



**INVITATION FOR BIDS**

**PROJECT MANUAL**

**including**

**CONTRACT DOCUMENTS  
and  
SPECIFICATIONS**

**for the**

**Durango Recycle Center Barriers: Push Walls and Bale Backstops**

**CITY OF DURANGO, COLORADO**

**April 2019**

**City of Durango, Colorado**  
**ADVERTISEMENT FOR BID**  
**INVITATION for BIDS**  
**Recycle Center Barriers: Push Walls and Bale Backstops**

Separate sealed bids for the **Construction of Push Walls and Bale Backstops at the City of Durango Recycle Center** will be received by the City of Durango until **3:00 PM (Local Time) on June 11, 2019**. The City of Durango invites interested, qualified persons or firms, capable of providing the required service to submit bids for the construction of Push Walls and Bale Backstops at the City of Durango Recycle Center, 710 Tech Center Drive.

Bids must be delivered electronically, via Rocky Mountain E-Purchasing Systems, [www.bidnetdirect.com/colorado](http://www.bidnetdirect.com/colorado). It is the sole responsibility of the bidder to see that the proposal is received before the submission deadline. Late proposals will not be considered. Bid documents and/or supporting information may be downloaded, at no charge, from the following web site: [www.bidnetdirect.com/colorado](http://www.bidnetdirect.com/colorado). Click on "Vendor Registration" or "Vendor Login", as applicable. Or at the City of Durango's website: [www.DurangoGov.org](http://www.DurangoGov.org)

**There will be a non- mandatory pre-bid conference at 10:00 a.m. (Local Time) on Tuesday May 14, 2019 at the City of Durango Recycle Center, 710 Tech Center Drive, Durango CO 81301, to familiarize bidders with the project.**

The City of Durango reserves the right to reject any and all proposals, to waive any informalities and minor irregularities in proposals, and to accept the proposal deemed, in the opinion of the City, to be in the best interest of the City of Durango. This project is being bid in accordance with the City of Durango Purchasing Policy.

**Published: 05/1 & 05/4, 2019**

## **I. INVITATION**

The City of Durango invites interested, qualified persons or firms, capable of providing the required service to submit bids for the construction of Push Walls and Bale Backstops at the City of Durango Recycle Center, 710 Tech Center Drive.

**Note that award of this project is dependent upon successful grant funding. Notification of grants is scheduled for May 1 through June 30. Earliest effective start-work date for awardee is July 8, 2019 estimated.**

## **II. INSTRUCTIONS TO BIDDERS**

Bids will be received by the City of Durango (herein called the “Contracting Agency”) until **June 11, 2019 at 3:00 PM (Local Time)**. Bids must be delivered electronically, via Rocky Mountain E-Purchasing Systems, [www.bidnetdirect.com/colorado](http://www.bidnetdirect.com/colorado) . It is the sole responsibility of the bidder to see that the proposal is received before the submission deadline. Late proposals will not be considered.

**There will be a non- mandatory pre-bid conference at 10:00 a.m. (Local Time) on Tuesday May 14, 2019 at the City of Durango Recycle Center, 710 Tech Center Drive, Durango CO 81301, to familiarize bidders with the project.**

All Bids must be made on the required Bid form. All blank spaces for Bid prices must be filled in, in ink or typewritten, and the Bid form must be fully completed and executed when submitted. Only one copy of the bid form is required. Any improperly completed bids will not be accepted.

The Contracting Agency may waive any informalities or minor defects or reject any and all Bids. Any Bid may be withdrawn prior to the above scheduled time for the opening of Bids or authorized postponement thereof. Any Bid received after the time and date specified shall not be considered and will be returned unopened. No Bidder may withdraw a Bid within 30 days after the actual date of the opening thereof. Should there be reasons why the Contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the Contracting Agency and the Bidder.

Bidders must satisfy themselves as to the accuracy of the estimated quantities in the Bid Schedule by examination of the site and review of the drawings and specifications including Addenda. After Bids have been submitted, the Bidder shall not assert that there was a misunderstanding concerning the quantities of Work or the nature of the Work to be done.

The Bid Documents and any Addenda issued contain the provisions required for the construction of the Project. Information otherwise obtained from an officer, agent or employee of the Contracting Agency, or any other person shall not affect the risks or obligations assumed by the Contractor or relieve him from fulfilling any of the conditions of the contract.

The bid shall remain firm for the entire project period. Due to grant requirements, the scheduled work period is tentatively set for July 2019.

Contractor must provide all equipment and personnel necessary to perform the required services.

Each Bid **must** be accompanied by a Bid Bond payable to the Contracting Agency for ten percent (10%) of the total amount of the Bid.

A Performance Bond and a Labor and Material Payment Bond, each in the amount of 100 percent (100%) of the Contract Price, with a corporate surety approved by the Contracting Agency, will be required for the faithful performance of the Contract.

Attorneys-in-fact who sign Bid Bonds or Labor and Material Payment Bonds and Performance Bonds must file with each Bond a certified and effective dated copy of their Power of Attorney.

Each Bid **must** include the provided List of Subcontractors to be assisting in the project.

The party to whom the Contract is awarded will be required to execute the Agreement and obtain the Performance Bond and Labor and Material Payment Bond within fifteen (15) calendar days from the date when Notice of Award is delivered to the Bidder. The Notice of Award shall be accompanied by the necessary Agreement and Bond forms. In case the Bidder fails to execute the Agreement, the Contracting Agency reserves the right to exercise its option to consider the Bidder in default, in which case, the Bid Bond accompanying the Proposal shall become the property of the Contracting Agency.

Within fifteen (15) calendar days of receipt of acceptable Performance Bond, Labor and Material Payment Bond, proof of insurance, W9, any other required documents, and an Agreement signed by the party to whom the Agreement was awarded, the Contracting Agency shall sign the agreement and return to such party an executed duplicate of the Agreement. Should the Contract Agency not execute the Agreement within such period, the Bidder may, by Written Notice, withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the Contracting Agency.

The Contracting Agency shall issue the Notice to Proceed within ten (10) calendar days of the execution of the Agreement. Should there be reasons why the Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement between the Contracting Agency and Contractor. If the Notice to proceed has not been issued within the ten (10) calendar day period or within the period mutually agreed upon, the Contractor may terminate the Agreement without further liability on the party of either party.

Each Bidder shall demonstrate his experience in Construction of Reinforced Concrete Structures/Barriers and related construction. **At the time of the Bid, the Bidder shall provide to the Contracting Agency a list of at least three (3) successfully completed projects of similar nature.** Include the size and a description of each of the three projects. Include in each list the date, dollar amount of the project, and name of the responsible person for whom the work was done.

The Contracting Agency reserves the right to reject any or all Bids and to waive informalities when such action is deemed to be in the best interest of the Contracting Agency.

A conditional or qualified Bid may be cause for rejection.

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Projects, shall apply to the Contract throughout.

Each Bidder is responsible for inspecting the site and for reading and being thoroughly familiar with the Contract Documents. The failure or omission of any Bidder to do any of the foregoing shall in no way relieve any Bidder from any obligation in respect to his Bid. For the purposes of this Invitation For Bids, the City of Durango shall be designated "City" and successful Contractor shall be "Contractor."

City of Durango Standard Agreement is provided herein, is for reference only, and is non-negotiable.

The City reserves the right to negotiate any and all elements of any proposal.

This IFB includes a project description, scope of work, submission requirements, selection process and criteria, insurance requirements, and Sample Standard Form of Agreement between City and Contractor for Contractor Services Agreement. Sample Agreement is for reference only and is non-negotiable.

Any bid that fails to conform to the essential requirements of the Invitation For Bids will be rejected.

a. Any bid that does not conform to the applicable specifications shall be rejected unless the invitation authorizes the submission of alternate bids and the items or services offered as alternates meet the requirements specified in the IFB.

b. Bid shall be rejected when the bidder imposes conditions that would modify requirements of the invitation or limit the bidder's liability to the Owner, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids shall be rejected in which the bidder:

1. Protects against future changes in conditions, such as increased costs, of total possible costs to the Owner cannot be determined
2. Fails to state a price and indicates that price shall be "price in effect at time of delivery".
3. Takes exceptions to the IFB terms and conditions.
4. Inserts the bidder's terms and conditions

Prospective firms are encouraged to carefully read this IFB in its entirety.

### III. PROJECT TIMETABLE

Project Publication	May 1 & May 4, 2019
<b>Non-Mandatory Pre-Bid Conference</b>	Tuesday May 14, 2019, 10:00 a.m.(Local Time) City of Durango Recycle Center 710 Tech Center Drive, Durango CO
<b>Contractor Questions Due</b>	May 23, 2019, 3:00 p.m.(Local Time)
Addendum Issued by Purchasing (if necessary)	May 30, 2019, 4:30 p.m.(Local Time)
<b>Bid Opening</b>	June 11, 2019, 3:00 p.m.(Local Time) <a href="http://www.bidnetdirect.com/colorado">www.bidnetdirect.com/colorado</a>
Notice of Award (estimated)	June 17, 2019
Notice to Proceed (estimated)	July 1, 2019 (after grant determination)
Project Commences (estimated)	July 8, 2019 (due to grant requirements)
Estimated Number of Calendar Days	14

### III. SCOPE OF SERVICE

A. **SCOPE OF WORK.** Generally the work under this contract includes furnishing all labor, materials, and equipment necessary for the following items:

- 1) Excavate and construct approximately 120 ft. of new concrete walls from frost depth to 4 feet above grade. The walls shall be 8" thick reinforced concrete on a 10" thick by 36" wide footing. The work includes doweling into existing concrete at 2 existing piers and footings. It also includes backfilling the excavations and re-paving back to the new walls.
- 2) Excavate and construct 7 independent back-stop footings 2 ft. wide x 4 ft. long x 3' feet deep of reinforced concrete cast neat-to-earth for 7 steel back-stop posts:
- 3) Construct a backstop of 7-W10x22 posts approximately 7'-6" high with 2 MC8x20 rails between each pair of the 7 posts. Work includes bolting of the posts to the footings and rails to the posts.

All work shall be done under the supervision and inspection of the Recycle/Solid Waste Manager or his assigned agent. Any deviation from the standard specifications shall be approved, in writing, in advance. Any deviation from the standard specifications without prior authorization shall result in the immediate suspension of work, and possible termination of contract.

The scheduled work period is tentatively (weather permitting) set for estimated July 8 through July 26, 2019 unless otherwise agreed upon by both the city of Durango, and the Contractor

- B. GUARANTEE. The Contractor shall guarantee and warrant all the workmanship and materials against any defects for one year from date of final acceptance.
- C. PROTECTION OF EXISTING PROPERTY. The Contractor shall protect all existing structures and property from damage. Contractor will be responsible for any damage incurred while fulfilling the terms of the contract. Replacement of any damaged property shall be the sole responsibility of the Contractor.
- D. CONSTRUCTION STANDARDS. All work shall be completed in accordance with City of Durango Standard Specifications, unless otherwise stated in these bid documents
- E. INCLUSIONS IN BASE BID. The each Base Bid item shall include the following items:
  - 1) Mobilization – All costs associated with mobilizing equipment and manpower to and from the site.
  - 2) Concrete Wash out structure – All costs associated with the construction and maintenance of a legal wash out structure.
  - 3) Construction – All costs associated with labor, materials, and construction, as per specifications
  - 4) Sanitary Facility – All costs associated with the delivery and maintenance of a sanitary facility on the site.
- F. ADD ALTERNATE

Provide total cost for construction Optional Concrete Slab-on-Grade per specifications on Sheet S1.

#### **IV. TECHNICAL SPECIFICATIONS**

Please See plan set, pages S1, S2, & S3 for general notes and specifications.

#### **V. INSURANCE**

A. The Successful 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 the 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.

B. The Successful Contractor shall 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.

C. Successful 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.

1. Worker's 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 One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) – policy limit, and One Million Dollars (\$1,000,000) disease – each employee.

2. Comprehensive General Liability insurance with minimum single limits of One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) 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.

3. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than Five Hundred Thousand Dollars (\$500,000) each occurrence and 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. The policies required above, except for the Workers' Compensation insurance and Employer's Liability insurance, shall be endorsed to include the City, and its officers and employees, as additional insured. 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.

E. 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 copies of such certificates shall be forwarded to the City prior to start of Work. Each certificate shall identify the Project and shall provide that the coverages afforded under the policies shall not be cancelled, 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.

F. 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 the 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.

## **VI. ILLEGAL ALIEN CERTIFICATION**

Per State Statute, all City of Durango contracts for services are now required to include certification that the contractor does not knowingly contract with illegal aliens.

HB 1343 requires certification from the contractor that the contractor has registered with, or certified that they are in compliance with, the E-Verify Program, formerly known as the Basic Pilot Program. The E-Verify Program is a free program run by the Federal Government within the Department of Homeland Security. The program requires an employer to apply for entry into the program and make certain agreements with the Department of Homeland Security and Social Security programs.

An employer must apply to participate in the E-Verify Program over the internet. Following is the website: <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES> A set of instructions will appear and the applicant should follow those instructions to apply.

Therefore, effective immediately, prior to start of any work, every Successful Contractor shall be required to:

- 1) Fill out the Certification Statement Regarding Illegal Aliens form and return it to the City of Durango Purchasing Agent, and

- 2) Participate or attempt to participate in the “E-Verify Program” with the Division of Homeland Security.

The City will not make payments on any contract until the form is on file in the office of the Grants/Contracts Division.

## **VII. BIDDER QUALIFICATIONS**

In evaluating each bidder, consideration shall be made utilizing the following criteria. Deficiency in any of the areas listed below may be adequate cause for bid rejection.

- A. The ability, capacity and skill of the bidder to perform the contract or provide the service required. **Bidder shall provide a separate representative list of the firm’s current and previous contracts for similar work, with a contract person and telephone number, related to the services requested.**
- B. The cost of the service to the City of Durango

## **VIII. BID SUBMISSION**

- **Bids are to be completed on the form furnished and any exceptions to the specifications must be attached hereto and made a part of the contract. Retain one copy for your records.**
- **Include the items listed in Section VII (A) (above) with Bid Sheet.**
- **Provide a list of equipment to be used in performing the services required.**
- Successful Contractor must have or obtain a City Business License.
- Successful Contractor must complete a W-9 form (Taxpayer Identification No.).
- The City of Durango is exempt from all local, state and federal taxes.
- The City of Durango reserves the right to reject any and all bids.

## BID

Proposal of \_\_\_\_\_ (hereinafter called "Bidder"), organized and existing under the laws of the State of \_\_\_\_\_, doing business as \* \_\_\_\_\_ to the City of Durango (hereinafter called "Contracting Agency").

In compliance with your Advertisement for Bids, Bidder hereby proposes to perform all work for the installation of the Construction of ADA Ramps in strict accordance with the Bid Documents, within the time set forth therein, and at the prices stated below.

By submission of this Bid, the Bidder certifies, and in the case of joint Bid, each party thereto certifies as to his own organization, that this Bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this Bid with any other Bidder or with any competitor.

Bidder hereby agrees to commence work under this contract on or before a date to be specified in the Notice to Proceed and to fully complete the Project within **Fourteen (14)** calendar days thereafter. Bidder further agrees to pay as liquidated damages, and not as penalty, as described in Section 6 of the Standard Form of Agreement.

Bidder acknowledges receipt of the following Addendum:

<b>ADDENDUM NUMBER</b>	<b>DATE</b>	<b>ACKNOWLEDGEMENT</b>
Addendum No. 1		
Addendum No. 2		
Addendum No. 3		
Addendum No. 4		
Addendum No. 5		

\* Insert "a Corporation", "a Partnership", "an Individual", as applicable.

Bidder agrees to perform all work described in the Bid Documents for the following unit or lump sum prices

**City of Durango  
Grants/Contracts Division  
949 E 2nd Ave  
Durango CO 81301  
970.375.4994**

**Recycle Center Barriers**

**Opening 3:00 p.m. (Local Time) June 11, 2019**

**BID SCHEDULE**

<b>BASE BID</b>		
<b>ITEM NO.</b>	<b>CONTRACT ITEM</b>	<b>TOTAL COST</b>
1	Construct approximately 120 ft. of new concrete walls, per specifications	\$
2	Excavate and construction seven (7) independent back-stop footings, per specifications	\$
3	Construct a backstop of seven (7) posts, per specifications	\$
<b>TOTAL – BASE BID</b>		\$
<b>ADD ALTERNATE</b>		
	Exterior Concrete Slab-on-Grade, per specifications	\$
<b>TOTAL – BASE BID PLUS ADD ALTERNATE</b>		\$

Bidder acknowledges that the cost of a 100% Performance and Payment Bond is included in the foregoing Bid, and agrees to furnish said Bond in the amount of the Bid with a Surety Company satisfactory to the Owner at the time of execution of the Agreement or a suitable Letter of Intent.

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

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

Company Name: \_\_\_\_\_

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

\_\_\_\_\_

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

Email Address: \_\_\_\_\_

City of Durango Business License No. \_\_\_\_\_



Grants/Contracts Division  
949 E 2<sup>nd</sup> AVENUE  
DURANGO CO 81301

**STANDARD FORM OF AGREEMENT  
BETWEEN  
CITY AND CONTRACTOR  
FOR  
CONSTRUCTION SERVICES**

AGREEMENT

Made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2019

BETWEEN the City: **City of Durango**  
**949 E 2<sup>nd</sup> Avenue**  
**Durango CO 81301**

And the Contractor:

For the following Project: **Recycle Center Barriers**

**PART 1**  
**CONTRACT DOCUMENTS**

- 1.1 The Contract Documents consist of the following:
- (a) This Agreement;
  - (b) The Invitation for Bids, and all addenda and attachments;
  - (c) The Contractor's Bid;
  - (d) Information for Bidders;
  - (e) City of Durango General Conditions and Standard Specifications;
  - (f) Special Provisions;
  - (g) Other documents, plans, or drawings listed in the Invitation for Bids;
  - (h) Bid Bond;
  - (i) Labor and Material Payment Bond;
  - (j) Notice of Award;
  - (k) Acceptance of Notice of Award;
  - (l) Notice to Proceed;
  - (m) Affidavit of Residency;
  - (n) Change Orders, and
  - (o) Modifications issued after execution of the Agreement
- 1.2 All of the above-listed Contract Documents are incorporated by reference as though set forth in full herein, whether or not attached hereto, and shall form an integral part of this Agreement. If there is any conflict between this Agreement and the other Contract Documents, the terms and conditions of this Agreement shall control.
- 1.3 The Contract Documents represent the entire and integrated agreement between the parties hereto and supersede any and all prior negotiations, representations or agreements, either written or oral. Except as provided herein, this Contract may not be modified or amended except by written agreement signed by the parties.
- 1.4 The Agreement is this executed Standard Form of Agreement between City and Contractor.
- 1.5 Pursuant to C.R.S. §24-91-106.3(2), any change order or change directive requiring additional compensable work to be performed which work causes the aggregate amount available under the contract to exceed the amount appropriated for the original contract shall be agreed to in writing, signed by both parties and shall assure that the City has made lawful appropriations to cover the costs of the additional work. Any change order or directive made by the City requiring additional compensable work to be performed shall be performed at the hourly rates and/or unit pricing set forth in the contractor's bid

and shall be reimbursed at the contractor's costs on a monthly basis for all additional directed or performed until a change order is finalized.

## **PART 2** **CONTRACT SUM**

- 2.1 The City shall pay the Contractor, in current funds, for the Contractor's performance of the Contract in the total lump sum amount of \$???, subject to additions and deductions as provided in the Contract Documents.
- 2.2 A contingency account, not to exceed ??? has been appropriated and shall be available for modifications to the scope of work including pre-approved change orders and directives.
- 2.3 Based upon Invoices submitted by the Contractor, the City shall make payments to the Contractor for actual work performed. Invoices shall indicate a description of the work performed and percentage completion, as specified in the Contract Documents.
- 2.4 **Retainage.** The amount to be retained from payments shall be ten (10) percent of the value of the completed work, exclusive of payments for materials on hand, but not greater than five (5) percent of the amount of the contract. When the retainage has reached five (5) percent of the amount of the contract, no further retainage will be made and this amount will be retained until such time as final payment is made. If applicable, the Contractor shall make payments to its subcontractors in accordance with C.R.S. Section 24-91-103.
- 2.5 The appropriated funds for this project are equal to or exceed the amount of the contract stated in Paragraph 4. Pursuant to C.R.S. § 24-91-103.6(2), any change order or change directive requiring additional compensable work to be performed which work causes the aggregate amount available under the contract to exceed the amount appropriated for the original contract shall be agreed to in writing, signed by both parties and shall assure that the County has made lawful appropriations to cover the costs of the additional work. Any change order or directive made by the County requiring additional compensable work to be performed shall be performed at the hourly rates and/or unit pricing set forth in the contractor's bid and shall be reimbursed at the contractor's costs on a monthly basis for all additional directed work performed until a change order is finalized. However, in no instance shall the periodic reimbursement be required before the contractor has submitted an estimate of cost to the County for the additional compensable work to be performed.

## **PART 3** **SCOPE OF SERVICES**

- 3.1 The Contractor shall execute the entire Scope of Services described in the Bid Documents dated ???, any Addenda issued, and the Contractor's Bid, submitted ???, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

**PART 4**  
**CITY'S RESPONSIBILITIES**

- 4.1 The City shall provide full information regarding requirements for Work to be performed.
- 4.2 The City shall designate, when necessary, a representative authorized to act in the City's behalf with respect to the Project or Project Documents.
- 4.2 The City shall furnish required information as expeditiously as necessary for the orderly progress of the Work, and the Contractor shall be entitled to rely upon the accuracy and completeness thereof.

**PART 5**  
**DATE OF COMMENCEMENT**

- 5.1 The date of commencement is the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the City.

**PART 6**  
**TIME FOR COMPLETION AND LIQUIDATED DAMAGES**

- 6.1 The date of beginning and the time for completion of the work are essential conditions of the Contract Documents and the work embraced shall be commenced on the date specified in the Notice to Proceed.
- 6.2 The Contractor will proceed with the work at such a rate or progress to insure full completion within the Contract time. It is expressly understood and agreed, by and between the Contractor and the Contracting Agency, that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.
- 6.3 Should the Contractor fail to complete the work within the Contract time, or extension of time granted by the Contracting Agency, the Contractor shall pay the Contracting Agency the amount of liquidated damages specified in the Bid or \$500 per day if not specified in the Bid for each calendar day the Contractor may be in default of the time stipulated in the Contract Documents.
  - 6.3.1 The Contractor shall not be charged with liquidated damages provided the delay in completion of the work is due to the following and the Contractor has promptly given written notice of such delay to the Contracting Agency or Engineer.
    - 6.3.1.1 To any preference, priority or allocation order duly assigned by the Contracting Agency.

- 6.3.1.2 To unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of omission of the Contracting Agency, floods, epidemics, quarantine restrictions, strikes, material or fuel shortages due to governmental regulations or allocations, freight embargoes and abnormal or unusually severe weather.
- 6.3.1.3 Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time fixed for its completion may have been extended, will in no way operate as a waiver on the part of the Contracting Agency of any of its rights under the Contract.

## **PART 7**

### **FINAL INSPECTION AND FINAL PAYMENT**

- 7.1 **Final Inspection.** The Contractor shall notify the City when the Work is complete and ready for final inspection by means of a letter of completion. Within ten (10) working days thereafter, the City shall make a final inspection to determine whether the Work has been completed in accordance with the Contract Documents and shall submit a written list of any defects to the Contractor. The Contractor shall promptly correct any defects without additional cost to the City within ten (10) working days after receipt of the list of defects. If any defects cannot be corrected within ten (10) working days, the Contractor shall initiate corrective measures within said period of ten (10) working days, and shall thereafter pursue correction of such defects promptly and with due diligence. The Contractor shall also deliver to the City all guarantees and warranties, all statements to support state sales and use tax refunds, final plan set, record sets, as-constructed plans, geotechnical reports, documentations and calculations, approved shop drawings, and material testing records as a complete package. The Contractor shall provide the City with a letter of approval for contract closure from any surety furnishing bonds for the Work provided on AIA Form G707 (Consent of Surety Letter).
- 7.2 **Final Acceptance and Final Payment.** If the Contractor has completed the Work in a manner finally acceptable to the City (“Final Acceptance”), the City may authorize final payment (“Final Payment”) from the Retained Amount upon written request by invoice of the Contractor and completion of the following conditions:
- (a) The City shall determine that satisfactory and substantial reasons exist for the Final Payment;
  - (b) The City shall require written approval from any surety furnishing bonds for the Work;
  - (c) The City may require the Contractor to provide evidence that payment has been made to all subcontractors, consultants, and suppliers;
  - (d) A notice of contractor’s settlement shall have been published in accordance with C.R.S. §38-26-107.

**PART 8**  
**CITY'S RIGHT TO STOP THE WORK**

- 8.1 If the Contractor fails to correct defective Work or fails to carry out the Work in accordance with the Contract Documents, the City, by a written order, may order the Contractor to stop the Work or any portion thereof, until the cause for such order has been eliminated.
- 8.2 The City may order the Contractor in writing to suspend all or any part of the Work for such period of time as the City may determine to be appropriate for the City's convenience.
- 8.3 Upon receipt of any such suspension order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the Work covered by the order during the period of Work suspension.
- 8.4 If the City, pursuant to paragraph 8.2, suspends the performance of all or any part of the Work, the Contractor may make application for an adjustment in Contract Time and/or Contract Price, as applicable.

**PART 9**  
**CITY'S RIGHT TO CARRY OUT THE WORK**

- 9.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to any other remedies it may have, initiate and complete the necessary work to cure such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to Contractor, the cost of correcting such deficiencies, including compensation for the any additional services of the City's consultant's made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City by way of reimbursement.

**PART 10**  
**UNCOVERING THE WORK**

- 10.1 If any portion of the Work should be covered contrary to the request of the City or contrary to requirements specifically expressed in the Contract Documents relative to inspection by the City, it must, if required in writing by the City, be uncovered for its observation and inspection and shall be replaced at the Contractor's expense.
- 10.2 If any other portion of the Work has been covered, the City may request to see such Work and the Contractor shall uncover it. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall be charged to the City

by appropriate Change Order. If such Work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that the City caused this condition, in which event the City shall be responsible for the payment of such costs.

## **PART 11** **CORRECTION OF WORK**

- 11.1 The Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, plans, reports, drawings, and other services rendered by the Contractor; and shall, without additional compensation, promptly remedy and correct any errors, omissions, or other deficiencies which may occur.
- 11.2 The Contractor shall promptly correct all Work rejected by the City as defective or as failing to conform to the Contract Documents observed before Final Acceptance and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the City's additional services made necessary thereby. This obligation shall survive termination of the Contract. The City shall give such notice promptly after discovery of the condition.
- 11.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected, unless the City waives such removal, in writing.
- 11.4 If the Contractor fails to correct defective or non-conforming Work, the City may correct it in accordance with Part 9 (City's Right to Carry Out the Work).
- 11.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the City, the City may remove such work and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days after billing from the City for such costs, the City, upon ten (10) additional days' written notice, may sell such Work (materials and equipment) at auction or at private sale and shall account to the Contractor for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the City's additional services made necessary thereby. If such proceeds of sale do not cover all costs that the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City by way of reimbursement.
- 11.6 The Contractor shall bear the cost of making good all work of the City or separate contractors destroyed or damaged by such correction or removal, unless in the City's sole discretion, the City agrees to a percentage deduction of the total contract payment, in lieu of said correction or removal of Work.

**PART 12**  
**CHANGES IN THE WORK**

- 12.1 The City may from time to time, by written notice to the Contractor, extend the Start or Completion Dates or make changes in the Work necessary or convenient to accomplish the purpose intended by the Contract Documents. The City shall have such further authority, if any, as may be specifically granted or authorized by the City to initiate or process administrative Change Orders affecting the price or quantity of the Work to be performed. A Change Order is a written order to the Contractor signed by the City, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Completion Date or Contract Price. By signing the Change Order, the Contractor indicates agreement with the Change Order, including, without limitation, the adjustment in the Contract Price or the Period of Performance set forth within such Change Order. The Contractor agrees to minimize the cost of all Change Order to the extent possible.
- 12.2 The cost or credit to the City resulting from a change in the Work shall be determined in one or more of the following ways:
- (a) by mutual acceptance of a lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation;
  - (b) by unit prices stated in the Contract Documents or subsequently agreed upon; or
  - (c) by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

**PART 13**  
**TERMINATION OF AGREEMENT**

- 13.1 This Agreement may be terminated by either party upon seven (7) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
- 13.2 This Agreement may be terminated by the City upon at least seven (7) days written notice to the Contractor in the event that the Project is permanently abandoned.

**PART 14**  
**NONDISCRIMINATION**

- 14.1 The Contractor shall, in all hiring or employment made possible or resulting from this agreement, take affirmative action to ensure that there shall be no unlawful discrimination against any employee or applicant for employment because of sex, race, age, color, creed, sexual orientation, national origin, marital status or the presence of any sensory, mental or physical handicap, unless based upon a bonafide occupational qualification, and this requirement shall apply to but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

- 14.2 No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, age except minimum age and retirement provisions, marital status, or the presence of any sensory, mental or physical handicap.

**PART 15**  
**HOLD HARMLESS/INDEMNIFICATION**

- 15.1 To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the City of Durango, 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 negligent 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 of Durango.

**PART 16**  
**INDEMNIFICATION, BONDS, INSURANCE, AND WARRANTIES**

- 16.1 **Indemnification.** 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 negligent 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 shall 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.
- 16.2 **Performance and Payment Bonds.** For the construction portion of the Work, the Contractor shall furnish, at the Contractor's expense, a performance bond and a separate labor and materials payment bond, each for an amount not less than 100% of the Contract Price. The bonds shall be issued by a qualified corporate surety licensed to transact business in Colorado. If at any time during performance of the Work, the surety on the bonds shall be disqualified from doing business in Colorado, or shall become insolvent or otherwise impaired, the Contractor shall furnish bonds from an alternate surety acceptable to the City. The bonds shall be delivered to the City's Purchasing Agent prior to the commencement of the Work and shall remain in effect until one year from

completion of the Work. The Contractor shall secure an increase in the bonds in an amount equal to the cost of any additional work authorized pursuant to a duly executed Change Order or contract amendment.

- 16.3 **Insurance.** The Contractor and any subcontractors or subconsultants shall purchase and maintain insurance coverage in a company or companies licensed to do business in the State of Colorado in not less than the minimum limits set forth in the Invitation for Bids. Certificates evidencing such coverage shall be delivered to the City's Purchasing Agent prior to the start of Work. Such certificates shall name the City of Durango as an additional insured and which shall further provide that coverage may not be discontinued or materially modified without at least 15 days prior written notice to the City of Durango.
- 16.4 **Warranty.** The Contractor warrants the construction portion of the Work against defects in workmanship and materials for a period of one (1) year commencing on the date of Final Acceptance (the "Warranty Period"). The Contractor shall also assign to the City any longer term warranty of materials used by the Contractor as may be provided by the manufacturer. The Contractor shall promptly replace any materials or re-perform any portion of the Work found to be defective within the Warranty Period in accordance with the Contract Documents and without expense to the City. If the Contractor fails to proceed promptly in accordance with these warranties, the City may have the work performed, at the expense of the Contractor.

## **PART 17** **COMPLIANCE WITH LAWS**

- 17.1 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 of Durango in writing, and any necessary changes shall be made as provided herein.

## **PART 18** **INDEPENDENT CONTRACTOR**

- 18.1 There is no employment relationship created pursuant to this Agreement and the Contractor is and shall remain an independent contractor for all purposes hereunder.

**PART 19**  
**MISCELLANEOUS PROVISIONS**

- 19.1 This Agreement shall be governed by the laws of the State of Colorado.
- 19.2 The City and the Contractor respectively bind themselves, their partners, agents, successors, assigns and legal representatives to the other party to this Agreement and to the partners, agents, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the City nor the Contractor shall assign, sublet or transfer any interest in this Agreement without the prior written consent of the other.
- 19.3 Contractor shall be required to comply with applicable safety regulations.
- 19.4 This project is being conducted in accordance with the City of Durango Purchasing Policy.
- 19.5 Prior to start of any phase of Work, the following documents must be on file in the City's Grants/Contracts Division.
- 19.5.1 Certificates of Insurance, as required by the Contract Documents
  - 19.5.2 Completed W-9 Form
  - 19.5.3 City of Durango Business License
  - 19.5.4 City of Durango Sales Tax License, as required
  - 19.5.5 Illegal Alien Certification Form
  - 19.5.6 Performance Bond, if required
  - 19.5.7 Labor and Material Payment Bond, if required

**PART 20**  
**OWNERSHIP**

- 20.1 Regardless of the future services retained by the successful contractor, all of the products of this project, including recommendations, drawings, artwork, photos, and similar materials used to produce the required submittals, shall become the property of the City of Durango. Any furnished materials shall remain the property of the City of Durango. All such items shall be delivered to the City of Durango in usable condition after completion of the work, and prior to submission of the invoice for payment.
- 20.2 Any materials excavated from the project site shall be used on the project where possible. The City reserves the right to maintain possession of any unused excavated materials at the City's discretion.

**PART 21**  
**SEVERABILITY**

21.1 If any provision in the Contract shall be declared by a court of competent jurisdiction to be invalid, such decision shall not invalidate any other part of provision hereof.

THIS AGREEMENT is entered into as of the date and year first written above and is executed in at least two original copies of which one is to be delivered to the Contractor and one to the City.

CITY:  
CITY OF DURANGO

By: \_\_\_\_\_  
Ron LeBlanc  
City Manager  
949 E 2<sup>nd</sup> Avenue  
Durango CO 81301

(SEAL)

ATTEST:

\_\_\_\_\_  
Amy Phillips  
City Clerk

CONTRACTOR:  
(NAME OF FIRM OR CONTRACTOR)

*(Insert name of corporation, limited liability company, partnership or sole proprietorship)*

Firm Name: \_\_\_\_\_

*(insert trade name or name under which corporation, company, partnership or proprietorship is doing business, if different from legal name of entity or proprietor)*

doing business as \_\_\_\_\_

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date