

2024 Street Striping 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 herein after referred to as the “Contractor”.

RECITALS:

WHEREAS, the City desires to obtain services of a Contractor for the purpose of street striping 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 Street Striping 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 May 24 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 Dollars and Cost in Cents (\$xxx,xxx.xx).

- 3.5. The amount set forth in Section 3.4 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.
- 3.6. 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.
- 3.7. 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.
- 3.8. 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 the provision of the same.
- 3.9. 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
City 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 **October 11, 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 the City Public Works Director on the Notice of Final Acceptance. Date of Final Completion shall be by **October 17, 2024**.

- 5.3. Liquidated Damages. No liquidated damages will be assessed under this contract. When weather conditions exist such that the Contractor cannot reasonably perform work activities for a given day, the contract time may be extended by written confirmation by the City.

- 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. SCOPE OF PAYMENT.

- 6.1. 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.
- 6.2. The parties agree that the City's payment of any monies under this Agreement is subject to annual budget appropriations as required by provisions of the Taxpayers' Bill of Rights ("TABOR") contained in Article X, Section 20 of the Colorado constitution, as amended. The parties further agree that any failure to fund the obligations set forth herein as a result of TABOR-related monetary constraints shall not give rise to any legal or equitable cause of action whatsoever.

7. PROGRESS PAYMENTS AND RETAINAGE.

- 7.1. 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.

- 7.2. 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.

8. OWNERSHIP OF PLANS, SPECIFICATIONS, AND DOCUMENTS.

- 8.1. 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.

9. NO PERSONAL LIABILITY.

- 9.1. 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.
- 9.2. Nothing herein shall constitute a waiver by the City of any provisions of the Colorado Governmental Immunity Act ("CGIA"), C.R.S. §§ 24-10-101 et seq. as may be amended from time to time.

10. OBSERVATION OF ALL LAWS.

- 10.1. 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.

11. AGREEMENT PROVISIONS PREVAIL.

- 11.1. 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.

12. CONTRACTOR'S RESPONSIBILITY FOR WORK.

- 12.1. 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.

13. TERMINATION OF CONTRACTOR'S RESPONSIBILITY.

- 13.1. 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.

14. INDEMNIFICATION

- 14.1. 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.

15. INSURANCE AND BONDS

- 15.1. 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.
- 15.2. 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.
- 15.3. 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.

- 15.3.1. 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.
- 15.3.2. 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.
- 15.3.3. 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.
- 15.3.4. 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.

- 15.3.5. 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.
- 15.3.6. 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 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.
- 15.3.7. 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.

16. EVIDENCE OF SATISFACTION OF LIENS.

16.1. 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.

17. ACCEPTANCE OF WORK.

17.1. 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.

18. GUARANTY OF WORK.

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.

19. DEFAULT / BREACH OF CONTRACT.

19.1. 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.

20. FINAL APPLICATION FOR PAYMENT.

20.1. 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).

20.2. **LIENS:** Colorado Statutes do not provide for any right of lien against public facilities. In lieu thereof, Section 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 Section 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 Section 38-26-101 et seq. unless the context requires otherwise.

21. FINAL PAYMENT AND ACCEPTANCE.

21.1. 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 14 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. Section 38-26-107(1) and shall make final payment in accordance with C.R.S. Section 38-26-107(3).

22. DELAYED COMPLETION.

22.1. 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.

23. COSTS AND ATTORNEY'S FEES.

23.1. 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.

24. CHANGE ORDERS.

24.1. 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.

25. NO ASSIGNMENT.

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

26. GOVERNING LAW.

26.1. 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.

27. SUBCONTRACTING.

27.1. 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.

28. EQUAL OPPORTUNITY EMPLOYER.

28.1. 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.

- 28.2. 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.

29. INDEPENDENT CONTRACTOR.

- 29.1. 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.
- 29.2. 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.
- 29.3. 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.

