affected. A subcontracted person or entity (such as a Surveyor or Traffic Control Firm) which has quoted prices to one bidder is not disqualified from quoting prices to other bidders but may not submit a direct bid on its own behalf.

The City of Fruita reserves the right to reject any or all Bids, and to waive any informalities or irregularities therein, for any reason, including past project performance.

11.0 Description of Bid Items

Bid Item Descriptions are included in the Special Provisions. All Bid Items shall be priced as complete, in place.

END OF BID INSTRUCTIONS

SPECIAL PROVISIONS AND ITEM DESCRIPTIONS

The Special Provisions listed hereafter are specific to this contract only and do not apply to any other contract. Any provisions stated herein shall take precedence over any other sections of this document. Any conflicting segment shall be void while the special provision is applicable. The Contractor is to review these special provisions and include any costs of these provisions in the applicable pay items of the bid.

I. Project Specifications

The CDOT Standard Specification for Road and Bridge Construction, 2011 Edition, The City of Fruita Design Criteria and Construction Specifications (DCCS) – 2009 Edition, and the City of Fruita Standard Detail Drawings will govern general construction specifications. Copies of CDOT standard specifications are not included in the bid and specification package due to their length, but are incorporated herein by reference. Copies of CDOT standard specifications can be obtained from CDOT at: <http://www.dot.state.co.us/Publications/publications.htm> or by mail CDOT Headquarters, Bid Plans Room, 4201 E. Arkansas Ave., Denver, Colo. 80222. City of Fruita DCCS – 2009 can be downloaded from Fruita.org.

Administrative and contractual issues will be governed by various documents including these Special Provisions, the Bidding Instructions, the Construction Contract, and Section 100 of the CDOT Standard Specification for Road and Bridge Construction, 2011 Edition. In the case of discrepancies between similar administrative or contractual provisions contained in the various documents, the following hierarchy is specified:

- | | |
|---------------------------------|------------------|
| 1. Construction Drawings | Highest Priority |
| 2. Fruita Special Provisions | ↑ |
| 3. Construction Contract | ↕ |
| 4. Fruita DCCS 2009 Manual | ↓ |
| 5. CDOT Standard Specifications | Lowest Priority |

In the case of any discrepancies between the Project Drawings and the CDOT Standard Specification, the Project Drawings shall control. Any general changes from the standard CDOT construction specifications will be delineated in these Special Provisions, on the Project Drawings, or in Bid Addenda. When specifications or special provisions contain both English units and SI units, the English units apply and are the specification requirement.

II. Scope of Work

This project involves asphalt milling and overlay of approximately 25,500 SY of streets around Fruita. In most areas, after the mill, the leveling course is laid and is then followed by the 1.5" or 2" overlay. Numerous water valve, manhole and survey monument lids shall be adjusted to finished grade. In addition to the work listed above, a pre- and post-construction survey of one survey monument will be performed and submitted to the City. Following paving, street striping will be installed.

Some of the Specific Work Item Descriptions are shown on the Bid Schedule and listed in Section XV of these Special Provisions.

III. Pre - Bid Conference

No Pre-Bid Meeting will be held for this Project.

III. Tentative Project Schedule

The following schedule provides the general timeline and/or milestones for which the project is anticipated to proceed. The dates presented below are subject to change at the direction of the City.

Event / Deadline	Date & Time
Advertisement Dates – GJ Sentinel	Sundays – March 10 & 17, 2024
Plans and Bid Documents Available	March 11, 2024
Pre-Bid Meeting	None
Project Questions Deadline	Tuesday, March 19, 2024, EOD
Final Addenda Issued	Wednesday, March 20, 2024, EOD
Bid Opening	Monday, March 25, 2024, 1:00 p.m.
Notice of Award	Wednesday, March 27, 2024
Pre-Construction Meeting	Prior to commencement of work
Begin Construction	School summer recess
Substantial Completion	July 22, 2024
Project Completed (Final Acceptance)	July 29, 2024

V. Hours of Operation

Contractor may perform work Monday through Friday during daylight hours only, but may not start or operate equipment and machinery before 6:30 AM. Special approvals for Saturday or Sunday work, or night work, if needed, will be considered on a case-by-case basis. All work on this project shall be completed by **July 29, 2024**

VI. Road Closures, Detours, and Traffic Control

Traffic Control is a Lump Sum bid item. Traffic Control shall be placed in accordance with an approved Traffic Control Plan. The TCP must be submitted for approval with the City of Fruita Public Works Department with the *City Excavation and Right Of Way Permit*. This Permit will be issued at no charge to the Contractor.

The contractor shall insure that access to individual parcels / residents (within the construction zone) be maintained at all times, minor delays excepted. The City and the contractor share the responsibility to keep the residents informed of work tasks affecting their property. Contractor shall provide notification of construction schedule to all residents affected at least three days in advance. Door hangers are acceptable. It is the responsibility of the Contractor to minimize the impacts and disturbances as much as practical.

VII. Construction Sequencing

No construction sequencing recommendations are intended to be implied by these bid documents. Actual scheduling and performance of the Work is the sole responsibility of the Contractor, while minimizing traffic disruptions from detours and road closures.

VIII. Staging/Lay down Areas

Without road closures in place only unpaved portions of existing Rights Of Way within the project limits are available to the Contractor for laydown, staging, equipment parking or other uses during the project, with the exception of existing driveway locations which shall remain unblocked at all times. With road closures in place, all areas within the closures are available for use. Contractor must take precautions to ensure no materials are stored, dumped, leaked or otherwise placed or located such that they could enter private property, or existing storm drain inlets.

Any additional staging areas required outside of the right-of-way shall be the responsibility of the Contractor to acquire and maintain property owner's permissions. Staging areas outside of the project limits shall be kept clean and restored to a condition acceptable to the property owner prior to final acceptance.

IX. Protection of Adjacent Improvements, Environmental Controls, and Site Restoration

The progress of the work shall be done in a manner to protect existing public facilities, such as utilities and concrete, as well as private property, specifically fences and landscaping not designated for removal. Any damage to existing facilities, public or private, and not designated for removal, shall be the sole responsibility of the Contractor.

The Contractor shall protect all existing grasses, trees, shrubs, and other existing vegetation in this area, except for those that are dead, or are called for removal to accommodate construction of the project.

The Contractor shall perform all the work in such a manner that the least environmental damage will result. Any questionable areas or items shall be brought to the attention of the City Project Manager for approval prior to removal or any damaging activity. Damaged or destroyed trees, shrubs, or grass, which could have been saved, shall be replaced and/or re-vegetated at the expense of the Contractor.

The Contractor shall implement and install standard Best Management Practices (BMP's) in constructing sediment control measures such as silt fence and storm inlet protection, storing chemicals and fuels, and servicing heavy equipment. Fuels, chemicals, and any other liquid or

solid hazardous substances shall be properly stored and handled per OSHA and/or EPA requirements to avoid spills and/or other discharges.

Of particular concern is protection of existing storm inlets (curb inlets) during construction. It is imperative that existing piping remain clean and free of soil and debris, such that the existing capacity of the outlet is not compromised. Protection of curb inlets via straw bales and/or gravel filters is mandatory and will be inspected by the City regularly. Any flushing or cleaning required for maintaining clean storm drainage piping during construction will not be paid as additional work.

A Construction Stormwater Discharge Permit, Dewatering Permit, or any other permits that may be required from the Colorado Department of Public Health and Environment Water Quality Control Division are the responsibility of the Contractor. No Stormwater Permit is required for this Project.

X. Construction Staking

The City of Fruita shall be responsible for identifying or providing project benchmarks for horizontal and vertical control. In general, these will be existing Mesa County Survey Monuments (MCSM) as shown on the drawings.

The Contractor shall be responsible for all construction staking, layout and final placement of materials per the construction drawings. Any established survey monuments damaged, destroyed, or altered during construction that are not shown as being reset on the construction drawings shall be reset by a Colorado Licensed Professional Land Surveyor at the sole expense of the Contractor.

XI. Utilities

The Contractor shall comply with Article 1.5 of Title 9, CRS (“Excavation Requirements”) when excavation or grading is planned in the area of underground utility facilities. The Contractor shall notify all affected utilities at least two (2) business days prior to commencing such operations. Contact the Utility Notification Center of Colorado (UNCC) at (800) 922-1987 to have locations of UNCC registered lines marked by member companies. All other underground facilities shall be located by contacting the respective company. Utility service laterals shall also be located prior to beginning excavating or grading.

The locations of utility facilities shown on the plan and profile sheets were obtained from the best available information. The contractor is responsible for all utility locates, and is responsible for any damage, replacement and repairs to affected utility lines. All costs incidental to the foregoing requirements will not be paid for separately but shall be included in the work.

Known utilities within the limits of this project are:

Water:	Ute Water	Justin Bates, 970-589-9153
Drainage:	City of Fruita	Sam Atkins, 970-858-8377
Drainage:	Grand Valley Drainage District	Tim Ryan, 970-242-4343
Natural Gas:	Xcel Energy	Mike Easter, 970-244-2727

Electricity:	Xcel Energy	Mike Easter, 970-244-2727
Electricity:	Grand Valley Power	Tom Holman, 970-242-0040
Sanitary Sewer:	City of Fruita	John Carrillo, 970-858-9558
Telephone:	Century Link	Chris Johnson, 970-244-4311
Cable TV:	Optimum Communication	Jeff Valdez, 970-263-2314
Fire Department:	Lower Valley Fire District	970-858-3133
Irrigation:	City Of Fruita	Public Works, 970-858-9558
Irrigation:	Grand Valley Irrigation Co.	Charlie Gunther, 970-242-2762

The work described in these plans and specifications require coordination between the Contractor and the utility companies in accordance with the Contract. “Dry” utility relocations (gas, phone, cable, power) relocations will be performed by the respective utilities, or by parties contracted by the individual utilities. is the City’s intent to have all non-project / non-contractor utility relocations completed prior to the Contractor mobilizing to the site.

All “Wet” utility relocations (water, irrigation, sewer, and storm drains) are shown in the plans and bid documents as the responsibility of the Contractor. The Contractor shall keep the utility company(s) and the City of Fruita Project Manager advised of any work being done to their facility(s), so that the utility company(s) can coordinate their inspections for final acceptance of the work.

XII. Measurement & Payment

The Bid Schedule is comprised of Lump Sum and Unit Price items of work that collectively covers all the work for this project. The Bid Schedule shows estimated quantities based on the Engineer’s Estimate. Actual quantities may be more or less than the Bid Schedule quantity. All quantities will be paid at the listed Unit Price. If there is a need to change the amount of work for a Unit Price Item, the schedule of Unit Prices will be the contractual basis for establishing the associated cost impact. Lump sum prices will only be changed via negotiated Change Order.

Each month the Contractor and the Owner will evaluate the progress of the work and agree to the overall percent complete for each Lump Sum item. This will be the basis for progress payments against lump sum items.

Measurement for payment quantities and associated surveying, calculations and documentation are the responsibility of the Contractor. Calculations and documentation shall be submitted to the City Project Manager, either before or concurrent with invoicing the items for which payment is requested. The City will also perform measurements and surveys on its own accord to verify payment quantities.

As a condition of final payment, the Contractor shall secure full written lien releases from all subcontractors, equipment and material suppliers, who have provided services, equipment and materials, on behalf of the contract, releasing the City and the Contractor from any further claim.

XIII. Conformity with Plans and Specifications, Price Reductions.

All work performed and all materials furnished shall conform to the lines, grades, cross sections, dimensions, and material requirements, including tolerances, specified in the Contract or as shown on the drawings. For those items of work where working tolerances are not specified, the Contractor shall perform the work in a manner consistent with reasonable and customary manufacturing and construction practices.

When the City Project Manager finds that the materials furnished, the work performed, or the finished product does not conform with the Plans, Specifications, or Contract but that reasonably acceptable work has been produced, the City Project Manager reserves the right to negotiate price reductions for sub-standard work that will remain in place. The City Project Manager may use Section 105 of the CDOT Standard Specification, incorporated by reference in Section I, to evaluate appropriate price reductions, or other methods, at his discretion. If acceptable price reductions are negotiated, the City Project Manager will document the basis for acceptance by Contract Modification Order which will provide for an appropriate reduction in the Contract price for such work or materials. If a satisfactory price reduction cannot be negotiated, the City Project Manager reserves the right to require removal and replacement of substandard work at the expense of the Contractor.

When the City Project Manager finds the materials furnished, work performed, or the finished product are not in conformity with the Contract and has resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.

If deemed necessary by the City, materials will be sampled and tested by the City in accordance with the sampling and testing schedules and procedures contained in CDOT's Field Materials Manual. Materials or work will be evaluated for price reduction when deviations from specifications occur on any of the several individual tests for the lot. The Contractor will not have the option of accepting a price reduction in lieu of producing specification material. Continued production of non-specification material will not be permitted. Material which is obviously defective may be isolated and rejected without regard to sampling sequence or location within a lot.

XIV. Time of Completion

The City believes more than adequate time is contained in the schedule to achieve the Substantial Completion date of **July 22, 2024**, during normal working hours only. Substantial Completion is defined as follows:

1. Date of Signature of the City Project Manager on the Notice of Substantial Completion.
2. All major construction, including pavement markings and signage completed per plan.
3. All road closures/ detours/ and traffic control removed, and all roads open to unrestricted travel in both directions.

Substantial Completion does not include minor repairs and punch list items that do not affect safe, unrestricted pedestrian and vehicle access through the corridor.

Any claim for delay resulting in potential changes to dates specified herein must be submitted in writing to the City Project Manager, who will evaluate the claim and issue a written response, and

issue a change order if necessary. Claims for delay will not be considered valid solely based on the Contractor or Subcontractor(s) inability to complete a specific work task at a specific location, if similar work can be performed at a different location.

All construction projects encounter minor delays in certain tasks, and the City expects the Contractor to be flexible in addressing normal construction variability. By way of example, if a storm drain installation at a particular location cannot be completed due to interference, but other storm drain work can be performed at a different location, a claim for delay will not be considered a valid claim. Similarly, if a storm drain installation encounters soft soils requiring additional excavation and backfill, this will be considered normal construction variability not subject to a claim for delay. In either of these examples a cost impact, and potential increase in Contract value may be valid, even though the claim for delay is not.

XV. Item Descriptions

The following descriptions delineate the work, materials, and how measurements of completed work will be made and paid for regarding each bid item listed in the Bid Schedule. The Bidder is to read these definitions and price their proposal accordingly. The City of Fruita may choose to add, reduce, or eliminate any bid item or combination of bid items so the construction contract shall not exceed the encumbered funds allocated for this project.

Item 1 Mobilization

This pay item includes the Contractor's cost of moving all materials, equipment, and labor onto the job site, setup, providing a temporary sanitary facility, tear down and removing all debris, materials, equipment, and labor off the job site, dust abatement during the project, and final cleanup. The price for this item shall include all costs incorporated in performing the work described herein. Payment will be made at 50% of the Lump Sum amount upon initial mobilization, up to 90% during the work, and the final 10% after demobilization and advertisement.

Item 2 Traffic Control

This pay item includes furnishing a Traffic Control Plan, flaggers, daily traffic control inspections, and all equipment for traffic control throughout construction of the project. This includes installing any temporary pavement markings that may be necessary. All traffic control devices, setups and procedures shall comply with the latest edition of the MUTCD and with all applicable City of Fruita specifications. Traffic control on streets adjacent or connecting to CDOT highways shall comply with all CDOT specifications regarding traffic control. The contractor shall obtain all permits necessary to work adjacent to a CDOT right-of-way and shall coordinate with CDOT personnel as needed to ensure traffic control meets CDOT specifications. Payment of this Lump Sum item shall be made in increments upon completion of construction.

Item 3 Material Testing

This pay item includes the Contractor's cost for all Material Testing identified as the Contractor's responsibility within these Special Provisions, the Bid Instructions, and/or the Drawings and Specifications. Material Testing that is specifically the responsibility of the Contractor; includes all labor, material and equipment for field compaction testing of subgrade soil and aggregate materials; moisture/density (proctor) testing for imported subgrade or backfill materials; concrete physical properties testing; and asphalt strength and composition testing. The testing firm selected by the contractor shall be fully certified and able to density test, sample HMA, process superpave, and furnish full reports within a few days of paving. Payment shall be made at the Lump sum price quoted.

Item 4 Stormwater Management

This pay item includes furnishing all equipment, materials, and labor necessary to administer the CDPHE SWMP responsibilities for the Project as specified in Section 9 of these Special Provisions. No stormwater permitting is required for this project. BMP installation and upkeep will be the Contractor’s responsibility until project final completion. Removal of BMP’s and cleanup of the affected areas are included in this pay item. Payment of this Lump Sum item shall be made in increments upon completion of construction.

Item 5 Pre/Post Construction Survey

This pay item includes furnishing all equipment, materials, and labor necessary to perform pre- and post-construction surveys of existing Mesa County and City of Fruita survey monuments located in the work zone and as designated on the plans. A report detailing the pre- and post-construction coordinates of each survey monument shall be prepared by a professional land surveyor licensed in the state of Colorado and submitted to the City following construction and prior to final payment. Any disturbance felt significant enough to remedy shall be the sole responsibility of the contractor to remedy to the satisfaction of the City. Payment of this Lump Sum item shall be made in increments upon completion of construction.

Item 6 Protect Survey Monuments

This pay item includes furnishing all equipment, materials, and labor necessary to protect county/city survey monuments during construction and to ensure no movement of the monument takes place. A pre- and post-construction survey by a licensed surveyor will be required in addition to this item (Item 5). Payment of this Lump Sum item shall be made in increments upon completion of construction.

Item 7 Adjust Water Valve Box Lids

This pay item includes furnishing all equipment, materials, and labor necessary to adjust valve boxes to meet finished grade or design elevations. Valve boxes can be adjusted by the use of cast iron valve box extensions or by digging the valve box out after paving and raising the existing box. After adjusting the height of the valve box, the area around the valve box shall be filled with Grading-SX, Hot Mix Asphalt to the same thickness as the adjacent pavement. Water valve tolerance will be the same as manholes with the exception of (-) ¼”. Payment of all adjustment items will be based on Unit Price quoted for the actual quantity completed.

Item 8 Adjust Manhole Lids

This pay item includes furnishing all equipment, materials, and labor necessary to adjust manhole lids to meet finished grade or design elevations. Manholes shall be paved over during the overlay. Sand or paper will be used to prevent the asphalt from adhering to the manhole cover. After paving, the manhole ring shall be adjusted to grade by the use of concrete grade rings. The cut area around the manhole shall then be patched with Grading-SX, Hot Mix Asphalt to the same thickness as the adjacent pavement. When adjusting the manhole ring to match the cross slope of the street, the Contractor shall fill the space between the concrete grade ring and the cast iron ring with Rapid Road Repair or Engineer approve equal. In the event that grade rings are removed and or replaced as part of the adjustment the contractor shall fill the annular area below the uppermost grade ring with a self-consolidating media such as 3/4” washed rock or completely fill the area with Rapid Road Repair or Engineer approved equal. Manhole adjustment tolerance: all manholes adjusted as part of this project shall meet the following criteria: level with the adjacent asphalt or (-)1/8”. Manholes set outside of this tolerance will be

rejected. Payment of all adjustment items will be based on Unit Price quoted for the actual quantity completed.

Item 9 Asphalt Milling/Disposal

This pay item includes all labor, materials and equipment for milling (planing) of existing asphalt surfaces varying from 0 to 2 inches in depth and for haulage and stockpiling of the millings to a location of the contractor's choice. Payment for this pay item shall be made based on the completed surface area of the milled asphalt at the unit prices quoted.

Item 10 Hot Mix Asphalt (Grading SX) (PG 64-22) (With Fiber)

This pay item includes furnishing all equipment, labor, and materials necessary to install an asphalt leveling course and mat as shown on the construction drawings and in the applicable City specifications.

In addition, the hot mix asphalt shall include reinforcement fiber strands with virgin aramids that meet the following requirements:

Property	Requirement
Nominal Specific Gravity	.91 to 1.44
Minimal Length	0.75 inches

Only reinforcing fiber strands that are not detrimental to the pavement will be allowed. The contractor shall store and maintain reinforcing fiber strands in accordance with the manufacturer's recommendations and shall ensure that the fiber blend corresponds with the manufacturer's recommendations for the hot mix asphalt materials being used on the project. The contractor shall follow the manufacturer's recommended procedures for placement of fiber strand reinforced warm or hot mix asphalt pavement. Acceptable products are:

- ACE FIBERTM
- FORTA-FI
- An approved equivalent

Tack coat between asphalt layers will not be paid for separately and shall be incidental to the work. Payment for this item will be based on unit prices quoted for the actual tonnage of asphalt installed.

Item 11 4"-Wide Solid White Striping

This pay item includes furnishing all equipment, materials and labor necessary to paint 4"-wide white pavement markings as shown on the plans. The paint shall be waterborne and all paints shall meet Federal Specifications RR-P 1952D type 1 and type II. All paint shall be applied according to manufacturer's recommendations. All paint lines shall be covered in glass beads. Payment will be made at the unit price quoted for completed length of striping.

Item 12 4"-Wide Solid Yellow Striping

This pay item includes furnishing all equipment, materials and labor necessary to paint 4"-wide yellow pavement markings as shown on the plans. The paint shall be waterborne and all paints shall meet Federal Specifications RR-P 1952D type 1 and type II. All paint shall be applied according to manufacturer's recommendations. All paint lines shall be covered in glass beads. Payment will be made at the unit price quoted for completed length of striping.

Item 13 Thermoplastic Stop/Crosswalk Bars

This pay item includes furnishing all equipment, materials and labor necessary to provide 125 mil thick preformed thermoplastic pavement markings as shown on the plans. The thermoplastic

pavement markings shall be the equivalent of PreMark® ViziGRIP (White). Payment shall be made at the unit price quoted.

SUMMARY

This concludes the pay items listed in the proposal. Please be aware that the only payments made under this contract are for the pay items listed in the proposal and no other payments or additional payments will be made to the contractor for work specified and shown in these documents unless otherwise pre-approved via a contract change order approved by the City's project manager. If any discrepancies exist, the contractor should notify the project manager in writing, requesting clarification as soon as practical.

The following items have not been included as specific pay items and are considered incidental to the construction for which they are required, unless otherwise identified in a bid item:

- Dust control
- Erosion and Environmental control
- Watering / Dewatering
- Temporary facilities and utilities
- Barricades and other required safety provisions
- Cold weather protection
- Construction Contract Administration including completion and submittal of required forms and other paperwork

END OF SPECIAL PROVISIONS

**City of Fruita
Bid Schedule
2024 Road Overlay Project**

<u>No.</u>	<u>Item</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Extension</u>
1	Mobilization	LS	1		
2	Traffic Control	LS	1		
3	Material Testing	LS	1		
4	Stormwater Management	LS	1		
5	Pre/Post Construction Survey	LS	1		
6	Protect Survey Monument	Each	1		
7	Adjust Water Valve to Finished Grade	Each	16		
8	Adjust Manhole Lids to Finished Grade	Each	22		
9	Asphalt Milling/Disposal	SY	12500		
10	Hot Mix Asphalt	Ton	2550		
11	4"-Wide Solid White Striping	LF	2400		
12	4"-Wide Solid Yellow Striping	LF	6000		
13	White Thermoplastic Stop/Crosswalk Bars	SF	166		
				Base Bid:	

Company Name: _____

By: _____

Signature: _____

Date: _____

2024 Road Overlay Project

THIS CONTRACT is made this _____ day of _____, 2024 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 asphalt pavement installation 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 2024 Road Overlay Project as defined by the Project Plans and Project Documents which include Bid Schedule, Bid Instructions, Special Provisions, and the 2009 City of Fruita Design Criteria and Construction Specifications Manual, by reference included herein, pursuant to the pricing, representations, and acknowledgements stated in the Contractor’s Bid Schedule dated _____, 2024.
- 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 insuring 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 Special Provisions.

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:

Tom Nankervis: Project Manager
900 Kiefer Ave.
Fruita, CO 81521
(970) 858-9558

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 **Friday, July 22, 2024.**

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 the design phase. Date of Final Completion shall be by **Friday, July 29, 2024**, including the installation and testing of all drainage, sewer, irrigation, sidewalk and pavement improvements, as well as final project cleanup, contractor demobilization and removal of any and all traffic control devices.

- 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 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.

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