

# **REQUEST FOR PROPOSALS**

(SECTIONS B1 THROUGH B32 EXPLAIN IN DETAIL THE BID REQUIREMENTS)

Solicitation Title & Number:

**Fountain Gateway Improvement Project  
Project No. 4149613**

**CITY OF FOUNTAIN  
ECONOMIC DEVELOPMENT/ FOUNTAIN  
URBAN RENEWAL AUTHORITY (FURA)**

**BID CLOSING DATE  
Friday, May 29, 2015  
3:00 p.m.**

## **CONTACT**

**Mrs. Kimberly Bailey  
Economic Development Manager  
City of Fountain  
116 S. Main St.  
Fountain, CO 80817  
Ph. 719-322-2056**

[kbailey@fountaincolorado.org](mailto:kbailey@fountaincolorado.org)

CITY OF FOUNTAIN

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**SPECIAL FEDERAL FUNDING PROVISION ATTACHMENTS**

**EI PASO COUNTY CDBG PROGRAM – Contract & Subcontract Provisions**

**CITY OF FOUNTAIN – CDBG ADMINISTRATION MANUAL**

- Exhibit CQS – Contractor Qualification Statement**
- Exhibit VIII-O – Contractor/Subcontractor Bid Certifications**
- Exhibit 9B – CDBG Supplemental General Conditions & Federal Labor Standards**
- Exhibit 5C – Section 3 Plan Submission**
- Exhibit 13H – Section 3 Summary Report**
- Exhibit 5J – CDBG Contract Reporting Form**
- Exhibit 6A – Federal Labor Standards Provisions HUD 4010 Form**
- Exhibit 6C – HUD/CDBG Additional Classification & Wage Rate Form 4230A**
- Exhibit 6E – Preconstruction Conference Planning Guide**
- Exhibit 6F – Federal Wage Poster WH-1321**
- Colorado Minimum Wage Order 26 Poster**
- Davis Bacon Act Wage Determination – El Paso County Zone Rates**
- Exhibit 6G – Equal Employment Opportunity Poster**
- Exhibit 6H – Occupational Safety & Health Act Protection Provisions & Poster**
- Exhibit 6I – Weekly Payroll Report & Compliance Forms (WH-347 & WH348)**
- Exhibit 6J – Additional Contractor Payroll Information**
- Exhibit 6K – Record of Employee Interviews Form HUD-11**
- Exhibit 6L – Labor Standards Definitions**
- Exhibit 6M- Volunteer Certification Form**
- Exhibit 6N – Contractor’s Receipt of Required Program Materials**
- Exhibit 6O – Making Davis Bacon Work - A Contractor’s Guide**
- Exhibit 6P – Certification of Labor Compliance**

**Davis Bacon Labor Standards Contractor’s Guide**

**CONSTRUCTION DETAILS**

- Bid Item Descriptions (Schedule G)**
- Project Vicinity Site Plan Map**
- Landscape Planting Plan**
- Landscape Drip Irrigation Plan**
- Colorado Springs Standard Plans No. D-8B**
- CDOT Standard Plans No. M-608-1 & M-609-1**
- Colorado Springs Standard Specifications Section 500- Concrete**
- Verti-crete Precast Wall System Specifications 03-45- # -M**
- Verti-crete 6 Ft. Wall Panel, Pier & Column Detail W-01-M**
- Verti-crete Fence Panel Layout & Erection Detail A1.00-M**
- Sample Verti-crete Fence Wall Photo (Grinell & Wageman Intersection)**

**INVITATION FOR BID QUOTES  
CITY OF FOUNTAIN  
FOUNTAIN GATEWAY IMPROVEMENT PROJECT  
(Project No. 4149613)  
SIDEWALK, CURB AND GUTTER, LANDSCAPE DESIGN, and  
VERTI-CRETE PRE-CAST CONCRETE FENCE WALL  
(Or City Approved Equal)**

The City of Fountain is seeking the following services by licensed contractor and/or landscaper. The installation of ADA pedestrian sidewalk, section repair of pedestrian sidewalk, linear curb and gutter, a 6-foot high pre-cast concrete fence, with landscape design and drip irrigation. A new pedestrian access sidewalk, approximately 489 SF, should be installed at the southwest side of US85, allowing for neighborhood residents to safely access the sidewalk on US85/Santa Fe. The new sidewalk should be ADA compliant and match the existing sidewalks throughout Gateway Improvement District. The pre-existing frontage sidewalk on US85/Santa Fe has a 110 SF section identified in need of repair and should aesthetically match the pedestrian corridor of the Gateway Improvement District. Approximately 12,925 SF of drought tolerant landscape with drip irrigation will need to be installed on both the eastern and western frontage of US85/S. Santa Fe. The pre-cast fence requires the manufacture/construct/installation of an approximate 222 SF (25 columns + 22 panels sized to specs), 6-foot high, Engineered VERTI-CRETE (Or City Approved Equal) Molded LedgeStone Pattern Concrete Fence Wall Panels & Ashler Slate Pattern Columns with Caps. The VERTI-CRETE Pre-cast Architectural Concrete Fence Wall shall be in general compliance with applicable manufacturer specifications as modified by the City of Fountain (See Attached).

The successful Contractor/Bidder must be prepared to promptly start work weather permitting and fully complete all work by July 14, 2015 following issuance of a City of Fountain Purchase Order Contract along with a “Notice to Proceed” anticipated to be issued on or before May 15, 2015. A sample standard City contract is included as an attachment to this the bid package.

**SCHEDULE A – Bid Form**

The undersigned declares that it has carefully examined the bid information and the complete Solicitation. (The term solicitation means the complete invitation for bid) in submitting a bid for 2014 CDBG Fountain Gateway Improvement Project. The Offeror’s signature will be considered the Offeror’s acknowledgement of understanding and ability to comply with all items in the solicitation including all special federal funding provisions.

The Offeror’s signature will be considered the Offeror’s acknowledgement of understanding and ability to comply with all items in this solicitation. If an Offeror makes any changes to corrections to the bid documents (such as shite out, or writing over a figure, etc.) such changes or corrections must be initialed and dated by the person signing the offer prior to its submittal.

**TOTAL BID** will be evaluated and awarded as follows: The City of Fountain intends to award a contract to the lowest responsible and responsive bidder as specified in B.15. Each bidder will provide pricing for each area listed in the following documentation.

CITY OF FOUNTAIN

**2015 CDBG Fountain Gateway Improvement Project, Project No. 4149613  
 BID SPECIFICATIONS**

Bid Table is as follows with more specific scope of work details included in Schedule G:

ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL AMOUNTS
CDBG Project Information Sign	1	EACH		
Sidewalk (CDOT M-609-1) (5.5" to 6" thick)	599	SF		
Corner Pedestrian ADA Curb Ramp with Detached Sidewalk (CCS Std. D-8B) Including removal/ replacement of Vertical Curb & Gutter (CCS Std. D-8B)	1	EACH		
Canyon Granite Cobble (2-4" diameter)	1,143	SF		
1.5 Diameter Rock	5,262	SF		
¾" Diameter Rock	3,936	SF		
Organic Wood Mulch	1,764	SF		
Path Breeze	221	SF		
Accent Boulder Large	9	EACH		
Accent Boulder Small	18	EACH		
Steel Edger	357	SF		
Evergreen Tree (6 Ft. height)	3	EACH		
Deciduous Tree (1.5" cal.)	9	EACH		
Shrub (#5 container)	69	EACH		
Ornate Grass (#1 container)	51	EACH		
Perennial (#1 container)	12	EACH		
Soil Amendment (lump sum)	1	UNIT		
Organic Wood Mulch for Plants (lump sum)	1	UNIT		
Weed Pre-Emergent (lump sum)	1	UNIT		
Drip Irrigation System***	12,326	SF		
VERTI-CRETE Fence Wall Panels (6 Ft. x 9 Ft.)	16	SF		
VERTI-CRETE Fence Wall Panels (6 Ft. x 10 Ft.)	2	SF		
VERTI-CRETE Fence Wall Panels (6 Ft. x 5 Ft.)	4	SF		
VERTI-CRETE Fence Columns	25	EACH		
*Anti Graffiti Control Coating				
** Fence Footings & Caps				
			<b>Grand Total =</b>	

\* Prosoco Sure Klean Weather Seal Blok-Guard & Graffiti Control II (or Approved Equal). City reserves the right to delete Anti Graffiti Control Coating from the contract bid award.

\*\* VERTI-CRETE Wall Panels quote should include cost of Footings and Fence Caps

\*\*\* Drip Irrigation cost to include: One control valve Rainbird xcv-075-prf; Manifold extension; Jumbo valve box: 1; Flush cap: 6 each; Lateral line: ¾" 100 psi polyethylene pipe, length per plan; ¾" drip tubing: length per plan; Class 200 sleeving: length per plan; Fittings and components: per plan

Table Notes:

CDBG – Community Development Block Grant  
CDOT – Colorado Department of Transportation  
CCS – City of Colorado Springs  
CFTN – City of Fountain

ADA Curb Ramp detectable warning panels full width of ramp (Minimum 2 ft. x 5 ft.) shall be constructed utilizing red colored minimum 8000 psi concrete brick pavers and ADA complaint truncated domes as manufactured by “Pavestone Company” or City Approved equal.

Contractor is responsible for Finish Grading, Sub-grade compaction, Road Base Placement, Concrete Form Work, Concrete/Joint Materials & Installation. Contractor is also responsible for concrete saw cutting and removal of minimal sized warning area sections of existing concrete ramps sufficient to install detectable truncated dome concrete brick pavers in accordance with specification details.

City Utilities Division will be responsible for ground bore requirements to the East side of the Gateway Improvement Project for the installation of a north/south main water line for a connection to the East site drip irrigation system to service the new landscaping. City Parks Division will be responsible for connection of the S. Santa Fe water main value to the new main water line feed, which will run north on the East side of the Gateway Improvement Project. City Parks Division will also be available to provide general guidance on the connection of the West side new drip irrigation system to tap into the existing water value manifold to service the new landscaping.

**VERTI-CRETE WALL Description:** All sides of the fence wall and columns shall have rock pattern surfaces. Smooth concrete finished surface areas or bands shall not be considered acceptable except on the column caps. The rock pattern fence wall panels and column rock pattern surfaces shall be finished with 3-color concrete stains utilizing Kwal Paint Stone FX Acrylic/Polysiloxane Base plus smokey beige and two high-lites consisting of nutmeg and dark walnut stains. Stain colors shall be similar to an existing Verti-crete wall located at the southwest corner of Grinell Street/Wageman Drive in the Security Subdivision area. A finish coat of Anti-Graffiti Control product shall also be applied to the fully constructed fence wall including columns and caps after the Kwal concrete color stain has properly cured. Contractor shall utilize the following Anti-Graffiti product: Prosooco, Inc. Sure Klean Weather Seal Blok-Guard & Graffiti Control II.

The concrete fence wall is proposed for installation along the southern and western property lines of the Fountain Creek Gateway Bridge to be constructed on City right-of-way property lines. The project site is relatively flat with a slight grade sloping southeasterly to US85/Santa Fe.

VERTI-CRETE Bidder quotes must state total quantity and unit prices for (1) each fence wall panel; (2) each fence/wall Column; (3) each cast-in-place Column Pier Footing; and (4) each gallon of Graffiti Control Finish Coating. All specified concrete surface Kwal Paint Base and 3-color stain costs shall be included in the unit prices for each column and fence wall panel as noted above.

All column pier footing setups including reinforcing steel placement will be inspected by City of Fountain personnel prior to any concrete material being placed/poured into the excavated pier hole. Contractor must obtain necessary utility locates prior to staking out and/or excavating pier footings.

**Note:** For Alternative Wall Product Bids please cross out and adjust typical unit dimensions and quantities to match the alternative product manufacturer specifications. Bidder must provide detailed product specifications and drawings with their bid so the City of Fountain can adequately evaluate equivalency of any bid alternative submittal.

**The successful bidder will be required to furnish proof of worker's compensation and public liability insurance. The successful bidder must also obtain a City of Fountain business license. Contractor(s) must provide the City a minimum \$5000 Surety Bond prior to starting any portion of the project and specifically as it pertains to fence wall construction. All cost associated with said insurance, business license and surety bond shall be included in the bidder quoted prices for other work items and will not be paid for separately.**

Bid quotes must be for all Materials & Labor. The Contractor shall furnish any equipment required for concrete fence/wall installation and general landscape design. Contractor shall warranty all defects in material and work for a minimum one-year period from time of completion.

**This project is funded through a federal Housing & Urban Development (HUD) Community Development Block Grant (CDBG) awarded to the City of Fountain through El Paso County. As such, all applicable federal funding provisions must be adhered to in completing this project.** This includes Davis-Bacon prevailing wage provisions for all on-site wall construction. The regulatory definition of "construction" includes "manufacturing or furnishing of materials, articles, supplies or equipment on the construction site" It is anticipated that the manufacturing of the pre-cast concrete fence wall panels will be performed off site as such Davis-Bacon provisions should not apply to such manufacturing work. However, all workers must be paid in accordance with Davis-Bacon provisions for any on-site work.

**All Bidders must adhere to applicable provisions of the attached El Paso County CDBG Contract and Subcontract Provisions.** A Federal Special Provisions Section with applicable Standard, Documents and Forms has been included with this Request for Bids to help prospective contract bidders meet required federal funding provisions.

**The City of Fountain has the option to award the contract to Primary Contractor and generally to the lowest responsible and responsive bidder of the requested services to be performed. The Primary Contractor will be permitted to sublet a portion of the Contract, however the Contractor's organization shall perform work amounting to 50 percent or more of the total contract cost. The calculation of the percentage of subcontracted work shall be based on the Primary Contractor unit prices rather than subcontracted unit prices.**

Sealed Bid Quotes for the Fountain Gateway Improvement Project will be received at the offices of the City of Fountain Administration Building, Economic Development Department, 116 South Main Street, Fountain, CO 80817 **until 3:00 P.M. Friday, May 29, 2015**, at which time they will be publicly opened and read aloud.

The Bidder's signature will be considered the Bidder's acknowledgment of understanding and ability to comply with all items in this solicitation. If a Bidder makes any changes or corrections to the bid documents (such as white out, or writing over a figure, etc.) such changes or corrections must be initialed and dated by the person signing the offer prior to its submittal.

**BID FORM SIGNATURE**

By signing in this space, the contractor hereby certifies that this company is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from bidding/proposing on any federal, state, county or municipal Invitations for Bids or Requests for Proposals.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

THE CONTRACTOR hereby Certifies that at the time of this certification, the Contractor does not knowingly employ or contract with an illegal alien and that the contractor has participated or attempted to participate in the basic pilot program in order to verify that the Contractor does not employ any illegal aliens. "Basic pilot program" means the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States department of homeland security.

If awarded the bid, the undersigned hereby agrees to provide required license/insurance documentation and furnish the necessary bonds within seven (7) days of receipt of the "Notice of Award". In addition the undersigned also agrees to begin work within ten (10) days from the date of receipt of the "Purchase Order/Notice to Proceed" and to complete all work by July 14, 2015 deadline.

CITY OF FOUNTAIN

The undersigned acknowledges and understands the terms, conditions, Specifications and all Requirements contained and/or referenced and are legally authorized by the bidder to make the above bid statements or representations.

\_\_\_\_\_  
(Name of Company) (Signature) (Date)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip) (Telephone Number)

\_\_\_\_\_  
(Name typed/Printed) (Title) (Facsimile Number)

FEDERAL TAX ID # _____			
This Company Is: Corporation	Individual	Partnership	LLC

Bidder hereby acknowledges receipt of the following amendments, if applicable Bidder agrees that it is bound by all Amendments identified herein)

AMENDMENT #1 \_\_\_\_\_ DATED: \_\_\_\_\_

AMENDMENT #2 \_\_\_\_\_ DATED: \_\_\_\_\_

Each bid must be submitted in a sealed opaque envelope addressed to the City of Fountain, Economic Development Department, 116 South Main Street, Fountain, CO 80817, and plainly marked on the outside as a bid for the project identified above. The envelope shall also bear the name and address of the bidder.

Any proposals received after the time and date stated above will be returned unopened.

All interested contractors are invited to submit a bid quote in accordance with the terms and conditions stated in this "Invitation for Bid Quotes". Any questions regarding this invitation should be submitted to the Economic Development Manager at (719) 322-2056.

The City of Fountain reserves the right to reject any and all bids, waive irregularities and accept the bid which in its opinion best serves the needs and purposes of the City of Fountain.

**Note: The following listed documents must be included with all submitted bids in order to be considered fully responsive. Use this list as a checklist to make sure all required documents are properly executed and submitted with the Bid Forms:**

- \_\_\_\_\_ **Schedule A – Bid Form**
- \_\_\_\_\_ **Schedule G – Exhibit 1 – Bid Bond**
- \_\_\_\_\_ **Schedule G – Exhibit 6 - Minimum Insurance Requirements Certification**
- \_\_\_\_\_ **Exhibit CQS - Contractor Qualification Statement (CDBG Adm. Manual)**
- \_\_\_\_\_ **Exhibit VIII-O -Federal Funded Contractor Certifications (CDBG Adm. Manual)**
- \_\_\_\_\_ **Non-Collusion Affidavit of Prime Contractor**
- \_\_\_\_\_ **Certification Regarding Lobbying**
- \_\_\_\_\_ **Certification of Buy American Procurement**
- \_\_\_\_\_ **Foreign Trade Restriction Certification**
- \_\_\_\_\_ **Debarment, Suspension, Ineligibility or Voluntary Exclusion Certification**
- \_\_\_\_\_ **Equal Employment Opportunity Certification**
- \_\_\_\_\_ **Certification of Non-Segregated Facilities**
- \_\_\_\_\_ **Section 3 & Segregated Facilities Certification**
- \_\_\_\_\_ **Exhibit 5C – Section 3 Plan Submission**

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SCHEDULE B

INSTRUCTIONS TO BIDDERS

**B.1 BID ISSUE DATE**

Invitation for Bid (IFB) posted on May 5, 2015.

**B.2 SUBMISSION OF BIDS**

B.2.1 Bids are to be submitted in a sealed envelope to  
Mrs. Kimberly Bailey  
Economic Development Manager  
City of Fountain  
116 S. Main St.  
Fountain, CO 80817

B.2.2 Date/Time: Bids shall be received on or before: **3:00 P.M., Friday, May 29, 2015.**

B.2.3 Non-refundable Fee for Bidding Documents: **None Required**

B.2.4 **Bid Bond is required only if total bid exceeds \$50,000.00. (Also see B.11 and B.21)**

\*\*\*\*\*LATE BIDS WILL NOT BE ACCEPTED\*\*\*\*\*

**B.3 LATE BIDS/LATE MODIFICATIONS OF BIDS**

B.3.1 Bids received in the office designated in B.2 above, after the exact time set for opening are considered "late bids", and will not be accepted by the Bid Opening Official. Bidders are solely responsible for insuring their bids arrive on time and to the place of bids specified in the Invitation for Bid.

B.3.2 The City of Fountain will not consider a late bid or late modification of bid unless:

- (1) There is conclusive evidence that the bid was submitted to the office designated in B.2 above, on time and was mishandled by the City of Fountain ( i.e. lost or misplaced) City Contracting personnel responsible for handling/receiving bids. Mishandling by other units or offices of the City of Fountain does not constitute City Contracting personnel.
- (2) Or – it was the only bid received.

**B.4 MISTAKES IN BIDS - CONFIRMATION OF BID**

When it appears from a review of the bid that a mistake has been made, the bidder may be requested to confirm their bid. Situations in which the confirmation may be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. All mistakes in bids will be handled by the Public Works Director at his discretion.

**B.5 PROCUREMENT RULES AND REGULATIONS**

It is the bidder's responsibility to advise the Contracting Analyst listed in these bidding documents of any potential discrepancies, conflicting statements, clauses or specifications prior to the bid opening date and time.

**B.6 MINOR INFORMALITIES/IRREGULARITIES IN BIDS**

B.6.1 A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to other bidders. The

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defect or variation is considered immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the services being acquired.

B.6.2 If the City Economic Development Manager determines that the bid submitted contains a minor informality or irregularity, then the Manager shall give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid, or waive the deficiency, whichever is to the advantage of the City. In no event will the bidder be allowed to change the bid amount. Examples of minor informalities or irregularities include but are not limited to the following;

B.6.2.1 Bidder fails to sign the Bid, but only if the unsigned bid is accompanied by other material evidence, which indicates the bidder's intention to be bound by the unsigned bid. (Such as Bid bond, or signed cover letter which references the bid # and amount of bid)

B.6.2.2 Bidder fails to acknowledge an Amendment - this may be considered a minor informality only if the Amendment, which was not acknowledged, involves only a matter of form or has either no effect or merely a negligible effect on price, quantity, quality, or delivery of the item or services bid upon.

### **B.7 REJECTION OF BIDS**

Any bid that fails to conform to the essential requirements of the invitation for bids will be rejected.

B.7.1 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 invitation for bids.

B.7.2 A bid shall be rejected when the bidder imposes conditions that would modify requirements of the invitation or limit the bidder's liability to the City, 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:

B.7.2.1 Protects against future changes in conditions, such as increased costs, if total possible costs to the City cannot be determined.

B.7.2.2 Fails to state a price and indicates that price shall be "price in effect at time delivery".

B.7.2.3 States a price but qualifies it as being subject to "price in effect at time delivery".

B.7.2.4 Takes exceptions to the invitation for bids terms and conditions.

B.7.2.5 Inserts the bidder's terms and conditions.

B.7.2.6 Limits the rights of the City under any contract/invitation for bid clause.

### **B.8 ESTIMATED QUANTITIES**

If the Bid schedule herein contains estimated quantities this provision is applicable. The quantities listed for each of the items in the bid schedule are only estimated quantities. Contractors are required to bid a firm Unit cost for each item specified. The actual quantities ordered may fluctuate up or down. The unit prices proposed by each bidder will remain firm and will not be re-negotiated if the estimated quantities are not met or are exceeded. This clause will take precedence over any/all other estimated quantity clauses that conflict with this clause.

For bidding purposes, if there is a conflict between the extended total of an item and the Unit Price, the Unit price shall prevail and be considered as the amount of the bid. All Unit prices shall include all

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necessary overhead and profit. Items not listed in the bid schedule such as overhead, profit, mobilization, de-mobilization, bonding, etc shall be distributed throughout the bidder's Unit Prices for the items listed in the bid schedule.

**B.9 NUMBER OF COPIES**

Bidder shall submit in its sealed and marked envelope, one (1) copy of its bid, signed in ink, and only if applicable, one (1) original copy of the Bid Bond as defined in B.11 and B.21.

**B.10 IDENTIFICATION OF BID**

Bids must be returned in a sealed envelope; solicitation number and date for submission of offers must be clearly marked on the outside in the lower left hand corner:

**Bid ID: 2015 Fountain Gateway Improvement Project**

**Due Date & Time: Friday, May 29, 2015, 3:00 P.M.**

**Company: \_\_\_\_\_**

Any offer that is submitted without being properly marked may be opened for identification prior to the deadline for receipt of offers and then resealed.

**B.11 BID BOND REQUIREMENTS**

A bid bond in the amount of five (5) percent of the amount bid is required to be submitted with your bid only when (1) the total amount of your accumulative bid is more than \$50,000 or (2) is required elsewhere in this solicitation. This Bond must meet the conditions specified under Bond Requirements B.21 and shall be submitted using the form in Section E of this solicitation, or by submitting a cashier's check or certified check. It is anticipated that bids will likely be below \$50,000 for this project. As such Bid Bonds will likely not be required.

**However, the Contractor being awarded a contract must provide the City a minimum \$5000 Surety Bond (Payment & Performance) prior to starting fence wall construction. All cost associated with said surety bond shall be included in the bidder quoted prices for other work items and will not be paid for separately.**

**B.12 SALES TAX**

**No State of Colorado, El Paso County, or City of Fountain Sales or Use Taxes** shall be included in the bid for the work covered by this Contract. After award of bid and execution of a Contract the Contractor shall be provided a letter from the City of Fountain Clerk's Office specifying the sales & use tax exemption eligibility of this subject project along with the City's tax exemption number. The Contractor shall then obtain from the Colorado Department of Revenue any other potentially required State Sales and Use Tax exemption certification for this Project. The tax exemption certification will exempt the Contractor and all subcontractors working on this City project from paying State of Colorado, El Paso County or City of Fountain sales and use taxes on the purchase of equipment, construction materials or supplies used solely for this project. The Contractor shall ensure the Contractor and all subcontractors use the tax exemption certification and tax exemption Project number when purchasing project related equipment, materials or supplies to be incorporated into this project. As such no State of Colorado, El Paso County or City of Fountain sales or use taxes shall be included in the bid prices for the Work covered by this Contract.

**B.13 PREPARATION OF BID OFFER**

B.13.1 Bidders are expected to examine the drawings, specifications, bid documents, proposed contract forms, terms and conditions, and all other instructions and solicitation documents. Bidders are expected to visit the job-site to determine all requirements and conditions that will affect the work. Failure to do so will not relieve a bidder from responsibility to know what is contained in this invitation for bid, or site conditions affecting the work. In addition,

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- B.13.2 The bidder certifies that it has checked all of its figures, and understands that the Owner will not be responsible for any errors or omissions on the part of the bidders in preparing its bid.
- B.13.3 All items, (unless the invitation specifically states otherwise) including any additive or deductive alternates on the bid schedule, **must** be completely filled out or the bid will be determined non-responsive and ineligible for consideration for award.
- B.13.4 The bidder declares that the person or persons signing this bid is/are authorized to sign on behalf of the firm listed and to fully bind the bidder to all the requirements of the solicitation.
- B.13.5 The bidder certifies that no person or firm other than the bidder or as otherwise indicated as any interest whatsoever in this bid/offer or the Contract that may be entered into as a result of this bid/offer and that in all respects the offer is legal and firm, submitted in good faith without collusion or fraud.
- B.13.6 By submitting a bid the bidder certifies that it has complied and will comply with all requirements of local, state, and federal laws, and that no legal requirements have been or will be violated in making or accepting this bid. Bidders are expected to review the City's Procurement Rules and Regulations (See B.5) which will be used when determining a bidder responsive and responsible and awarding contracts in the best interest of the City.
- B.13.7 If there is a discrepancy between the unit price and the total price, the unit price shall be used to determine the applicable total price. Bidders are responsible for including profit, and overhead associated with the project when determining their unit prices.

### **B.14 BASIS OF AWARD**

The City of Fountain intends to award a contract resulting from this solicitation to the lowest, responsive, responsible bidder, whose offer conforming to the solicitation, will be most advantageous to and in the best interest of the City of Fountain, cost or price and other factors considered.

- B.14.1 In addition to other factors, bid/offers will be evaluated on the basis of advantages and disadvantages to the City that might result from offers received.
- B.14.2 The City reserves the right to reject any or all proposals and to waive informalities and/or irregularities in the bid offer.
- B.14.3 Bid offers that include a base bid and add or deduct alternates will be evaluated and awarded as follows. At bid opening, the City will announce a Budgetary Control Dollar Amount to be used for determining the low bidder. The City intends to award a contract for the base bid item if the Budgetary Control Amount is not exceeded, to the lowest responsive and responsible bidder.
  - B.14.3.1 If the Budgetary Control Amount is exceeded by all bidders and the City cannot obtain approval to exceed the Budgetary Control Amount, then the deductive alternate(s) will be subtracted from each bid accordingly and the award made to the resulting lowest responsible bidder that does not exceed the Budgetary Control Amount. The deductive alternates will be deducted in the order in which they appear on the Bid Form.

### **B.15 PERIOD OF ACCEPTANCE**

The bidder agrees that its bid offer shall remain open for acceptance by the City for a period of sixty (60) calendar days from the date specified in the solicitation for receipt of bids. Time of completion for this contract will be adjusted according to actual award of contract and issuance of Notice to Proceed.

**B.16 CONTRACT AWARD**

The signature of the bidder indicates that within ten (10) calendar days from acceptance of its bid offer it will execute a contract with the City of Fountain and if indicated in this solicitation, furnish a project specific Certificate of Insurance naming the City of Fountain as Additional Insured, obtain City Business License, furnish Surety & other applicable Bonds and any other documents required by the Specifications or Contract Documents.

**B.17 NOTICE TO PROCEED**

Work may not start under any awarded contract until a written notice to proceed is issued by the City of Fountain. The City of Fountain may issue the Notice-to-Proceed anytime after the contract is signed and, if required, insurance and bonds have been provided in accordance with B.21 below.

**B.18 AMENDMENTS TO THE SOLICITATION**

Amendments are also referred to as addendum or addenda; and these terms shall be considered synonymous. The City of Fountain will post all addenda at the Economic Development department. It is the bidder's responsibility to check for posted addenda or contact the Economic Development manager listed in B.20 below to confirm the number of Amendments which have been issued.

B.18.1 If this solicitation is amended, then all specifications, terms and conditions, which are not amended, remain unchanged.

B.18.2 Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid offers, or (3) by letter or facsimile.

B.18.3 Acknowledged amendments must be received prior to bid opening. Bidders are encouraged to include signed addenda or initialed acknowledgment with returned bids.

**B.19 EXPLANATIONS TO PROSPECTIVE OFFERORS**

Any prospective bidder desiring an explanation or interpretation of the solicitation documents, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective Bidders before the time for submission of offers. Oral explanations or instructions given before the opening of bids will not be binding. Any information provided to a prospective bidder during the bid preparation stage will be promptly furnished to all other prospective bidders as an amendment to the solicitation if that information is necessary in submitting bid offers or if the lack of it would be prejudicial to other prospective bidders.

**B.20 QUESTIONS AND OTHER REQUESTS FOR INFORMATION**

All questions shall be submitted in writing to the following specified individual. The preferred method of submitting written questions is via e-mail. All questions must be received prior to the cutoff date for questions which will be established at the pre-bid conference.

<b>All questions shall be directed to:</b>	Mrs. Kimberly Bailey Economic Development Manager Ph. 719-322-2056 <a href="mailto:kbailey@fountaincolorado.org">kbailey@fountaincolorado.org</a>
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**B.21 BOND REQUIREMENTS**

**B.21.1 Bid (offer) Bond**

The Bidder is required to furnish with their bid a bid bond in the form of certified check, cashier's check or surety bid bond acceptable to the Economic Development Manager in the sum equal to at least 5% of the total amount of the Proposal payable without condition to the City of Fountain if; (1) the total amount of your accumulative bid is more than \$50,000 or (2) is required

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elsewhere in this solicitation.

- a. The Bid Bond shall guarantee that the bid will not be withdrawn or modified for a period of sixty calendar days after the time set for the receipt of bid offers, and if accepted within those sixty calendar days, that the person, firm or corporation submitting same shall within ten (10) calendar days after being notified of the acceptance of its bid offer, enter into a Contract and furnish the required bonds and all insurance certificates called for under this invitation for bid.
- b. The Bid Bonds of unsuccessful bidders will not be returned to the respective bidders unless a self addressed stamped envelope is provided along with a written request for bid bond return. However, if a certified check or a cashier's check is submitted in lieu of the Bid Bond, it will be returned as soon as possible after the lowest responsive and responsible bidder is determined and a contract is executed.
- c. In the event the bidder whose bid offer is accepted fails to enter into the contract and/or furnish the proper bonds, its certified check, cashier's check or surety bid bond will be forfeited in full to the Owner.

**B.21.2 Performance, Labor and Materials Payment, and Maintenance Surety Bonds**

The Contractor shall furnish a minimum \$5,000 Performance & Labor/Material Payment Surety to the City of Fountain within ten (10) calendar days after notification of award of a contract. Maintenance Bond will not be required on this project unless the Bid is over \$50,000. The cost of said surety shall be included in Contractor's bid offer.

**B.21.2.1 Bonds shall:**

- Be for the in the minimum amount of \$5,000 (Bids over \$50,000 shall require 100% Surety).
- Guarantee the Contractor's faithful performance of the work under this contract, and the prompt and full payment for all labor and materials involved therein.
- Guarantee protection to the City of Fountain against liens of any kind.
- Be, when a surety bond is furnished, from a surety company operating lawfully in the state of Colorado and shall be accompanied with an acceptable "Power-of-Attorney" form attached to each bond copy.
- Be issued from a surety company that is acceptable to the City of Fountain.
- Be submitted using forms similar to those attached in Schedule H of this solicitation.

**B.22 SCOPE OF SERVICES/STANDARD SPECIFICATIONS**

Standard Specifications and project specific specification references are included in this solicitation. See Schedule G & Construction Details.

**B.23 TYPE OF CONTRACT**

It is the intent of this Invitation for Bids (IFB) to award a firm fixed price Contract based on the prices offered by the lowest responsive and responsible bidder. Contract prices shall remain firm and fixed throughout the contract performance period.

**B.24 F.O.B. DESTINATION**

Unless otherwise specified in the invitation for bids, all goods, materials, supplies, equipment or services covered by this solicitation shall be delivered F.O.B. destination, all freight charges prepaid and allowed, within the city limits of the City of Fountain, Colorado, at the location indicated in the awarded contract.

**B.25 BID RESULTS**

The City of Fountain does not mail bid results or tabulations.

You can find the Bid Tabulations on City of Fountain's website [www.fountaincolorado.org](http://www.fountaincolorado.org), under RFP.

**B.26 TERMS, CONDITIONS AND SPECIAL PROVISIONS**

Bidders are advised to pay special attention to Schedules C, Terms and Conditions, Schedule D, Special Provisions and Special Federal Funding Provision Attachments. These schedules and attachments contain requirements that will have an impact on all potential bidders, such as Liquidated Damages, Indemnification, Federal Labor Standards, CDBG Provisions, type of contract, and delivery schedule.

**B.27 APPROPRIATION OF FUNDS**

B.27.1 In the event funds are not appropriated in whole or in part sufficient for performance of the City's obligations under this solicitation or appropriated funds may not be expended due the City Charter spending limitations, then the City may terminate this solicitation or award of this solicitation without compensation to bidders.

B.27.2 In accord with the City Charter, performance of the City's obligations under any resultant Agreement or Contract is expressly subject to appropriations of funds by the City Council or receipt of Federal Grant Funds, and the City may terminate that Agreement or Contract without compensation to the Contractor.

**B.28 EQUAL EMPLOYMENT OPPORTUNITY**

B.28.1 In connection with this procurement, the contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status or disability. The contractor will take affirmative action to ensure that all applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, age, marital status or disability. 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 will, in all solicitations or advertisements for employees placed by or on behalf of the contractor; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin.
- The Contractor will comply with all equal employment opportunity provisions, rules, regulations and executive orders issued by the City of Fountain, State of Colorado and the Secretary of Labor.
- The Contractor will furnish all information and reports required by any equal employment opportunity provisions, rules, regulations and executive orders and will permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with such Rules, Regulations, and Orders.
- In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such Rules, Regulations, or Orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further City contracts.
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**B.29 PERIOD OF PERFORMANCE**

The contractor shall complete all work on or before **July 14, 2015** after the Notice of Contract Award to be issued on or before **May 15, 2015.** An official Notice to Proceed will be issued upon receipt of fully executed contract and all required contract submittal documents. The contractor will start contract work promptly within ten (10) days from the date of receipt of the Notice-to-Proceed and continue to work diligently until all work is completed and accepted by the City.

**B.30 VISA AND ELECTRONIC FUNDS TRANSFER**

N/A

**B.31 ILLEGAL ALIENS - PUBLIC CONTRACTS FOR SERVICES**

Illegal Aliens - Public Contracts for Services - Compliance with Title 8, Article 17.5, Colorado Revised Statutes:

The Contractor acknowledges, understands and agrees, that:

- (a) In the performance of any work or the provision of any services by the Contractor under this Contract, the Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract; or
- (b) Enter into a contract with any subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or under the subcontract to this contract;
- (c) The contractor has verified or attempted to verify through participation in the basic pilot program that the contractor does not employ any illegal aliens and, if the contractor is not accepted into the basic pilot program prior to entering into a public contract for services, that the contractor shall apply to participate in the basic pilot program every three months until the contractor is accepted or the public contract for services has been completed, whichever is earlier. This provision shall not be required or effective in this Contract if the basic pilot program is discontinued. "Basic pilot program" means the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States department of homeland security.
- (d) The contractor is expressly prohibited from using basic pilot program procedures to undertake pre-employment screening of job applicants while this Contract and any services under this Contract is being performed.
- (e) If the contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall:
  - (1) Notify the subcontractor and the City within three days that the contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
  - (2) Terminate the subcontract with the subcontractor if within three days of receiving the notice the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- (f) The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the department may undertake pursuant to the authority established in Section 8-17.5-102 C.R.S.
- (g) If the contractor violates or fails to comply with any provision of C.R.S. 8-17-101 et seq, the City may terminate this Contract for breach of contract. If this contract is so terminated, the Contractor shall be liable for any actual and consequential damages to the City.

**B.32 BID DOCUMENTS**

B.32.1 The following listed documents must be submitted with your bid in order for your bid submittal to be considered responsive. **Use this list as a checklist to make sure all required documents are submitted.**

- Schedule A - Bid Form**
- Schedule G – Exhibit 1 – Bid Bond**
- Schedule G- Exhibit 6 -Minimum Insurance Requirements**
- Exhibit CQS – Contractor Qualification Statement**
- Federal Funded Contractor Certifications Exhibit VIII-O**
  - Non-Collusion Affidavit of Prime Contractor**
  - Certification Regarding Lobbying**
  - Certification of Buy American Procurement**
  - Foreign Trade Restriction Certification**
  - Debarment, Suspension, Ineligibility or Voluntary**
    - Exclusion Certification**
  - Equal Employment Opportunity Certification**
  - Certification of Non-Segregated Facilities**
- Section 3 & Segregated Facilities Certification**
- Exhibit 5C – Section 3 Plan Submission**

**SCHEDULE C**

**TERMS & CONDITIONS**

**C.1. CONFIDENTIAL MATTERS**

All data and information gathered by the Contractor and its subcontractors, and all reports, recommendations, drawings, documents, and data shall be treated by the Contractor and its subcontractors as confidential. The Contractor and its subcontractors must agree not to communicate and disclose the aforesaid matters to a third party or use them in advertising, publicity, or propaganda and/or in another job or jobs, unless prior written consent is obtained from the City.

**C.2. INDEMNIFICATION**

The Contractor agrees to indemnify and hold harmless the City, its employees, directors or agents, from and against all claims, damages, losses, and expenses, including attorney's fees arising from deaths or accidents or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom, resulting to employees of the Contractor, or its subcontractors, in the work contemplated and done under the Contract, and to indemnify and hold harmless City, its employees, directors, or agents, from and against all claims, damages, losses, and expenses, including attorney's fees, decrees or judgments whatsoever arising from any and all injuries, including death or damages or destruction of property resulting to any third person or persons, corporation, partnerships or associations caused by any act, omission, failure, or neglect of the Contractor, its subcontractors, or agents, servants and employees, or other persons under its supervision or direction in the performance of any work under the terms of the Contract. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable for or by the Contractor or any subcontractor, manufacturer, or supplier under the Workmen's Compensation Act, disability benefit acts, or other employee benefit acts.

**C.3. NON-APPROPRIATION OF FUNDS**

This Agreement and the financial commitments contained herein are subject to appropriation by the City Council of the City of Fountain. In the event that funds are not appropriated for the items, services, or continuations thereof provided hereunder, during the term of this Agreement, the City shall not be obligated to pay any portion of payments remaining unpaid. City agrees to notify Contractor of such non-appropriation at the earliest possible time. No penalty shall accrue to City in the event of such non-appropriation.

The funds appropriated for this Contract are equal to or exceed the Contract amounts for work to be completed in the fiscal year in which this Contract is awarded. For work to be completed in subsequent fiscal years, if any, the City will notify the Contractor of the amount of appropriation for such work after the adoption of the City's Annual Appropriation Ordinance for such years.

**C.4. LAW**

This contract is subject to and shall be interpreted under the law of the State of Colorado, and the charter, City Code, Ordinances, Rules and Regulations of the City of Fountain, a home rule city. Court venue and jurisdiction shall exclusively be in the Colorado District Court of El Paso County Colorado. The contractor shall insure that the contractor and the contractor's employees, agents and officers are familiar with, and comply with, applicable Federal, State and Local laws and Regulations as now written or hereafter amended.

**C.5. INSURANCE REQUIREMENTS**

See Schedule D General Provisions, Section 106, Insurance and Indemnity

**C.6. LIQUIDATED DAMAGES**

See Schedule D General Provisions, Section 108.02, Failure to Complete Work on Time, Liquidated Damages

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SCHEDULE D

GENERAL PROVISIONS

All bids submitted as a result of City of Fountain Invitations for Bids (IFB) shall be in accordance with the Rules, Regulations and Information outlined in this document.

DEFINITIONS AND TERMS

City	City of Fountain, Colorado.
Contract Documents	Contract Documents shall consist of Advertisement for Bids, Instructions to Bidders, Form of Bid or Proposal, Addenda, the signed Agreement, surety bonds, insurance documents, the General and Special Provisions of the Contract, the Plans, the Specifications, the Drawings, including all modifications thereof incorporated in any of the documents before execution of the agreement. The term Plans shall include the term Drawings unless otherwise specified.
Contractor	The person, persons, firm, or corporation to whom a contract is awarded by the City and who is subject to the terms of said contract. Contractor shall include the agents, employees, workmen, Contractors and any assignees of said contract.
Due Date and Time	The scheduled date and time for the receipt of bids, and opening thereof.
Engineer	The City Engineer of Fountain or, designated representative.
Project Engineer/Manager	The individual representing the City of Fountain responsible for Managing and oversight of the Contract.
Notice	Any written notice served pursuant to the terms of the contract. Notice shall be deemed to have been duly served if delivered in person or by registered mail to:  <u>Pre-award</u> The Economic Development Manager listed in the Invitation for Bid.  <u>Post award</u> The Economic Development Manager listed in the Invitation for Bid.  Notice to the Contractor will be to the Chief representative of the Contractor at the site of the project in person; or by registered mail to the place stated in the papers prepared by the Contractor to accompany their proposal as the address of their permanent place of business; or as to the Surety on the performance bond by registered mail to the Surety at the home office of such surety.
Project	The entire improvement proposed by the City to be construed in whole or in part pursuant to the contract.
Proposal Form or Bid Proposal	A contract document prepared by the City upon which the bidder shall submit their bid.
Subcontractor	A person, firm, or corporation, other than the Contractor, supplying labor or materials, or both, or equipment furnished at the site of the project under an Agreement with the Contractor.

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Surety	The person, firm, or corporation that has executed as surety the Contractor's Bid, Performance, Payment and Maintenance Bonds.
Calendar Day	Each and every day shown on the calendar, beginning and ending at midnight.

**SECTION 100**

**PROSPECTIVE BIDDERS**

**100.01 PROCUREMENT RULES AND REGULATIONS**

**100.02 ADVERTISEMENT FOR BIDS**

All bids estimated to exceed \$50,000.00 will be formally advertised under normal conditions.

**100.03 INVITATION FOR BIDS - CONTENT**

The Invitation for Bids shall include the following: (a) Instructions and information to bidders concerning the bid submission requirements, including the time and closing date, the address of the office to which bids are to be delivered; (b) The project description, basis of award, delivery or performance schedule and inspection and acceptance requirements; (c) The contract terms and conditions, including warranty and bonding or security requirements as applicable.

Project specific requirements, terms and conditions, etc. for each solicitation will be modified to reflect the contractual requirements for that particular Invitation for Bids or Request for Proposals. These types of requirements will be specified in Instructions to Bidders, Terms and Conditions, General Provisions, and Specifications.

**100.04 EQUAL OPPORTUNITY**

The City Contracts Office shall be responsible for ensuring the procurement of products, commodities, and services are in a manner that affords all responsible businesses a fair and equal opportunity to compete.

**SECTION 101**

**CONTRACT DOCUMENT INTERPRETATION**

**101.01 INTENT OF CONTRACT DOCUMENTS**

- A. The sections of the contract documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intent of the contract documents is to include in the contract price the cost of all labor and materials, water, fuel, tools, plant, equipment, light, transportation, and all other expenses as may be necessary for the proper execution of the work.
- B. Any work shown on the Plans and not covered in the Specifications, or included in the Specifications and not shown on the Plans, shall be executed by the Contractor as though shown both on the Plans and included in the Specifications. If the Plans and Specifications should be contradictory in any part, the Specifications shall govern. Special specifications shall govern over standard specifications.
- C. If the Contractor, in the course of the work, finds any discrepancy between the Plans and the physical layout, or any errors or omissions in Plans or layout, he shall immediately so inform the Engineer and the Engineer shall promptly verify them. Any work done after such discovery without written consent of the Engineer authorizing the same shall be done at the Contractor's risk.
- D. Any incidental and/or appurtenant items not specifically called for in the Plans and Specifications, but which are necessary to complete the work in accordance with the requirements of good practice, as determined by the Engineer, shall be included as a part of the Contractor's bid price and furnished at no additional cost to the Owner.
- E. In interpreting the contract documents, words describing materials or work which have a well known technical or trade meaning, unless otherwise specifically defined in the contract documents, shall be constructed in accordance with such well known meaning recognized by architects, engineers, and the trade.

**101.02 ORDER OF PRECEDENCE**

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) Terms and Conditions; (b) Proposal Requirements; (c) Contract Form; (d) other documents, exhibits, and attachments (excluding the contract drawings); (e) the specifications; and (f) the contract drawings.

**101.03 SPECIAL PROVISIONS, SPECIAL SPECIFICATIONS**

Special Provisions or Special Specifications may be written to expand upon, modify or cancel these general provisions or the standard specifications. If the special provisions and general provisions are contradictory, the special provisions shall govern. If the special specifications and standard specifications are contradictory, the special specifications shall govern.

**101.04 STANDARD MANUFACTURER**

Wherever the terms "standard", "recognized" or "reputable" manufacturers are used, they shall be construed as meaning manufacturers who have been engaged in the business of fabricating materials, equipment, or supplies of the nature called for by the Specifications for a reasonable period of time prior to the date set for opening of bids, and who can demonstrate to the satisfaction of the City that said manufacturer has successfully installed equipment, materials, or supplies of the type proposed to be furnished in at least three instances and that the performance of such materials, equipment, or supplies for a period of over twelve months prior to the date fixed for opening bids shall, prima facie, be deemed to have been engaged in such business for a reasonable length of time.

**101.05 “OR EQUAL” CLAUSE**

Whenever in any section of the contract documents, any article, material, or equipment is defined by describing a proprietary product, or by using the name of manufacturer or vendor, the term “or equal” if not inserted, shall not be construed in such a manner as to exclude manufacturers’ products of comparable quality, design, and efficiency, subject to review and approval by the Engineer. The Engineer may require that proposed equals be submitted for review and approval.

**101.06 TIME OF ESSENCE**

In as much as the Contract concerns a needed improvement, the provisions of the Contract relating to the time of performance and completion of work are of the essence of this Contract. The Contractor shall begin work on the day specified in the Notice to Proceed and shall prosecute the work diligently so as to assure completion of the work within the number of calendar days or date specified, or the date to which the time for completion may have been extended.

**101.07 PARTIAL WAIVER OR WAIVER BY ACQUIESCENCE**

Partial waiver or waiver by acquiescence of any of the general or special provisions of this contract shall not constitute waiver of any of the other provisions contained in the Contract Documents.

**SECTION 102**

**COMPLIANCE WITH LAWS**

**102.01 LAWS AND REGULATIONS**

This contract is subject to and shall be interpreted under the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Fountain, Colorado, a Colorado Home Rule City. Court Jurisdiction shall exclusively be in the District Court for El Paso County. The Contractor shall insure that the Contractor and the Contractor’s employees, agents, and officers are familiar with, and comply with, applicable Federal, State, and Local laws and regulations as now written or hereafter amended.

**102.02 PUBLIC IMPROVEMENT ASSESSMENT**

If the cost of the improvement to be constructed under the contract is to be assessed upon the owners of land benefited by such improvement, upon complaint of any such landowner that the improvement is not being constructed in accordance with the contract, the City Council may consider the complaint and make such order in the premises as shall be just to ensure compliance with the contract.

**102.03 ALL LEGAL PROVISIONS INCLUDED**

It is the intention and agreement of the parties to this contract that all legal provisions of law required to be inserted, shall be and are inserted. However, if by mistake or otherwise, some such provision is not inserted, or is not inserted in proper form, then upon application of either party, the contract shall be amended so as to strictly comply with the law and without prejudice to the rights of either party.

**102.04 SEVERABILITY**

If any provisions of this contract shall be held unconstitutional, illegal, or void, such finding shall not affect any other provisions of this contract.

**CITY OF FOUNTAIN**

**102.05 CORPORATIONS OR INDIVIDUALS DOMICILED OUTSIDE COLORADO**

Requirements for Corporations or Individuals Domiciled Outside the State of Colorado:

Unless otherwise decided by reason of the amount of the Contract involved, or other good reason, before or at the time that the Contract is awarded to a corporation outside the State of Colorado, such corporation must have carried out the proper procedure authorized to do business in the State of Colorado, designate a place of business therein, and appoint an agent for service of process. Such corporation must furnish the City with a certificate from the Secretary of the State of Colorado to the effect that a Certificate of Authority to do business in the State of Colorado has been issued by his office and there shall also be procured from the Colorado Secretary of State a photostatic or certified copy of the designation of place of business and appointment of agent for service of process, or a letter from the Colorado Secretary of State that such designation of place of business and agent for service of process have been made. In the event the successful bidder is an individual operating a sole proprietorship, a partnership or joint venture, the execution of these Contract Documents by such successful bidder shall amount to an appointment of the Sheriff of El Paso County, Colorado, as the agent for service of process of such successful bidder for any and all disputes that may arise under the Contract with acknowledgment that the State of Colorado shall be the proper venue for determination of such a dispute.

**102.06 LICENSES AND PERMITS**

It shall be the responsibility of the successful bidder to obtain, at his expense, all necessary licenses and permits to do the project, in accordance with applicable Federal, State and local laws, regulations and ordinances. Contractor/Subcontractor is required to provide a City of Fountain business license. Contractor/Subcontractor also must provide Traffic Control and Barricade Plans to be approved by the City Engineer for all work within public rights-of-way and easements i.e. (curb and gutter, sidewalks, pedestrian ramps and cross pans).

**SECTION 103**

**AWARD AND EXECUTION OF CONTRACT**

**103.01 AWARD**

The contract shall be awarded to the lowest responsive and responsible bidder in the best interests of the City as specified in the Instructions to Bidders of the Invitation for Bids or Request for Proposals.

**103.02 CONTRACTS EXECUTED**

Each contract must be executed in Three (3) original copies and no more. There shall be One (1) executed original counterpart of the Contractor's Performance, Labor and Material Payment and Maintenance Bonds. The City shall retain the counterpart original Bond Documents and Two (2) original executed copies of the contract. Each original Bond counterpart shall have an original Power of Attorney attached. One (1) executed original copy of the contract and copies of the original counterpart bond documents will be delivered to the Contractor. The successful bidder shall provide compensation insurance and public liability and property damage insurance as outlined in the contract. The costs of executing the bonds, contract and insurance, including all notarial fees and expense, are to be paid by the Contractor to whom the contract is awarded.

**103.03 VERBAL AGREEMENTS**

No verbal agreements or conversations with any agent or employee of the City either before or after execution of the contract shall affect or modify any of the terms or obligations contained in any of the documents comprising the contract.

**103.04 CONTRACT SECURITY**

The Contractor shall (If applicable) furnish good and sufficient Performance, Labor and Material Payment and Maintenance Bonds on applicable forms attached hereto in an amount not less than the full amount of the contract price as security for the faithful performance of the contract, for the payment of all persons performing labor and furnishing material in connection with the work, and for all guarantees of materials and workmanship required in the Contract. If at any time during the continuance of the contract a surety on the Contractor's bond or bonds becomes irresponsible, the City shall have the right to require additional and sufficient sureties which the Contractor shall furnish within ten (10) days after written notice to do so. Any additional surety bonds shall cover the entire original contract amount and any increases thereto.

**103.05 BOND FORMS**

Bonds shall be furnished on forms prepared by the City. Copies of the City's Bond Forms will be included in the Exhibits Section of the Invitation for Bids.

**103.06 INDEPENDENT CONTRACTOR**

In the performance of the Contractor's obligations under this contract, it is understood, acknowledged and agreed between the parties that the Contractor is at all times acting and performing as an Independent Contractor, and the City shall neither have nor exercise any control or direction over the manner and means by which the Contractor performs the Contractor's obligations under this contract, except as otherwise stated within the contract terms. The Contractor understands and agrees that the contractor and the contractor's employees, agents, servants, or other personnel are not City employees. The Contractor shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefit to the Contractor or any of the Contractor's employees, agents, servants or other personnel performing services or work under this contract, whether it be of a direct or indirect nature. Further in that regard, it is expressly understood and agreed that for such purposes neither the Contractor nor the Contractor's employees, agents, servants or other personnel shall be entitled to any City payroll, insurance, unemployment, worker's compensation, retirement or any other benefits whatsoever.

**SECTION 104**

**THE CONTRACT: FOLLOWING EXECUTION**

**104.01 MATERIALS**

Unless otherwise stipulated in the contract, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light power, transportation, and other facilities necessary for the execution and completion of the work. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

**104.02 SCHEDULE**

The Contractor shall prosecute the work to guarantee that all work will be completed in the specified schedule. The Contractor shall be responsible for assuring that its subcontractors, suppliers, and engineers/surveyors, at any tier, also prosecute the work according to the Schedule.

Failure of the Contractor to comply with the requirements of this subsection shall be grounds for a determination by the Project Engineer that no further progress payments are to be made until the Contractor is in full compliance.

- A. Project Coordination. The Contractor shall be responsible to coordinate and schedule their work to include utility work anticipated or otherwise. Various City and private utility agencies may be working to install and/or inspect their utilities within the project area. Reasonable delays should be expected for utility lowering, relocations and placement. These delays shall not be reason for granting any monetary change or performance time alteration to the contract.

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- B. Contractor Early Finish or Voluntary Acceleration. Early finish or voluntary acceleration of the schedule by the Contractor is acceptable provided:
1. At the time the Contractor submits the Project Schedule indicating an early finish or voluntary acceleration, the City is notified in writing of actions on the City's part necessary to accommodate the change(s).
  2. The City agrees to such change(s) in writing.
  3. The City is compensated by the Contractor for any inconvenience or expense associated with the change(s).
  4. There is no increased Contract cost.

### 04.03 SCHEDULE OF VALUES

- A. Promptly following the execution of the contract documents for all lump sum contracts, the Contractor shall prepare and transmit to the Engineer two copies of an itemized breakdown showing the unit quantities of each major construction item and the corresponding unit prices. Such unit prices shall contain all costs including profit **and overhead** of each item complete in place. The total cost of all the items shall equal the contract price for the project. This breakdown, when approved by the Engineer, will be used primarily in determining payment due the Contractor on periodical estimates. If, in the opinion of the Engineer, any unit price submitted by the Contractor is unbalanced, a detailed breakdown of the items contained in the unit will be required.
- B. For contracts bid on a unit price basis, payment shall be made based on the actual number of units installed or performed that are complete, however, payment shall not exceed the total contract amount unless previously approved by Change Order.

### 104.04 SURVEYS

- A. **Unless otherwise specified in the Contract documents**, the City will furnish all site surveys, easements, pipeline licenses, etc., necessary to authorize construction of any permanent works required in the Contract, where such work is to be done on property other than the City's.
- C. The project limits of construction shall be within the public property, right-of-way and/or easements. The Contractor shall not trespass on premises outside of the limits of construction for this project, unless permission to do so is granted by the property owner in writing. Copies of any such grant shall be furnished to the City prior to the performance of any work outside the limits of construction.

### 104.05 TAXATION

The Contractor's payment or exemption of State of Colorado, El Paso County and City Sales and Use Taxes shall be as specified in the as specified in the Instructions to Bidders of the Invitation for Bids or Request for Proposals.

### 104.06 ASSIGNMENT OF CONTRACT

No assignment or transfer by the Contractor of this contract or any part thereof or of the funds to be received there-under by the Contractor will be recognized unless such assignment has had the prior written approval of the City and the surety has been given due notice of such assignment. Such written approval by the City shall not relieve the Contractor of the obligations incurred by them under the terms of this contract. In addition to the usual recitals in assignment contracts, the following language must be set forth:

It is agreed that the funds to be paid to the assignee under this assignment are subject to a prior lien for services rendered or materials supplied for the performance of the work called for in said contract in favor of all persons, firms, or corporations rendering such services or supplying such materials.

**104.07 SUBCONTRACTS**

The Contractor shall as soon as practical after signing the contract, notify the Project Engineer/Manager in writing, giving the names and qualifications of all subcontractors proposed for work within ten (10) business days of notice of award. The City shall have the right to reject subcontractors who are debarred or suspended from doing business with the City of Fountain. The Contractor shall notify the Engineer of each subcontract he awards, giving:

- A. Name, address, and telephone number of the subcontractor
- B. Branch of work covered
- C. Total price of subcontract
- D. Date of subcontract

It shall be the responsibility of the Prime Contractor to file with the Engineer copies of applicable permits and licenses required to do the subcontracted work.

**104.08 OTHER CONTRACTS**

The City may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with City employees and shall carefully adapt their scheduling and performance of the work to accommodate the additional work, heeding any direction that may be directed by the Project Engineer/Manager. The Contractor shall not commit or permit any act, which will interfere with the performance of work by any other contractor.

**SECTION 105**

**CONSTRUCTION SITE**

**105.01 LANDS TO BE USED FOR WORK**

- A. The City shall provide as indicated the lands upon which the work under this contract is to be done, right-of-way for access to same, and such other lands which are designated on the Drawings for the use of the Contractor, unless otherwise noted in the contract documents.
- B. The Contractor shall provide at their expense and without liability to the City any additional land and access thereto that may be required for temporary construction facilities, or for storage of materials. All such costs will be considered as having been included in the bids for the contractor.

**105.02 STORAGE OF MATERIALS**

The Contractor shall confine their equipment, apparatus, the storage of materials and operations of Contractor's workmen to limits indicated by law, ordinances, permits, or directions of the City and shall not encumber the project site with materials or equipment not necessary for the project.

**105.03 LOADING OF STRUCTURES**

The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger the structure's safety. The Contractor shall enforce the Engineer's instructions regarding signs, advertisements, fires, and smoke.

**105.04 SANITARY PROVISIONS**

The Contractor shall provide and maintain on the construction work at all times suitable sanitary facilities for use of those employed on this contract without committing any public nuisance. All toilet facilities shall be subject to the approval of the El Paso County Health Department.

**105.05 ACCIDENT PREVENTION**

Precaution shall be exercised at all times for the protection of persons, including employees, and property. The safety provisions of all Federal, State and Municipal laws and any other codes relating to the public safety, shall be strictly observed, and the contractor shall, at all times, whether or not so specifically directed by the Engineer, take the necessary precautions to ensure the protection of the public.

Piling, sheeting and shoring shall be utilized where required to prevent any excessive widening or sloughing of the trench which may be detrimental to human safety, traffic flow, the pipe being placed, trees, or to any existing structure.

Excavated materials shall be placed a safe distance from the sides of the trench. Heavy equipment shall not be used or placed near the sides of the trench unless the trench is adequately braced. If the Engineer or any City Safety Officer or their designated representatives become aware of failure to comply with applicable safety regulations, the Engineer or City Safety Officer or their designated representatives may inform the contractor who shall take immediate steps to remedy the noncompliance. The Engineer or City Safety Officer or their designated representatives shall give written notification to the contractor directing them to correct the unsafe acts or conditions. If the contractor fails to comply with such a notification, the Engineer or City Safety Officer or their designated representatives may issue a "stop work" order in accordance with Section 108.05 of the General Provisions of this contract, and work shall only be resumed after adequate corrective actions have been taken to comply with the safety deficiencies the Contractor has been notified of. Stoppage of work because of noncompliance with prescribed accident precaution measures shall not be subject to claim for changed condition or changes in work, nor for extension of completion time.

**105.06 PROTECTION OF THE PUBLIC WORKS AND PROPERTY**

- A. The Contractor shall provide and maintain all necessary watchmen, barricades, lights, and warning signs and take all necessary precautions for the protection of the public. The contractor shall continuously maintain adequate protection of all work from damage, and shall take all reasonable precautions to protect the City's property from injury or loss arising in connection with the contract. The Contractor shall make good any damage, injury, or loss to their work and to the property of the City resulting from lack of reasonable protective precautions except such as may be due to errors in the contract documents, or caused by agents or employees of the City. The Contractor shall check all cautionary signs at least once a day during this contract.
- B. The Contractor shall continuously maintain adequate protection of all their work from damage and shall protect the City's and adjacent property from injury arising in connection with this contract.
- C. The Contractor will be responsible for any and all damage to property, public or private, that may be caused by their operations in the performance of this contract, and the Contractor shall defend any suit that may be brought against themselves or the City on account of damage inflicted by their operations, and shall pay any judgments awarded to cover such damage.
- D. The contractor shall be responsible for the restoration of all existing surface or subsurface improvements where damaged as a result of construction at no additional cost to the City.

**105.07 PUBLIC ROADS**

The Contractor in executing the work on this project shall not unnecessarily impede or interfere with traffic on public highways or streets. Detours, including surfacing, guard rails, temporary bridges and culverts, as may be shown on the drawings, or ordered by the Engineer to accommodate the general public, residents adjacent to the improvements, and the United States mail shall be provided and maintained by the Contractor in a good workmanlike manner.

All work done within the public right-of-way and/or easements requires an approved Traffic Control Plan by the City Engineering Division unless otherwise provided by City Street Division.

Unless otherwise provided by the City Street Division the Contractor shall provide and maintain in place all barricades, warning signs, lights and other safety devices required to protect the work, divert traffic, and warn pedestrians of open excavation, unfilled trenches, and other areas or conditions which might be hazardous or dangerous during the daylight or dark. Detour routings must first be submitted to the City Engineer for review and approval and shall be signed for the entire route of the detour as required to return the traffic to their street or origination. Detours shall be maintained throughout the period of construction in such a manner as to provide the least amount of disruption to normal traffic flow

All signing and barricading shall conform to the latest edition of the Manual of Uniform Traffic Control Devices for Street and Highways, refer to Section 800. The Traffic Engineer may require flag persons or off-duty police officers for traffic direction.

**105.08 FAILURE TO MAINTAIN SAFE SITE**

In case of injury to persons or property by reason of failure to erect and to maintain necessary barricades, safeguards, and signals, or by reason of any act of negligence of the Contractor, or Contractor's subcontractors, agents, or employees, during the performance of this contract, the City may withhold payments due the Contractor so long as shall be reasonably necessary to indemnify the City on account of any such injuries, but the City's payment or failure to pay any sum shall not be considered as a waiver of its right under the indemnity provision of this contract.

**105.09 POLLUTION**

The Contractor shall at all times ensure compliance with applicable Federal, State, and Municipal air, water, and noise pollution laws and ordinances. The Contractor shall at all times have the proper sprinkling equipment available and shall apply water in the amount determined by each site condition or as directed by the Engineer. The Contractor shall obtain all necessary permits at Contractor's expense, which may include, but not be limited to, El Paso County or a State Air Emission permit, State of Colorado Construction Activity permit, State of Colorado Dewatering permit and Section 404 Corp of Engineers permit, unless otherwise specified in the Invitation for Bids.

**105.10 CLEAN-UP**

The Contractor shall at all times keep the work area including storage and staging areas, free from accumulations of waste materials. The Contractor is also responsible for any costs associated with cleanup of debris from the work site or storage areas that may inadvertently be scattered outside the area by weather or vandalism. Upon completion of the work, the Contractor shall leave the work area in a clean neat, and orderly condition satisfactory to the Project Engineer/Manager.

**105.11 PROTECTION OF EXISTING CURBS, GUTTERS AND DRIVEWAYS**

The Contractor shall exercise care in protecting existing curbs, gutters and driveways. Curbs, gutters and driveways damaged by the Contractor's operations shall be removed and replaced by the Contractor at Contractor's expense.

**105.12 TEMPORARY CONSTRUCTION**

All temporary facilities, including the Contractor's field office which they may maintain at the site, and additional offices erected by subcontractors, shall be neatly constructed and arranged on the site in an orderly manner. The Contractor shall prepare and submit to the Engineer, for approval prior to starting work, a construction plan layout, showing arrangement of storage areas, temporary buildings, equipment, and work areas. The Contractor shall provide suitable weather-tight storage sheds of capacity required to contain all materials which might be damaged by storage in the open. The Contractor shall at all times keep copies of all contract documents readily accessible at their office at the site.

**105.13 TEMPORARY WATER SUPPLY**

The Contractor shall provide at Contractor's own expense temporary water connections and water supply necessary for the prosecution of the work and permit all contractors on the work to use this supply at a reasonable prorated charge, or by submetering. The Contractor shall pay for all water consumed in the work, and shall arrange with municipal authorities for temporary connections and payment of service charges. (Use most current Code of the City of Fountain). Upon completion of the contract work, all temporary waterlines shall be removed. The project work area is located within the City of Fountain Water Utility Department Service Area. As such, the Contractor must arrange with the Fountain Wter Department for any required temporary construction water connections/hydrant meters in this area unless temporary construction water is trucked into the site from another Water District.

**105.14 TEMPORARY ELECTRIC LIGHT AND POWER**

The Contractor shall arrange with the City Utility Departments for temporary electric light and power necessary for the prosecution of the work unless alternative source of electrical power is secured. The Contractor shall pay for all electric current consumed, and shall permit all contractors on the work to use this supply at a reasonable prorated charge, or by submetering.

**105.15 TEMPORARY HEAT**

The Contractor shall provide adequate, temporary heat required during construction. Until the building or work area is enclosed, heavy tarpaulin shall be used to enclose any space requiring heating or protection from weather during construction operations. After the heating plant is in operating condition and the building is enclosed, heat may be provided from the permanent heating plant if such is approved by the Engineer. In such case, the Contractor shall arrange to operate the plant, connect permanent or temporary radiation or unit heaters, and so maintain the plant during operation that it will be turned over to the City undamaged at the completion of the work. The Contractor shall provide all fuel required. In no case shall salamander heating be used in finished or plastered surfaces; instead, gas-steam radiators, unit heaters, or other suitable and approved means shall be used if the permanent heating plant is not available.

**105.16 TEMPORARY ENCLOSURES**

The Contractor shall provide and maintain temporary enclosures for the work as may be required to permit continuation of interior work during inclement weather, if wall and roof construction has progressed sufficiently to make interior work possible. Temporary enclosures shall include insulation blankets to protect fence wall column reinforced concrete foundation pier construction from inclement freezing weather conditions.

**SECTION 106**

**INSURANCE AND INDEMNITY**

**106.01 CONTRACTOR'S INSURANCE**

The Contractor shall secure and maintain during the life of this contract such insurance policies as will protect Contractor and Contractor's Subcontractors, the City, and each of their officers, agents and employees from claims for bodily injuries, death, or property damage, which may arise from operations under this contract whether such operations be by the Contractor or by any Subcontractor or anyone employed by them directly or indirectly. The Contractor shall not commence work under this contract until Contractor has obtained all insurance required and such insurance has been approved by the City of Fountain. Also, the Contractor shall not allow any Subcontractor to commence work on any subcontract until all similar insurance required of the Subcontractors has been obtained. The following insurance policies are required:

**Worker's Compensation Insurance**

Contractor shall take out and maintain during the period of this contract, Colorado Worker's Compensation Insurance for the Contractor and all employees of the Contractor. If any service is sublet by the Contractor, the Contractor shall require the subcontractor to provide the same coverage for the subcontractor and the subcontractor's employees. Worker's Compensation Insurance shall include occupational disease provisions covering any obligations of the Contractor in accordance with the provisions of the Worker's Compensation Act of Colorado.

**Employer's Liability**

The Contractor shall take out and maintain during the life of this contract, Employer's Liability Insurance with a limit of \$100,000 in an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract and the Contractor shall require each of his Subcontractors similarly to maintain Employer's Liability Insurance on his employees.

**Public Liability**

The Contractor shall maintain during the life of this contract such Public Liability Insurance as shall protect the Contractor against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage, which may arise from operations under this contract whether such operations be by the Contractor or by any Subcontractor or anyone directly or indirectly employed by either of them.

The Public Liability Insurance required by the preceding sub- paragraph shall include the following extensions of coverage:

1. The coverage shall be provided under a Comprehensive General Liability form of policy or similar thereto.
2. X.C.U. Coverage - If the contract requires any work procedures involving blasting, excavating, tunneling, or other underground work, the City may require Standard Blasting or Explosion Coverage, Standard Collapse Coverage and Standard Underground Coverage, commonly referred to as XCU property damage liability coverage. If this coverage is required, it will be specified in the contract and the limits shall be specified in the Special Provisions.
3. The property damage coverage shall include a Broad Form Property Damage Endorsement.
4. Contractual Liability coverage shall be included.
5. Protective Liability coverage shall be included to protect the Contractor against claims arising out of operations performed by Contractor's Subcontractors.
6. Products Liability and/or Completed Operation coverage shall be included.

**Automobile Liability**

The Contractor shall take out and maintain during the life of the contract such comprehensive Automobile Liability Insurance as shall protect the Contractor against claims for damages resulting from (1) bodily injury, including wrongful death, and (2) property damage, which may arise from the operations of any owned, hired or non-owned automobiles used by or for the Contractor in any capacity in connection with the carrying out of this contract.

- A. Other forms of insurance shall also be provided if specified in the Special Provisions.
- B. The minimum acceptable policy limits for each project shall be as set forth below or as specified in the Special Provisions. The required insurance coverage shall in no way lessen or limit the liability of the Contractor under the terms of the contract. The Contractor shall procure and maintain at Contractor’s own cost and expense, any additional kinds and amounts of insurance that in Contractor’s own judgment, may be necessary for his proper protection in the prosecution of the work.

<b>INSURANCE COVERAGE</b>	<b>STATUTORY WORKMEN’S COMPENSATION MINIMUM LIMITS</b>	
Employer’s Liability	each person	\$ 100,000
	<b>COMPREHENSIVE GENERAL LIABILITY</b>	
	<b><u>Insurance Coverage</u></b>	<b><u>Minimum Limits</u></b>
Bodily Injury:	each occurrence	\$ 500,000
	aggregate	\$1,000,000
Property Damage:	each occurrence	\$ 500,000
	aggregate	\$ 500,000
	<b>Comprehensive Automobile Liability</b>	
Bodily Injury:	each person	\$ 500,000
	each accident	\$ 500,000
Property Damage:	each accident	\$ 500,000

- C. The Contractor and all Subcontractors shall include the City of Fountain and the City’s officers, agents and employees as “additional insured parties” on each policy for each project, except for Worker’s Compensation Coverage.
- D. The Contractor shall furnish the Project Engineer with applicable Insurance Policies or Certificates of Insurance with required insurance coverage. They shall contain a provision that thirty (30) days written notice shall be given to the City prior to cancellation or revisions to any of the insurance. These Policies or Certificates of Insurance will be subject to City approval prior to execution of the contract.

**106.02 INDEMNIFICATION**

Contractor agrees that the Contractor shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, costs, including attorney's fees, cause or causes of action, or any liability whatsoever resulting from, or arising out of, or in connection with the Contractor's obligations or actions under this contract, or from any act or obligation of any subcontractor, laborer, materialman or agent of the Contractor.

This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable for or by the Contractor or any subcontractor, manufacturer or supplier under Workmen's Compensation Act, disability benefit acts or other employee benefit acts.

**106.03 THIRD PARTY LIABILITY**

It is specifically agreed between the parties executing this contract that this contract is not intended by any of the provisions to create in the public or any member thereof any third party beneficiary rights whatsoever, or to authorize anyone not a party to this contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this contract.

**106.04 RISK INSURANCE**

Unless otherwise set forth in the Contract Documents, the City shall not maintain risk insurance on the project.

**SECTION 107**

**ROYALTIES, PATENT INFRINGEMENTS, SPECIAL LICENSES AND PERMITS**

**107.01 ROYALTIES AND PATENTS**

The Contractor shall pay all applicable royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and save the City harmless from loss on account thereof except that the City shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified, unless the City has notified the Contractor prior to the signing of the contract that the particular process, design, or product is patented or is believed to be patented.

**107.02 PERMITS, LICENSES AND REGULATIONS**

Permits and licenses necessary for the prosecution of the work shall be secured and paid for by the Contractor. The Contractor shall be responsible for all water and wastewater tap fees and water and wastewater connection fees as set forth in the Code of the City of Fountain, as amended. Projects that involve Building Permits and sprinkler systems will require water or wastewater connection fees or both.

Licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the City, unless otherwise specified. The Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the Plans and Specifications are at variance therewith, he shall promptly notify the Engineer in writing, and any necessary changes shall be adjusted as provided in the contract for changes in the work.

Prior to the start of construction, the Contractor shall procure all permits and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work. Copies of the fully executed permits shall be furnished to the Engineer. It is the responsibility of the Contractor to be aware of the terms and conditions of all permits, and it is the Contractor's responsibility that the terms and conditions are satisfied." (REF. 102.06, 105.09)

**SECTION 108**

**WORK PROVISIONS AND RULES**

**108.01 COMMENCEMENT AND COMPLETION OF WORK**

- A. Pre-construction Conference. After issuance of Notice of Award, or as otherwise established by the City, a pre-construction conference shall be held for review of the construction schedule, Contractors written list of Subcontractors and suppliers, project contracts, utility support plan, water control plan, Traffic Control Supervisor name and telephone number, gradations, test results, certifications, to review procedures for handling shop drawings and other submittals, processing applications for payment, and other pertinent items.
- B. The Contractor shall commence work within ten (10) calendar days after the date specified on the Notice to Proceed and complete the contract within the number of calendar days or by the date specified in the proposal form. (Unless otherwise noted the number of days set out in proposal form are calendar days).
- C. The dates fixed for commencement and completion of the work may be extended by the Engineer. All requests for extension of time by the Contractor shall be made in writing to the Engineer and shall set forth the reasons for such requests. The Engineer shall fix the period of extension, if any. The Engineer's decision shall be binding upon the parties hereto. Requests for extension of time received twenty (20) or more days after the occurrence of the delay will not be honored. No requests for extension of time shall be honored if submitted after the completion date.
- D. If satisfactory execution and completion of the contract shall require work or materials in greater amounts or quantities other than those set forth in the contract, then the contract time shall be adjusted at the time of the execution of the Change Order. No allowance will be made for delays or suspension of the prosecution of the work due to the fault of the Contractor.

**108.02 FAILURE TO COMPLETE WORK ON TIME, LIQUIDATED DAMAGES**

If the Contractor fails to fully perform and complete the work in conformity to the provisions and conditions of the contract within the specified time limit set forth in the contract, including any extensions granted hereto, the Contractor shall pay to the City for each calendar day of delay until such time the contract is complete, liquidated damages at the applicable daily rate below. The amounts shown are considered to be liquidated damages to reimburse the City for the additional cost of construction engineering and contract administration services and in no case are considered a penalty.

<b>Amount of Liquidated Original Contract Amount</b>	<b>Damages per Day</b>
Less than \$50,000	\$300.00
\$50,000 to \$100,000	\$500.00
\$100,000 to \$500,000	\$700.00
\$500,000 to \$1,000,000	\$900.00
Over \$1,000,000	\$1500.00

**108.03 WORK IN BAD WEATHER**

No construction work shall be done during stormy, freezing, or inclement weather, except such as can be done satisfactorily, and in a manner to secure first class construction throughout, and then only subject to permission of the Engineer.

The granting of a time extension for inclement weather does not imply or guarantee that additional compensations for incidental and appurtenant work caused by such weather will be approved or authorized by the Engineer. The Contractor is instructed to include as part of the Contractor's total bid price the costs for such weather delays as can be reasonably anticipated. The Engineer will be the sole judge as to the reasonableness of delays for inclement weather.

**108.04 EMERGENCY WORK**

In an emergency affecting the safety of life or of the work or of adjoining property, the Contractor is, without special instructions or authorization from the Engineer, hereby permitted to act at Contractor's discretion to prevent such threatening loss or injury. Contractor shall also act, without appeal, if so authorized or instructed by the Engineer. Any compensation claimed by the Contractor on account of emergency work shall be determined by agreement or in accordance with the changes in Work Provision of this contract.

**108.05 AUTHORITY OF THE ENGINEER**

- A. The Engineer shall perform technical inspection of the work. The Engineer has authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the contract. The Engineer shall also have authority to reject all work and materials, which do not conform to the contract and to decide questions, which arise in the execution of the work.
- B. The Engineer shall, within a reasonable time after their presentation to the Engineer, make decisions in writing on all claims submitted to the City or the Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the contract documents. The Engineer's decisions shall be final.
- C. **Suspension of Work**  
The Project Engineer/Manager may order the Contractor, by giving fifteen (15) days written notice, to suspend, delay, or interrupt all or any portion of the work required by the contract for a period of up to 10 ten calendar days, for the convenience of the City at no additional cost.

**108.06 CONSTRUCTION OBSERVATION AND INSPECTION**

- A. The Engineer shall at all times have access to the work and the Contractor shall provide proper equipment, materials and labor as required for such access and inspection.
- B. All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. The Engineer shall have the right to reject materials and workmanship, which are defective, or require their correction. Rejected workmanship shall be satisfactorily corrected and rejected materials shall be removed from the premises without charge to the City. If the Contractor does not correct such condemned work and remove rejected materials within a reasonable time fixed by written notice, the City may remove them and charge the expense to the Contractor.
- C. Should it be considered necessary or advisable by the Engineer at any time before final acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall on request promptly furnish necessary facilities, labor and materials. If such work is found to be defective in any material respect due to fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the actual cost of labor and material necessarily involved in the examination and replacement, plus fifteen (15) percent, will be allowed the Contractor.
- D. All materials to be incorporated in the work, all labor performed, all tools, appliances, and methods used shall be subject to the inspection and approval or rejection of the Engineer.
- E. If the Engineer shall point out to the Contractor, Contractor's foreman, or agent any neglect or disregard of the contract provisions, such neglect or disregard shall be remedied and further defective work be at once discontinued.
- F. The Contractor shall execute the work only in the presence of the Engineer or authorized representative, unless provision has been made for the work to proceed without complete engineering supervision or inspection. The presence of the Engineer or authorized representative shall in no way relieve the Contractor of the responsibility of this contract, or be any warrant for the furnishing of bad material or poor workmanship.
- G. The observation of the work by the Engineer is intended to aid the Contractor in applying labor, materials, and workmanship in compliance with the contract provisions. Such observation, however, shall not relieve the Contractor from any of Contractor's contract obligations.

**108.07 CONTRACTOR COOPERATION**

- A. Discrepancies: If the Contractor, as the work progresses, finds any discrepancies between the Plans and physical conditions or any errors in the Plans or layout as given by the stakes or instructions, it shall be the Contractor's duty to inform the Engineer in writing and the Engineer shall address such discrepancy in a reasonable period of time. Any work done after such discovery until authorized will be done at the Contractor's risk.
- B. Workmen, Methods and Equipment: Permission from the Engineer to use any particular methods, equipment or appliances shall not be so construed as to relieve the Contractor from furnishing other equipment or appliances or adopting other methods when those in use prove unsatisfactory to the Engineer, or as to bind the Engineer to accept work which does not comply with the contract.
- C. All work under this contract shall be performed in a skillful and professional manner. The Project Engineer/ Manager shall have the authority to notify the Contractor in writing, that the Contractor remove from the work site any employee the Project Engineer/Manager deems incompetent, careless, or otherwise objectionable to the general public or the City of Fountain.

**108.08 Contractor's Responsibility for Work**

- A. Until the work is accepted by the Engineer as evidenced by the issuance of the Certificate of Completion, the Contractor shall have the charge and care thereof and shall take every necessary precaution against injury or damage to any part thereof by action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before its completion and acceptance and shall bear the expense thereof.
- B. The Contractor shall be responsible for the preservation of all public and private property, trees, fences, monuments, and other property, along and adjacent to the improvements and shall use suitable precautions necessary to prevent damage to pipes, conduits, and other underground structures. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect or misconduct in the execution of the work, or in consequence of the non-execution thereof on the part of the Contractor, such property will be restored by the Contractor and at Contractor's expense to a condition similar, or equal to that existing before such damage or injury to the satisfaction of the City's Project Manager.
- C. It shall be the responsibility of the Contractor, when moving or operating equipment, to make all arrangements for temporary crossings of telephone, transmission, pipe lines, railroad tracks, and irrigation ditches. This work shall not be paid for as a separate item but shall be considered as incidental to the project.

**108.09 PROTECTION OF UTILITIES**

- A. The Contractor's attention is directed to the fact that utilities may encroach on the construction of this project, and also to the importance of protecting all public/private utilities encountered on this project. These may include telecommunications, cablevision, traffic signal lines and power lines, water lines, sewer lines, gas lines, railroad tracks, and other overhead and underground utilities.

Any information concerning underground utilities shown on the drawings is intended to be merely an aid to the Contractor. The accuracy of information with respect to underground utilities is not guaranteed. The Contractor shall make their own investigation, including exploratory excavations, to determine the locations and type of existing mains or service laterals or appurtenances when their presence can be inferred from the presence of other visible facilities, such as building, manholes, inlets, meters and junction boxes, on or adjacent to the site of the work. If the Contractor discovers utility facilities not identified in the plans or specifications or in a position different from that shown in the plans and specifications, the Contractor shall immediately notify verbally and in writing the Engineer and Owner of the utility facility.

- B. Before any excavation is begun in the vicinity of water lines, railroad tracks, or structures, sewer lines, telecommunication conduits or cablevision line, each utility company, department, or company concerned must be notified in advance of such excavation, and such excavation shall not be made until an authorized representative of the utility concerned is at the site.
- C. All utilities encountered must be kept in operation by the Contractor and must be protected and/or repaired at the Contractor's own expense, unless otherwise specified in the contract documents. The Contractor shall be held liable for all damages to any and all public utilities encountered on the project, which damages are due to the Contractor's operations. Such damages shall include all physical damages to utilities and also all damages due to interruption of service of such utilities, when such damages and interruptions are caused by the Contractor's operations.
- D. Where alterations or moving of utilities is not required to permit construction of the project, the Contractor shall take such measures as the Engineer may direct to properly protect these utilities throughout his construction operations and shall cooperate at all times with the proper authorities and/or owners in maintaining service of railroads, conduits, pole lines, transmission lines, pipe lines, sewers, etc., affected by this project.
- E. The costs of damages due to the Contractor's operation or the cost of protecting utilities where alteration or moving is not required to permit construction of the project shall be included in the original contract price for the project.
- F. Should any pipe line, water lines, or gas mains, electrical conduits, sewer pipes, overhead wiring, telecommunication lines, power lines, or any other such utilities, not specifically mentioned and provided for elsewhere as a part of this contract, have to be moved, repaired, reconditioned, or revised due to the construction, or moved temporarily to permit construction of the project the party or parties owning and operating such utilities shall perform the actual work of moving, repairing, reconditioning, or revising such utilities. The cost of this work shall be borne by the utility companies involved, unless other agreements are reached with the City.
- G. Existing Utilities
1. Existing Gas Lines: As of April 1, 1983, Federal law requires anyone who uncovers a gas line to report it to the gas company and allow it to be inspected by the gas company personnel before it is backfilled. The Gas Department is to be notified prior to any excavation around gas lines. A Gas Department inspector is to be notified and present on site prior to construction activities around gas lines.

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2. Existing Sewer Mains and Services: All relocation, replacement protection shown on the plans or determined necessary by the inspector shall be performed according to the latest Wastewater Department Standard Specifications. Minimum 48 hours notice must be given to the Wastewater Department prior to any related work.

The Contractor shall adjust sanitary sewer manhole rims to an elevation acceptable to the City Wastewater Department. The Contractor shall contact the City Wastewater Department twenty-four (24) hours prior to manhole rim adjustments.

3. Existing Water Mains and Services: All relocation, replacement or protection shown on the plans or determined necessary by the inspector shall be performed according to the latest Water Department Standard Specifications and the Water Service Standard Specifications. Minimum 48-hour notice must be given to the Water Department prior to any related work. The Water Department reserves the right to schedule any operations at their discretion and to provide for any requirements determined necessary to perform the work. The Contractor shall coordinate with the Water Department and receive their approval prior to performance of the work.

H. Utility Support Systems:

1. If required by the contract documents, or requested by the Engineer, the Contractor shall submit shop drawings for the method of temporary support for all existing utilities during construction. The temporary support details for existing utilities shall be submitted for review and approval prior to performance of the work. Shop drawings must bear the seal of a Professional Engineer registered in the State of Colorado, unless so waived by the City.
2. Regardless of City approved shop drawings, the Contractor shall be responsible for the satisfactory support of the utility system and any damages that may occur to the utility involved.

I. Electric Utility Installation: Any electric facilities unless otherwise noted are to be relocated or modified by the City of Fountain Electric Department. The Contractor shall coordinate the work with the Electric Department and the Electric Department's Contractor.

J. Telecommunication Agencies: Any telephone facilities unless otherwise noted are to be relocated or modified by the respective private utility company. The Contractor shall coordinate the work with the respective private utility company including but not limited to AT&T, Century Link, Sprint, Century Tel, Comm South, McLeod USA, El Paso County Telephone Company, ICG Communications, Ionex, Sunwest Communications, Thrifty Telephone, XO Communications, Porchlight Communications, Zip Broadband.

K. Cable Television: The cable television utilities are to be relocated by applicable service provider. The Contractor shall coordinate the work with appropriate Cable Television provider.

**108.10 LABOR**

- A. The Contractor shall employ only competent and skilled workmen and foremen in the conduct of work on this contract. The Contractor shall at all times enforce strict discipline and good order among Contractor's employees. The Engineer shall have the authority to order the removal from the work of any Contractor's employee who refuses or neglects to observe any of the provisions of these Plans or Specifications, or who is incompetent, abusive, threatening, or disorderly in conduct, and any such person shall not again be employed on the project.
- B. Colorado labor shall be employed to perform the work to the extent of not less than eighty percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed on this project, as required and defined in Section 8-17-107 C.R.S. 1973.

- C. Eight (8) hours shall constitute a day's labor and Monday through Friday shall constitute a workweek. In no event shall the City be responsible for overtime pay.

**108.11 EMPLOYMENT OF LABOR**

The Contractor shall comply with, and protect and hold the City harmless from any violation of all laws and lawful rules and regulations, both of the State of Colorado and of the United States, relating to Workmen's Compensation, unemployment compensation, Social Security, payment for overtime, and all other expenses and conditions of employment under this contract.

**108.12 EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, sex, color 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, religion, sex, color or national origin. Such actions 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, notices to be provided setting forth the provisions of this nondiscrimination clause.
- D. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color or national origin.

**108.13 FEDERAL FUNDS**

This contract is a Federally assisted construction contract, as such, all applicable federal requirements, terms and conditions, provisions and forms will be included in the bidding documents. Additionally, the Contractor agrees as follows:

- A. The Contractor shall complete and submit with its bid all federal forms and certifications included in the bidding documents.
- E. The Contractor will send to each labor union or representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- F. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- D. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Secretary of Labor, State of Colorado Civil Rights Commission and any other governmental agency entity which may be assisting with the funding under this contract for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- E. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be cancelled, terminated, or

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suspended in whole or in part, and the Contractor may be declared ineligible for further government contracts or Federally assisted construction contracts in accordance with the procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or otherwise provided by law.

- G. The Contractor include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the city, state, or any federal governmental entity may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or threatened with, litigation with a subcontractor or vendor as a result of such direction by the city, state, or any federal governmental entity, the Contractor may request the city, the state, or the United States to enter into such litigations to protect the interests of such governmental entity.

### **108.14 SUPERINTENDENCE**

The Contractor shall give the work the constant attention necessary to facilitate the progress thereof and shall cooperate with the Engineer and with other Contractors or utility company employees in every way possible. The Contractor shall have at all times, on the work, as Contractor's agent, a competent superintendent capable of reading and thoroughly understanding the Plans and Specifications, and who shall have the necessary authority to receive and promptly execute the instructions and orders from the Engineer or the Engineer's authorized representative. Such superintendent shall be furnished irrespective of the amount of work sublet. The Contractor shall supply the Engineer with a list of phone numbers at which the Contractor, his superintendent and foreman can be reached at any time. The assigned Superintendent must adhere to the cooperation requirements specified in Section 108.07 and is subject to removal if so ordered in writing by the Engineer/Project Manager.

### **108.15 PREPARATION**

All vegetation, stumps, and debris and other objectionable objects shall be removed from the area staked out by the Engineer, and where necessary from the area immediately adjacent thereto. Such debris shall be hauled from the site of the construction and wasted as directed by the Engineer.

### **108.16 STAKING WORK**

- A. The Engineer shall provide reference points (horizontal and vertical control) only, unless otherwise noted in the bid proposal and project specifications. If necessary, the Contractor shall engage the services of a licensed surveyor or surveying firm (hereinafter referred to as the Surveyor) to be approved by the Engineer. The Surveyor shall perform all detailed construction layout and staking including the staking of all contract improvements in accordance with the plans and specifications. The Contractor shall be responsible for the correctness and accuracy of the detailed layout of finished structures.
- B. Any instrument man or survey assistant employed on the work by the Contractor or his Subcontractors who is judged by the Engineer to be incompetent shall be removed from the work and replaced by a competent individual.

### **108.17 DEVIATION ALLOWED**

Finished surfaces in all cases shall conform with lines, grades, cross sections and dimensions shown on the approved drawings or described in the Specifications. Deviations from the approved drawings and working drawings as may be required by the expedencies of construction will, in all cases, be determined by the Engineer and authorized in writing. If the Engineer deems it inexpedient to correct work injured or done in an unauthorized manner, an equitable deduction from the contract price of the work done shall be made by the Engineer subject to approval of the City Engineer.

**108.18 RIGHT-OF-WAY**

The City's property/right-of-way will in general be adequate for construction purposes. Nothing marked on the drawings shall be interpreted as giving the Contractor exclusive occupancy of the territory provided by the City. The City and its employees for any purpose, and other contractors of the City, for any purpose required by their respective contracts, may enter upon or occupy portion of the land furnished by the City. When the territory of one contract is a necessary or convenient means of access for the execution of another contract, such privileges of access or any other reasonable privilege shall be granted by the Contractor to the extent, amount, in the manner and at times necessary. No such joint occupancy or use of the territory shall be made the basis of any claim for delay or damages.

**108.19 SHOP DRAWINGS AND SUBMITTALS**

- A. The Contractor shall submit to the Engineer all shop drawings, submittals and schedules required for the work, including those pertaining to structural and reinforcing steel within fifteen calendar days from the date of the Notice of Award. The Contractor shall make any corrections in the drawings required by the Engineer, and resubmit the same without delay.
- B. Three final copies of all shop drawings, submittals and schedules shall be submitted to the Engineer, who after checking will retain two copies and return one copy to the Contractor. The Engineer's approval of shop drawings of equipment and material shall extend only to determining the conformity of such equipment and materials with the general features of the design drawings prepared by the Engineer. It shall be the responsibility of the Contractor to determine the correctness of all dimensions and minor details of such equipment and materials so that when incorporated in the work, correct operations will result.

**108.20 RECORD DRAWINGS**

The Contractor shall maintain an up-to-date set of contract documents, legibly marked, depicting all constructed improvements at the site or as otherwise specified and shall submit a complete set labeled "Project Record" to the Engineer upon completion of the project.

- A. Drawings:
  - 1. Depths of various elements of foundation in relation to finish floor datum.
  - 2. Horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements and project survey control.
  - 3. Location of internal utilities and appurtenances concealed in the construction, referenced to permanent surface improvements and project survey control.
  - 4. Field changes of dimensions and detail.
  - 5. Changes made by Field Order or by Change Order.
  - 6. Details not on original Contract Drawings.
- B. Specifications and Addenda:
  - 1. Manufacturer, trade name, catalog number, and supplier of each product and item of equipment actually installed.
  - 2. Changes made by Field Order or by Change Order.

**108.21 MATERIALS**

- A. Unless otherwise stipulated in the Specifications, all workmanship, equipment, materials, and articles incorporated in the work covered by this contract are to be new and of the best grade of their respective kinds for the purpose. The Contractor shall furnish to the Engineer for the Engineer's approval, the name of the manufacturer of machinery, mechanical and other equipment, which he contemplates installing, together with their performance capacities and other pertinent information including but not limited to instruction manuals pertaining to the use and operation of such machinery, mechanical and other equipment.
- B. When required by the Specifications, or when called for by the Engineer, the Contractor shall furnish for approval full information concerning the materials or articles which he contemplates incorporating in the work. Samples of materials shall be submitted for approval when so directed. Machinery, equipment, materials, and articles installed or used without such approval shall be at the risk of subsequent rejection.

**108.22 TESTING OF MATERIALS**

- A. Tests and Inspections. The City may elect to employ and pay for the services of an approved testing laboratory to perform specified services for the field testing of on-site Soil Compaction Control, Cast-in-Place Concrete, and Asphalt Concrete Pavement.

The Contractor shall perform, or arrange for the performance, and pay all costs in connection therewith, with all other necessary tests and inspections required by the contract documents. The Contractor shall pay for all testing laboratory services in connection with necessary tests verifying conformance of proposed materials and installation with project requirements including, but not limited to: concrete mix design, material gradation tests for embedment, concrete curing strength, steel reinforcement properties, stains & coatings and site fill and backfill materials. The City shall pay for testing laboratory services in connection with tests on materials after incorporation into the project, unless retesting of materials is necessary because of the failure of the materials to meet the project requirements. The Contractor should obtain the City's written acceptance of the testing laboratory before having services performed.

- B. Requirements for Independent Testing Consultants.  
Comply with "Recommended Requirements for Independent Laboratory Qualifications", latest edition, published by the personnel, facilities, equipment and other qualification data, including; Report of inspection of facilities made by the American Council of Independent Laboratories, and basic requirements of ASTM E-329, "Standards of Recommended Practice for Inspection and Testing Agencies for Concrete, Steel, and Bituminous Materials as Used in Construction", latest edition.

Submit to the City for prior approval, the name and address of the proposed testing laboratory with description of personnel, facilities, equipment and other qualification data. Certificate of calibration of applicable testing equipment shall be made by an accredited calibrated agency within 12 months prior to submittal date.

- C. Test Reports  
Testing agency shall be instructed to submit directly to the City three (3) copies of all reports of tests or inspections made, showing compliance, irregularities or deficiencies, identifying project, date of test, location in project, applicable specification section, applicable standard(s) for compliance, observations relating to compliance, name and signature of inspector.
- D. Contractor Responsibilities  
Furnish access to the work, materials, equipment and labor required to accommodate inspections and test when testing laboratory is retained by the City. In the event retesting of materials, or re-compaction is necessary because of the failure of the materials or compaction to meet the project requirements, the cost of said retesting shall be borne by the Contractor.

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Cost of said retest will be deducted from the final payment amount due the Contractor, or invoiced directly to the Contractor at the City's discretion.

**108.23 DIFFERING SITE CONDITIONS**

- A. The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Project Engineer/Manager of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract.
  
- B. The Project Engineer/Manager shall promptly investigate the site conditions after receiving the notice. If the Engineer/Project Manager determines that conditions do materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions encountered, an equitable adjustment shall be made under this clause and the contract modified accordingly.
  
- C. No request by the Contractor for an equitable adjustment to the contract shall be allowed, unless the Contractor has given the proper written notice and the Project Engineer/Manager determine the condition is in fact a Differing Site Condition; furthermore, the City of Fountain shall not be liable for an equitable adjustment under this clause if the Contractor disturbed or repaired the condition without prior inspection by the Project Engineer/Manager, or if the contract is completed.

**108.24 CHANGED CONDITIONS**

- A. When additional information regarding foundation or other conditions becomes available as a result of the excavation work, further testing, or otherwise, it may be found desirable and the City shall have the right to change the location, alignment, dimensions, or design of the work to meet such conditions.
  
- B. During the progress of the work, the City may find it advisable, and it shall have the right to omit portions of the work and to increase or decrease any items as may be deemed necessary or desirable without changing the unit prices in the proposal, provided such increase or decrease does not exceed fifteen percent (15%) of the total monetary value of the original contract. If the material or labor involved in such a change is not included in the unit prices of the contract, but forms an inseparable part of the work to be done under this contract, and the delay involved in asking for the advertising for bids and the letting of a new contract therefore might result in damage, injury, or impairment of the plant, work system or other property belonging to the City, the City may, in its discretion, declare an emergency and require the Contractor to proceed with such alterations and additions. The Contractor will not, however, be required to perform such extra work and furnish such extra materials without a written Change Order from the Engineer. The parties hereto shall agree upon any sum to be paid for said work in advance of performing it. The Contractor shall make no claims for extra work unless the work was performed as authorized by a properly executed Change Order. Additional compensation or credit for work covered by a Change Order must be determined by one or a combination of the following methods:
  - 1. Unit bid prices previously approved.
  - 2. An agreed lump sum.
  - 3. The actual cost of:
    - a. Labor (including foremen and extra supervision if required).
    - b. Materials entering permanently into the work.
    - c. Rental cost of construction plant and equipment used for the work.
    - d. Power and fuel required for the operation of power equipment used for change order work.
    - e. The Contractor shall furnish a breakdown of cost including but not limited to bills, payrolls, invoices and vouchers covering the cost of the work. To this cost there shall be added a fixed fee to be agreed upon, but not to exceed fifteen percent (15%) of the cost of work. The fee shall be compensation to cover the cost of management, insurance, benefits, bond, profit and any other general expenses.

The cost of Subcontractor's work shall be determined according to methods 2 and 3, above, to which the Contractor may add a maximum of fifteen percent (15%), which amount shall be compensation for the cost of the Contractor's management, insurance, benefits, bond, profit, and any other general expenses.

**108.25 CHANGES IN THE WORK**

The City may make written changes in the Plans and Specifications or scheduling of the contract within the general scope of this contract at any time by a written order. If such changes add to or deduct from the Contractor's cost of the work, the contract price shall be adjusted accordingly. All such work shall be executed under the conditions of the original contract except that any claim for an extension of time caused thereby shall be allowed and adjusted at the time of ordering such change or at such time as it can be ascertained.

- A. In giving instructions, the Engineer shall have authority to make minor changes in the work not involving extra cost, and not inconsistent with the purpose of the work. No extra work or change

shall be made unless in pursuance of a written order by the Engineer, and no claim for an addition to the contract sum shall be valid unless the additional work was so ordered.

- B. The Contractor shall proceed with the work as changed and the value of any such extra work or change shall be determined as provided for in the Agreement.
- C. It shall be expressly understood and agreed to by the contractor that no claim for extra work, will be recognized by the City unless same has been ordered in writing by the Engineer and unless claim for such added work has been filed by the Contractor within five (5) days after the end of the calendar month in which such alleged extra work was performed.

**108.26 PROTESTS**

If the Contractor considers any work demanded of him to be outside the requirements of the contract, or considers any record or ruling of the Engineer or of the inspectors to be unfair, he shall immediately upon such work being demanded or such record or ruling being made, as in writing, or written instruction or decision, whereupon he shall proceed without delay to perform the work or to conform to the record or ruling, and, within ten (10) days after date of receipt of the written instructions or decisions, he will file a written protest with the Engineer, stating clearly and in detail the basis of his objection. Except for such protests or objections as are made of record in the manner herein specified and within the limit stated, the written records, rulings, instructions, or decisions of the Engineer shall be final and conclusive. Instructions and decisions of the Engineer contained in letters transmitting drawings to the Contractor shall be considered as written instructions or decisions subject to protest or objections as herein provided. In the event of a protest, the protest shall be presented to the City Engineer, the City Engineer's decision shall be final and conclusive.

**108.27 REMOVAL AND SUSPENSION FOR DEFECTIVE WORK**

All work or material which has been rejected shall be remedied or removed and replaced in an acceptable manner. Additional compensation will not be allowed for such removal and replacement. Any work done beyond the lines and grades shown on the drawings, except as herein provided, will be considered as unauthorized and will not be measured or paid for. Work so done may be ordered removed at the Contractor's expense. Should the Contractor fail to comply promptly with any order of the Engineer made under the provisions of this paragraph, the Engineer shall have the authority to cause said work to be removed and to deduct the cost from any money due, or to become due, from the Contractor. At any time during the course of construction of this project if the provisions of the Plans, Specifications, or contract provisions are being violated by the Contractor or his employees, the Engineer shall have the right and authority to order all construction to cease or material to be removed, until arrangements satisfactory to the Engineer are made by the Contractor for resumption of the work in compliance with the provisions of the contract.

**108.28 CLEANING UP AND FINAL INSPECTION**

- A. The Contractor shall at the completion of the work, remove all rubbish from and about the work and all tools, equipment, scaffolding, and surplus materials and shall leave the work clean and ready for use. In case of dispute, the City may remove the rubbish and surplus materials and charge the cost to the Contractor.
- B. All sewers, conduits, pipes, and appurtenances and all tanks, pump wells, chambers, buildings, and other structures shall be kept clean during construction and as the work or any part thereof approaches completion, the Contractor shall systematically and thoroughly clean and make any needed repairs to them. Contractor shall furnish at Contractor's own expense, suitable tools and labor for removing all water and cleaning out all dirt, mortar, and foreign substances. Any undue leakage of water into the structures such as to make the work, in the opinion of the Engineer, fall short of first class work, shall be promptly corrected by the Contractor at Contractor's own expense.

Cleaning and repairs shall be arranged, so far as practicable, to be completed upon finishing the construction work. Notice to begin the final cleaning, and repairing, if such is needed, will be given by the Engineer, who at the same time will make his final inspection of the work. The Engineer will not approve the final estimate of any portion of the work until after the final inspection is made and the work found satisfactory.

**108.29 CUTTING AND PATCHING**

- A. The Contractor shall do all cutting, fitting, or patching of work that may be required to make its several parts fit together or to receive the work of other contractors shown upon, or reasonably implied by the Plans and Specifications for the completed project, except as otherwise specified in the bid specifications and by the project plans.
- B. Any cost caused by defective or ill timed work shall be borne by the Contractor.
- H. The Contractor shall not endanger any work by cutting, digging, or otherwise and shall not cut or alter the work of any other contractor without the consent of the Engineer.

**108.30 FINAL TESTS**

After completion of the work, the Contractor shall make any and all tests required by the Specifications or by Municipal, State or Federal regulations, and where so provided in said regulations shall furnish the City with certificates of inspection by the Municipal, State or Federal regulation bodies. The Contractor shall also make all tests required by the National Board of Fire Underwriters for the purpose of determining insurance rates or other protection of the City or the public.

**108.31 CORRECTION OF WORK AFTER FINAL PAYMENT**

Neither the final payment nor any provision in the contract documents shall relieve the Contractor of the responsibility for negligence or faulty materials or workmanship within the extent and periods provided by law and by this contract.

**108.32 GUARANTEES**

- A. All work shall be constructed in compliance with standard construction codes, and all materials and workmanship must be guaranteed for a period of two years from the date of final acceptance. The Contractor guarantee period (two-year warranty period) will not begin until the contract is 100 percent complete, as determined by the Engineer. Acceptance of the 100 percent complete contract shall be requested in writing by the Contractor. Any item requiring repair and/or replacement prior to expiration of the two-year warranty period shall be guaranteed for a period of one-year after the date of said correction or repair or for the remainder of the two-year warranty period, whichever is longer.
- B. In placing orders for equipment, the Contractor shall purchase same only under a written guarantee from the respective manufacturers that the equipment supplied will function satisfactorily as an integral part of the completed project in accordance with the Plans and Specifications. Furthermore, the Contractor shall require that the manufacturer agree in writing at the time order of equipment is placed that manufacturer will be responsible for the proper functioning of the equipment in cooperation with the Contractor, and that whenever necessary during the installation period or tuning up period following construction period, the manufacturer will supply without additional cost to the City, such superintendence and mechanical labor and any adjustments and additional parts and labor needed to make the equipment function satisfactorily, even if the same was not shown on approved shop drawings.
- C. "Warranty Inspection" will be conducted prior to the expiration date of the Warranty Period. The City will make a visual inspection of the project to determine whether correction of work is required. The Contractor shall attend such inspection if requested by the City.

**108.32 PROJECT CLOSEOUT**

Prior to the issuing of the Certificate of Completion by the City, the Engineer and Contractor shall conduct a preliminary inspection and develop a "punchlist" of items to be completed by the Contractor to the satisfaction of the Engineer. A final inspection is to be performed upon completion of the punchlist items.

**SECTION 109**

**PAYMENTS AND ACCEPTANCE OF WORK**

**109.01 PAYMENTS AND RETAINAGE**

Payments will be made, and required retainage withheld if applicable, in accordance with this section as the work progresses at the end of each month or as soon thereafter as practicable in compliance with Title 24, Article 91, Section 103 and Section 110, Colorado Revised Statutes, on statements made and approved by the Engineer. In preparing statements, only completed work will be taken into consideration. No payment will be made for materials in storage and/or delivered to the site, unless otherwise approved by the City.

Payment for work performed by the contractor under these contract documents will be made at the approved unit price or lump sum price for each of the several items as listed in the bid and measured as hereinafter specified. Such payment shall compensate the Contractor for all costs in connection with furnishing all labor, equipment and material required and performing the operations necessary to complete the item in accordance with the contract documents. All incidental work essential to the completion of the project in a workmanlike manner, and including cleanup and disposal of waste or surplus material, shall be accomplished by the contractor without additional cost to the City. The cleanup and disposal of waste or surplus material shall be performed during construction or as soon after as is reasonably possible in order to better maintain the aesthetics and safety of the construction area. The quantities listed in the bid are estimated quantities, and are listed only for convenience in comparing bids. Payment will be made for the actual quantities constructed or installed, unless otherwise noted in these contract documents. However, any changes to plan quantity must be approved

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through proper change order procedures, said quantities being measured as specified in the contract documents.

- (1) If the contract exceeds ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00), and is for the construction, alteration, or repair of any highway, public work, or public improvement, structure, and; the contractor has provided Performance, and Payment Bonds: the City of Fountain shall authorize partial progress payments of the amount due under this contract monthly, or as soon thereafter as practicable, to the contractor, if the contractor is satisfactorily performing the contract. If the City of Fountain finds that satisfactory progress is being achieved during any period for which progress is to be made, the City of Fountain may authorize payment to be made in full without withholding retainage. However, if satisfactory progress has not been made, the City of Fountain may retain a maximum of ten percent (10%) of the amount of the requested payment until satisfactory progress is achieved. When the work is substantially complete, the City of Fountain may retain from the remaining unpaid balance that amount the City Contracting Manager, at the advice of the City's project manager, considers adequate for protection of the City, suppliers and subcontractor's, and shall release to the Contractor all the remaining funds associated with completed and acceptable work.

The withheld percentage of the contract price of any such work, improvement, or construction shall be retained on an invoice-to-invoice basis and shall not be cumulative. In other words, if the contractor is not performing satisfactorily the City of Fountain will hold ten percent (10%) of what is actually due to the contractor. for example, if the contractor is behind schedule and has successfully completed fifty percent (50%) of the work, the City of Fountain will only pay forty percent (40%) of the invoice, withholding ten percent (10%) of what is due until the contractor gets back on schedule. Once the City of Fountain determines that satisfactory progress is being made in all phases of the contract, then no retainage will be held on successfully completed work.

- (2) Whenever a contractor receives payment pursuant to this section, the contractor shall make payments to each of the subcontractors of any amount actually received which were included in the contractor's request for payment to the City for such subcontracts. The contractor shall make such payments within seven (7) calendar days of receipt of payments from the City in the same manner as the City is required to pay the contractor under this section if the subcontractor is satisfactorily performing under the contract with the contractor. The subcontractor shall pay all suppliers, sub-subcontractors, laborers, and any other persons who provide goods, materials, labor, or equipment to the subcontractor any amounts actually received which were included in the subcontractor's request for payment to the contractor for such persons, in the same manner set forth in this subsection (2) regarding payments by the contractor to the subcontractor. If the subcontractor fails to make such payments in the required manner, the subcontractor shall pay those suppliers, sub-subcontractors, and laborers interest in the same manner set forth in this subsection (2) regarding payments by the contractor to the subcontractor.

At the time a subcontractor submits a request for payment to the contractor, the subcontractor shall also submit to the contractor a list of the subcontractor's suppliers, sub-subcontractors and laborers. The contractor shall be relieved of the requirements of this subsection (2) regarding payment in seven (7) days and interest payment until the subcontractor submits such list. If the contractor fails to make timely payments to the subcontractor as required by this section, the contractor shall pay the subcontractor interest as specified by contract or at the rate of fifteen percent (15%) per annum, whichever is higher, on the amount of the payment which was not made in a timely manner. The interest shall accrue for the period from the required payment date to the date on which payment is made. Nothing in this subsection (2) shall be construed to affect the retention provisions of any contract.

- (3) **CONTRACTS UNDER ONE HUNDRED FIFTY THOUSAND DOLLARS:** If the contractor is not progressing in accordance with the project schedule or not performing quality work in

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accordance with the specifications, the Project Manager may, at that point start withholding retainage up to and including ten percent (10%) of the total contract amount.

**109.02 CORRECTION OF WORK BEFORE FINAL PAYMENT**

- A. The Contractor shall promptly remove from the premises all materials and work condemned by the Engineer as failing to meet contract requirements, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute Contractor's own work in accordance with the contract and without expense to the City and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.
- B. All removal and replacement work shall be done at the Contractor's expense. If the Contractor does not take action to remove such condemned work and materials within ten (10) days time thereafter, the City may, upon ten (10) days written notice, sell such materials at auction or at private sale and retain the proceeds without compensation to the Contractor.

**109.03 PAYMENTS WITHHELD PRIOR TO FINAL ACCEPTANCE OF WORK**

The City may withhold or nullify the whole or part of any certificate of payment to such extent as may be necessary to protect it from loss caused by:

- A. Defective work not remedied.
- B. Claims filed or reasonable evidence indicating probable filing of claims by other parties against the Contractor.
- C. Failure of the Contractor to make payments properly to subcontractors or for material or labor.
- D. Damage to another contractor.  
When the above grounds are removed, payment shall be made for amounts withheld because of them.

**109.04 ACCEPTANCE OF FINAL PAYMENT**

- A. Upon notice that the work is fully completed, the Engineer will make a final inspection. If the Engineer finds the work acceptable under the contract and the contract is fully performed, the work may be finally accepted by the Engineer under the terms and conditions of the contract. The entire balance found by the Engineer to be due the Contractor, including the retained percentage, less any retention based on; (1) the Engineer's estimate of the fair value of the claims against the Contractor; and (2) the cost of completing the incomplete or unsatisfactory items of work with specified amounts for each incomplete or defective item of work; and (3) retentions required by law, shall be due and payable to the Contractor. The date of completion is the date as specified in the Certificate of Completion issued by the Engineer.
- B. Upon completion of the work under the contract and before the Contractor shall receive or be paid for the Engineer's final statement, the City Contracts Office shall publish in a newspaper published in El Paso County, a notice that the City has accepted such work as completed according to the Plans and Specifications and rules set forth in the contract; that the Contractor is entitled to final settlement; that after the final publication, the City will pay the full balance due under the contract; and that persons having claims for labor or material furnished the Contractor must present their claim to the City Contracts Office prior to the date specified for such payment. Nothing herein shall be construed as relieving the Contractor and the sureties on the Contractor's bonds from any claim or claims for work or labor done or materials or supplies furnished in the execution of the contract.
- C. The making and acceptance of the final payment shall constitute a waiver of all claims by the Contractor against the City.

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- D. If, after the work has been substantially completed, full completion thereof is materially delayed through no fault of the Contractor, and the Engineer so certifies, the City may, upon Certificate of Completion by the Engineer, and without terminating the contract, make payment of the balance due for that portion of the work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment and acceptance of the project shall constitute a waiver of all claims by the Contractor but acceptance shall not constitute a waiver of City claims against the Contractor.
- E. Advertising for Final Payment and processing of the Final Pay Request shall not take place until after the Contractor has submitted Sales and Use Tax Forms to the City of Fountain and said forms have been reviewed and approved by the City Sales Tax Office.

**SECTION 110**

**TERMINATION OF CONTRACT**

**110.01 THE CITY'S RIGHT TO TERMINATE CONTRACT**

- A. In accordance with the City Charter, performances of the City's obligations under this contract are expressly subject to appropriation of funds by the City Council. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the City's obligations under this contract, or appropriated funds may not be expended due to City Charter spending limitations, then the City may terminate this contract without compensation to the Contractor.
- B. If the termination is for failure of the contractor to fulfill the contract obligations, the City may terminate the subject contract for Default, and complete the work by contract or otherwise, and the contractor shall be liable for any additional cost incurred by the City. Prior to issuing a Termination for Default, the City will issue a Notice to Cure allowing the contractor a minimum of ten (10) calendar days to prepare a plan to correct whatever failures are causing the contract obligation failure(s). The City will have the right to accept the plan of correction or to continue with the Termination for Default.
- C. Where the contract has been terminated for Default by the City, said termination shall not affect or terminate any of the rights of the City as against the Contractor or his surety then existing or which may thereafter accrue because of such default. Any retention or payment of monies by the City due the Contractor under the terms of the contract shall not release the Contractor or the Contractor's surety from liability for the Contractor's default.
- D. If the Contractor should become bankrupt and a relief from stay is granted to the City, or if the Contractor should make a general assignment for the benefit of Contractor's creditors, or if a receiver should be appointed on account of Contractor insolvency, or if Contractor should persistently or repeatedly refuse or should fail, except in cases for which extensions of time are provided, to supply enough properly skilled workmen or materials, or if Contractor should fail to make payments to subcontractors or for material or labor so as to affect the progress of the work, or breach, or substantially violate any provision of the contract, then the City, upon the written notice of the Engineer may, without prejudice to any other right or remedy, terminate the contract for default and take possession of the premises and of all materials, tools, equipment, and other facilities installed on the work and paid for by the City, and finish the work by whatever method the City may deem expedient. In such cases, the Contractor shall not be entitled to receive any further payment under the contract.
- E. The City may also terminate this contract for convenience of the City, upon written notice to the Contractor, without additional compensation to the Contractor, unless the Contractor has started or performed portions of the contract prior to receiving such notice. If performance of the contract is underway, the City will be liable only for the portions of work actually satisfactorily completed up to the point of the issuance of the Notice of Termination for Convenience. In no

event shall the City be liable for unperformed work or anticipated profits or overhead. Upon receipt of this notice the Contractor shall immediately: discontinue all services affected (unless the notice directs otherwise), and deliver to the City all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

**110.02 COMPLETION OF CONTRACTS IN DEFAULT**

- A. If for any reason a contract is declared in default, the City shall have the right without process or action at law to take over all or any portion of the work and complete it in any manner the City deems most appropriate. Written notice shall be given the Contractor by the City that the contract has been declared in default, and upon receiving such notice, the Contractor shall peaceably relinquish possession of the said work or the parts thereof specified in the notice.
- B. The City may, at its option and at a rental which it considers reasonable, retain all material, equipment, and tools on the work until the work has been completed.
- C. Neither the City, nor any officer, agent or employee of the City shall be in any way liable or accountable to the Contractor or the Contractor's surety for the method by which the completion of the said work, or any portion thereof, may be accomplished or for the price paid. Should the cost of completing the work be in excess of the original contract price, the Contractor and Contractor's surety shall be responsible for such excess cost. Should the cost of such completion, including all proper charges, be less than the original contract price, the amount so saved shall accrue to the City. Neither by taking over the work nor by declaring the contract in default shall the City forfeit the right to recover damages from the Contractor or Contractor's surety for failure to complete the entire contract.

**110.03 REMOVAL OF EQUIPMENT**

Except as provided in Section 110.01 above, in the case of termination of this contract before completion from any cause whatever, the Contractor, if notified to do so by the City, shall promptly remove any part or all of Contractor's equipment and supplies from the property of the City, failing which the City shall have the right to remove such equipment and supplies at the expense of the Contractor.

**SCHEDULE E**

**PROJECT SPECIFIC SPECIAL PROVISIONS**

**2.01 GENERAL**

Work to be completed under this contract consists of furnishing all labor, materials, equipment, accessories, and performing all operations to complete the project work in accordance with the Project Drawings and Specifications as specified and attached to the bid package.

1. All work shall generally be completed in accordance with the following Technical Specifications:
  - a. Colorado Springs Standard Specifications Manual
  - b. Colorado Springs Standard Plans No. D-6; D-7; & D-8A, B, H, I, J, & K
  - c. CDOT Standard Specifications for Road and Bridge Construction
  - d. CDOT Standard Plans No. M-608-1 & M-609-1
  - e. Pikes Peak Region Asphalt Paving Specifications – Asphalt Binder Grade PG 64-22
  - f. Colorado Springs Pavement Design Criteria Manual

The Contractor is required to visit the jobsite to carefully examine the proposed work. The Contractor shall also thoroughly review the Drawings and Specifications. The Contractor shall satisfy himself as to the character, quality, and quantities of work to be performed, materials to be furnished, and as to the requirements of these Specifications.

All Contractors on this project are required to have on the job site copies of the Project Drawings and Specifications as specified and attached to the bid package and any City approved revisions to said drawings and specifications ( or City Approved Equal Drawings & Specifications as submitted with the Bid).

**2.02 OWNER**

The City of Fountain (hereinafter referred to as Owner) shall administer this project including the finalization of any change orders, pay estimates and payments of such, acceptance of work, and other matters as stipulated in these Contract Documents.

**2.03 ENGINEER**

The Owner will typically be represented by the City Engineer or may alternatively be represented by a professional engineering firm, (hereinafter referred to as Engineer).

**2.04 DRAWINGS**

No detailed construction site plan and profile drawings will be prepared for this project.

**2.05 INSPECTION**

At all times, representatives of the Owner and representatives of other agencies affected by the construction work, and the Engineer or his representative shall have the right to enter and inspect any and all parts of the work for compliance with the Drawings and Specifications.

The Engineer may delegate some or all construction inspection duties to qualified project inspectors. The Engineer shall decide any and all questions that may arise as to the quality and acceptability of the materials furnished, the work performed, the manner of performance, and the progress of the work. He shall decide all questions that may arise as to the acceptable fulfillment of the contract. The decision of the Engineer shall be final.

The Contractor shall give the inspection personnel a minimum of forty-eight (48) hours notice prior to needing inspection.

**2.06 MATERIAL TESTING**

The Contractor shall provide all required materials testing, including geotechnical testing, compaction testing, concrete, and reinforcement testing certifications. The Contractor shall pay for all materials tests as required to demonstrate full compliance with City Standard General Provisions.

**2.07 EXISTING UTILITIES**

The size and location of existing underground utilities, as may be noted on the project Drawings, is from available information as established from existing records, field observations, surveying, and utility potholing. The Contractor shall field verify the existence and location of all existing utilities which might affect the work and shall notify the Owner of such Utilities. The Utilities shown on the project Drawings are noted for informational purposes only and are believed to be correct. However, the Contractor must take sole responsibility for damage to any utility line encountered whether or not shown on the Drawings and whether or not actually located in the field as shown on the Drawings. The Contractor shall notify the utility companies for field locations prior to the start of construction.

If the exact location and depth of existing underground utilities are unknown, the Contractor shall perform all necessary exploratory excavation at his expense to locate these facilities which may affect the work prior to beginning construction. The Contractor shall notify the Engineer immediately of any utility discrepancies or conflicts.

The Contractor shall inform the Engineer of existing utilities that may need to be relocated. The Contractor shall be responsible for contracting, coordinating, and requesting relocations from affected utility owners, and scheduling said relocations in his Work Sequence Plan to meet the Contract Time of Performance.

If the Contractor requests that utility companies relocate their utilities for his convenience in construction of any portion of the work, the cost of such shall be at the Contractor's expense.

The Contractor shall determine the actual location of all existing utilities prior to starting any work that may cause damage to such utilities. The Contractor shall be liable for all damages done to existing utilities in the performance of his work.

Contract time will not be extend to account for repair of utilities that are damaged by the Contractor due to his negligence.

The Contractor will be required to contact all Utility Owners five (5) days prior to beginning excavation and/or grading.

Full compensation for compliance and cooperation, as required by this section, shall be considered to be in the prices bid and paid for the various contract items of other work, and no additional compensation will be allowed.

Utility Problems or Questions	719-440-9517
Central Locating of Utility Lines	800-922-1987

**MISCELLANEOUS UTILITY SERVICES**

Colorado One-Call Dig Alert - 811

Comcast Cable – Don Reynolds	719-491-8221
U.S. West Communications	800-922-1987
Long Distance Lines	800-922-1987
Engineering Division for Inquiries	322-2036

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At least forty-eight (48) hours prior to commencing excavation, the Contractor shall call Central Locating at 811 or 1-800-922-1987 between the hours of 7:30 A.M. and 4:30 P.M., Monday through Friday, for information concerning the location of buried utilities in the area of construction.

**Standard Utility Marking Color Code**

Natural Gas	Yellow
Electric	Red
Water	Blue
Wastewater	Green

“The Contractor shall be responsible for coordination and cost of all utility relocations indicated on the plans and not specified to be done by others. Utility locations shown on the plans are approximate.”

If the exact location and depth of existing underground utilities are unknown, the Contractor shall perform all necessary exploratory excavation at his expense to locate these facilities which may affect the work prior to beginning construction. The Contractor shall notify the Engineer immediately of any utility discrepancies or conflicts.

The Contractor shall inform the Engineer of existing utilities that may need to be relocated. The Contractor shall be responsible for contacting, coordinating, and requesting relocations from affected utility owners, and scheduling any relocations in his Work Sequence Plan to meet the Contract Time of Performance.

If the Contractor requests that utility companies relocate their utilities for his convenience in construction of any portion of the work, the cost of such shall be at the Contractor’s expense.

The Contractor shall determine the actual location of all existing utilities prior to starting any work that may cause damage to such utilities. The Contractor shall be liable for all damages done to existing utilities in the performance of his work.

Contract time will not be extended to account for repair of utilities that are damaged by the Contractor due to his negligence.

The Contractor will be required to contact all Utility Owners five (5) days prior to beginning excavation and/or grading.

Full compensation for compliance and cooperation, as required by this section, shall be considered to be in the prices bid and paid for the various contract items of other work, and no additional compensation will be allowed.

**2.08 FEES AND PERMITS**

The Contractor, prior to commencing any work, shall secure at his own expense all the necessary fees and permits required for the performance of the work. Full compensation for compliance and cooperation, as required by this section, shall be considered to be in the prices paid for the various contract items of other work, and no additional compensation will be allowed.

Contractor shall obtain all other necessary permits from the City of Fountain. The Contractor shall comply with all conditions of all of the required permits.

**2.09 WASTE MATERIALS**

The Contractor shall clean-up any debris created by his construction activities and shall dispose of the same in suitable trash containers on a daily basis. All debris shall be disposed of off-site at a disposal site approved by the Owner. Should the Contractor fail to maintain the construction area in a suitable manner, the Owner will have the right to contract with a third party and withhold any amounts incurred from the Contractor's payment.

**2.10 OPERATIONS WITH OTHERS**

The Owner reserves the right to have other work performed by other contractors and to permit the public utility companies and others to do work adjacent to or within the site. The Contractor shall conduct his operations and shall cooperate with the other parties so as to minimize interference with this other work.

**2.11 CONSTRUCTION STAGING AREA, ACCESS AND EASEMENTS**

CONTRACTOR shall provide for all necessary construction staging areas and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

*A. Limitation on Use of Work Site and Other Staging Areas*

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the work site and other staging areas permitted by Laws and Regulations, and shall not unreasonably encumber the work site and other staging areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the OWNER or occupant thereof, or any third party, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made any such OWNER, occupant, or any third party, because of the performance of the Work, CONTRACTOR, at CONTRACTOR'S sole expense, shall promptly settle with such other party by negotiation or otherwise resolve the claim or other dispute resolution proceeding or at law.

3. CONTRACTOR shall indemnify and hold harmless OWNER, OWNER'S REPRESENTATIVE, OWNER's consultants, the City of Fountain, and the City Councils, Utilities Boards, officers, directors, partners, representatives, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages, causes of action, or liability of any nature (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, OWNER'S REPRESENTATIVE, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

*B. Removal of Debris during Performance of the Work:* During the progress of the Work CONTRACTOR shall keep the work site and other staging areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations. All excess fill materials or those that are unsuitable for use as backfill on the Work Site and other staging areas shall be transported to and disposed of at another work site or facility that has been approved for the disposal of such material by all applicable regulatory authorities. CONTRACTOR shall provide OWNER with proof of disposal of all such material at an approved disposal site or facility.

*C. Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Work Site and other staging areas to make it ready for utilization by each respective OWNER. At the completion of the work CONTRACTOR shall remove from the Work Site and other staging areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

*D. Loading Structures:* CONTRACTOR shall not load nor permit any part of any structure to be loaded

in any manner that will endanger the structure, nor shall CONTRACTOR subject any party of the Work or adjacent property to stresses or pressures that will endanger it.

**2.12 SANITARY FACILITIES**

The Contractor shall provide portable toilet facilities as required during the construction period.

The Contractor shall supply sufficient drinking water from approved sources to all of his employees.

Full compensation for compliance and cooperation, as required by this section, shall be considered to be in the prices paid for the various contract items of other work, and no additional compensation will be allowed.

**2.13 CONTRACTOR'S AND ENGINEER'S REPRESENTATIVES**

The Contractor shall have on the job at all times as his agent, a competent superintendent capable of reading and thoroughly understanding the Drawings and Specifications and being thoroughly experienced in the type of work being performed. The Owner will have a representative on the job site periodically to observe work for conformance with the Drawings and Specifications, and clarify questions the Contractor has relative to the job. The Contractor shall provide accurate records of any field changes made during construction.

**2.14 DUST AND MUD CONTROL**

The Contractor shall use measures to prevent and control dust and mud within the area affected by the project. No additional compensation will be paid to the Contractor for general dust control. A silt fence or sock tubes will be required along the toe of any proposed embankment fill area as may be shown on the drawings. The silt fence and any other erosion control best management practices shall be considered incidental to the project and not paid separately.

The Contractor shall clean off any soil, dirt, or debris tracked onto any adjacent streets. When notified by the Owner that the adjacent streets require cleaning, the Contractor shall clean the streets within 24 hours of such notification, or the Owner shall arrange to have the streets cleaned and shall deduct the cost of such cleaning from the Contractor's payments.

**2.15 TRAFFIC CONTROL AND PEDESTRIAN BARRICADES**

City Forces will erect and maintain necessary warning lights, advance warning signs, detour signs, cones, barricades provide and other basic construction warning signs for this project. Unless otherwise specified in the bid documents the Contractor shall furnish all other necessary flag persons; temporary fence, and sufficient safeguards around all excavations, embankments, obstructions; and any other work for this project for the protection of all work being performed and for the safety of the public and pedestrian traffic, as well as motor vehicles. All signs and barricades shall conform to the Manual of Uniform Traffic Control Devices and meet the requirements of General Provision 107.07 and Section 800 of the Standard Specifications. The Contractor should erect orange plastic safety fencing to help protect fresh concrete work.

The Contractor shall submit (3) copies of any desired Traffic Control Phasing Plan for Owner review and coordination at the Preconstruction Conference. This plan must provide traffic control at all access points, and when loading and unloading equipment and construction material and debris. The Traffic Control Plan shall also address pedestrian traffic along the trails within and adjacent to the site.

The full cost of any flag persons; temporary fence, and sufficient safeguards and additional required traffic control devices, traffic control items, and pedestrian barricades above the basic construction

traffic control items provided by the City shall be include in unit prices of each Contractor bid items as listed each bid schedule on the Bid Form.

**2.16 TIMING**

Construction of this project is to be completed on or before **July 14, 2015**.

**2.17 WATER CONTROL ( SECTION 2.17 IS LIKELY NOT APPLICABLE)**

Until final written acceptance of the project by the Owner, the Contractor shall take every precaution against damage to any part of the project and adjacent land from any cause, including all surface and subsurface water, whether arising from the execution of work or any other cause. The Contractor shall rebuild, repair, restore, and make good all damages to any portion of the work due to causes beyond the control of and without the fault of negligence of the Contractor, including but not restricted to, acts of God, of the public enemy, or of governmental authorities.

The Contractor shall be responsible for the project and shall take such precautions as may be necessary to construct the project in a dry condition and provide for drainage, dewatering, and control of all surface and subsurface water. The Contractor shall erect any necessary temporary structures or other facilities at his expense to control surface water and groundwater. The Contractor is advised that he is working in a drainage channel subject to intermittent and extensive runoff conditions, such that unless the construction area is properly protected, localized flooding and/or extensive soil erosion may occur.

At the Preconstruction Meeting, and prior to beginning any work, the Contractor shall submit a plan for water control and dewatering to the Engineer and Owner for review. The Owner, at his option, may require the Contractor to update the Water Control Plan as conditions warrant.

As part of water control, the Contractor is responsible for furnishing, transporting, and installing all materials and equipment, well points, pumping, channelization, diversion, damming, or other means of controlling surface water, ground waters, runoff from other drainage tributaries flowing into the channel and pipe effluent as necessary to complete all of the work in accordance with the Contract Documents.

**2.18 WORK HOURS**

Normal work hours are from 8:30 AM to 4:30 PM Monday through Friday. Work outside normal hours must be approved in advance in writing by the Owner. Contractor shall be responsible for payment of all overtime expenditures for Owner's Inspection services.

**2.19 PROGRESS**

If the completion of any part of the work or the delivery of materials is behind the approved schedule, the Contractor must submit a plan acceptable to the Engineer for bringing the work up to schedule. The Owner shall have the right to withhold progress payments for the work if the Contractor fails to update and submit the progress/manpower schedule and reports as specified.

**2.20 COORDINATION WITH ADJACENT PROPERTY OWNERS**

The Contractor shall coordinate the removal/relocation of fencing, sprinklers, control boxes and utility services with the adjacent property owners, if applicable.

The Contractor shall perform his work in a manner that minimizes any inconvenience to the public.

**2.21 DISPOSAL SITE**

The Contractor is responsible for the removal of all debris, deleterious material, muck, asphalt, concrete, trees, stumps, remains from clearing and grubbing, and all other materials not used for the construction of the improvements. Disposal of these materials shall not be measured separately but included in the unit price bid for each applicable item on the bid schedule. The Contractor shall designate in writing a disposal site acceptable to the Owners. Further, the Contractor shall consider the following for hauling suitable or disposing of unsuitable materials:

Access to the project beyond the immediate confines of the work area shall be over suitable roadways without violation of any City, County, State, or Federal restrictions for vehicle and truck weights or any other limitation on movement of heavy equipment hauling materials to and from the site. Violation costs, including fines and repairs to either public or private roadways and appurtenance structures, above or below ground level, shall be at the Contractor's expense.

Unless otherwise presented in the Bid Schedule, the Contractor's cost for loading, hauling, daily cleaning of streets, the disposal of concrete and earthwork (excavation) materials (suitable or unsuitable), together with the construction, maintaining and watering of haul roads, dump fees and permits, shall not be paid for separately. Such costs shall be considered in the unit price bid for related work items.

**2.22 MOBILIZATION**

The Bid Schedule does not have an item for mobilization. Mobilization shall be considered an incidental item to the project.

**2.23 SEEDING**

Payment for seeding (If Applicable) shall be per Section 900.05 Basis of Payment. See Standard Specifications Revisions/Additions in this contract for changes to Basis of Payment.

**2.24 EXCAVATION / EMBANKMENT FILL**

This project does not include any embankments. Excavation for this project shall be limited to drilling foundation pier holes for each fence wall column. Backfill of these excavations holes shall be reinforcing steel and concrete material as specified in the project bid documents.

**2.25 BASE COURSE / SUBGRADE STABILIZATION (NOT APPLICABLE)**

In the event the geotechnical engineer identifies a need for import material to stabilize roadway widening areas, the Bid Form includes an item for "Base Course / Subgrade Stabilization" material. The unit price for this pay item will apply to any import, placement, and compaction of materials required for stabilization, regardless of the gradation or type of material specified by the geotechnical engineer based on field conditions.

**2.26 MEASUREMENTS AND PAYMENT**

Payment for work performed by the Contractor under these Contract Documents will be made at the approved unit price or lump sum price for each of the several items as listed in the bid proposal and measured as hereinafter specified. Such payment shall compensate the Contractor for all costs in connection with furnishing all labor, equipment and material required and performing the operations necessary to complete the item in accordance with the contract documents.

Any items of work which are called out in the plans and/or the specifications and do not have a specific line item in the bid proposal but which are necessary to complete the work in accordance with the requirements of good and standard practice, such as clearing, sub-grade preparation and form work are to be considered as incidental to the construction of the project and the Contractors cost for such work shall be included in the bid price with the related item of work.

CITY OF FOUNTAIN

All incidental work essential to the completion of the project, including cleanup and disposal of waste or surplus material shall be accomplished by the Contractor without additional cost to the Owner (See Subsection 103.01 of General Provisions). The cleanup and disposal of waste or surplus material shall be performed during construction or as soon after as is reasonably possible in order to better maintain the safety and aesthetics of the construction area.

SCHEDULE F

PROJECT SPECIFIC GENERAL PROVISIONS

1.01 SPECIFIC GENERAL PROVISIONS

The Contractor’s attention is specifically drawn to the following sections of the General Provisions.

ITEM	SUBSECTION	REMARKS
Site and Work Required	101.04	Note requirements
Preparation of Bid Proposal	102.02	Note requirements
Intent of Contract Documents	103.01	Note requirements. Intent of complete bid items, work necessary but not specifically listed.
Insurance and Indemnity	108	Note requirements
Work Provisions and rules	110 section)	Note requirements (Also see revisions in this
Construction Site	107	Note requirement

1.02 REVISIONS TO THE GENERAL PROVISIONS

A. REVISION OF SECTION 110, WORK PROVISIONS AND RULES

Subsection 110.09, Protection of Utilities, is hereby revised to add the following paragraphs:

**Add the following to Paragraph B:**

The Contractor shall notify all utility companies who may have installations in the area where the work is to be performed and solicit their aid in locating horizontally and vertically utilities prior to any excavation. All utilities encountered must be kept in operation by the Contractor and shall be protected and/or repaired at Contractor’s expense.

Utility Problems or Questions	719-440-9517
Central Locating of Utility Lines	800-922-1987

MISCELLANEOUS UTILITY SERVICES

Colorado One-Call Dig Alert - 811

Comcast Cable – Don Reynolds	719-491-8221
U.S. West Communications	800-922-1987
Long Distance Lines	800-922-1987
Engineering Division for Inquiries	322-2036

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At least forty-eight (48) hours prior to commencing excavation, the Contractor shall call Central Locating at 811 or 1-800-922-1987 between the hours of 7:30 A.M. and 4:30 P.M., Monday through Friday, for information concerning the location of buried utilities in the area of construction.

**Standard Utility Marking Color Code**

Natural Gas	Yellow
Electric	Red
Water	Blue
Wastewater	Green

“The Contractor shall be responsible for coordination and cost of all utility relocations indicated on the plans and not specified to be done by others. Utility locations shown on the plans are approximate.”

**Subsection 110.32 Guarantees, is hereby revised to add the following paragraph:**

“Warranty Inspection: will be conducted prior to the expiration date of one (1) year Warranty Period. The City will make a visual inspection of the project to determine whether correction of work is required. The Contractor shall attend such inspection if requested by the City.

**Subsection 110.33 Project Closeout, is hereby added:**

Prior to the issuing of the Certificate of Completion by the City, the Engineer and Contractor shall conduct a preliminary inspection and develop a “punch list” of items to be completed by the Contractor to the satisfaction of the Engineer. A final inspection is to be performed upon completion of the punch list items.

**SCHEDULE G**

**G.1 STANDARD SPECIFICATIONS**

The City of Fountain has generally adopted by reference the following Standard Specifications:

- a. Colorado Springs Standard Specifications Manual
- b. Colorado Springs Standard Plans No. D-6; D-7; & D-8A, B, H, I, J, & K
- c. CDOT Standard Specifications for Road and Bridge Construction
- d. CDOT Standard Plans No. Mm-608-1 & M-609-1
- e. Pikes Peak Region Asphalt Paving Specifications – Asphalt Binder Grande PG 64-22
- f. Colorado Springs Pavement Design Criteria Manual

All Contractors on this project are required to have on the job site and utilize the current updated copy of the above specifications as follows: Pikes Peak Region Asphalt Paving Specification, Colorado Springs Specifications & Pavement Design Criteria Manual are available on the City of Colorado Springs website. CDOT Specifications are available online at the CDOT web site.

**G.2 STANDARD SPECIFICATIONS REVISIONS/ADDITIONS**

The Technical Specifications, Details & Plans included in Construction Details Section of the Bid Package take precedence over, supplement, are part of, or modify the Standard Specifications listed above.

**CITY OF FOUNTAIN**

Detailed description of Bid Items is included in the Construction Details Section of the Bid Package intitled "Bid Item Descriptions."

**SCHEDULE H**

**EXHIBITS**

This section includes the examples of the forms used for submitting the required bonds (If Required), as well as, a sample contract format, which will be issued as a result of this solicitation:

- Exhibit 1 -- Bid Bond
- Exhibit 2 -- Performance Bond
- Exhibit 3 -- Materials and Payment Bond
- Exhibit 4 -- Maintenance Bond
- Exhibit 5 -- Sample Contract
- Exhibit 6 -- Minimum Insurance Requirements
- Exhibit 7 -- Change Order Form

CITY OF FOUNTAIN

EXHIBIT 1 - CITY OF FOUNTAIN BID BOND

1. KNOW ALL MEN BY THESE PRESENTS, THAT:

(Name)

As Principal, hereinafter called Principal, and

(Address)

(SURETY Name)

a corporation organized and existing under the laws of the State of:

(SURETY Address)

and AUTHORIZED TO DO BUSINESS IN THE STATE OF COLORADO, as Surety, hereinafter called Surety, are held firmly bound to the CITY OF FOUNTAIN, COLORADO, as Obligee, hereinafter called the Obligee, in the sum of: (Insert Proposal Amount in Words)

(\$ DOLLARS),

lawful money of the United States of America, for payment of which sum well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS, the Principal has submitted to the Obligee,

a contract bid dated the \_\_\_\_\_ day of \_\_\_\_\_ For the following contract:

**2015 Fountain Gateway Improvement Project No. 4149613**

3. NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT, If Principals bid is accepted by Obligee and Principal is awarded the contract in whole or in part, and the Principal shall enter into the contract with the Obligee in accordance with the terms of such bid, and give such Payment, Performance, and Maintenance bond or bonds as may be specified in the bidding or contract documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such contract and give such bond or bonds, if the Principal shall promptly pay to the Obligee the amount of this bond as set forth herein above, then this obligation shall be null and void, otherwise this obligation to remain in full force and effect.

Signed and sealed on the dates set forth below:

(Witness) FOR: (Principals Name)

BY:

(Seal) ITS:

This \_\_\_\_\_ day of \_\_\_\_\_

(Witness) FOR: (Surety's Name)

BY:

(Seal) ITS:

This \_\_\_\_\_ Day of \_\_\_\_\_

Bond # \_\_\_\_\_ This Bond (is) (is not) a SBA Guaranteed Bond.

CITY OF FOUNTAIN

**EXHIBIT 2 – PERFORMANCE BOND  
CITY OF FOUNTAIN PERFORMANCE BOND**

1. KNOW ALL MEN BY THESE PRESENTS, THAT:

\_\_\_\_\_  
(Name)

As Principal, hereinafter called Principal, and

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(SURETY Name)

a corporation organized and existing under the laws of the State of:

\_\_\_\_\_  
(SURETY Address)

and AUTHORIZED TO DO BUSINESS IN THE STATE OF COLORADO, as Surety, hereinafter called Surety, are held firmly bound to the CITY OF FOUNTAIN, COLORADO, as Obligee, hereinafter called the Obligee, in the sum of: (Insert Proposal Amount in Words)

\_\_\_\_\_  
(\$ \_\_\_\_\_ DOLLARS),

lawful money of the United States of America, for payment of which sum well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS, the Principal and the Obligee have entered into,

a contract dated the \_\_\_\_\_ day of \_\_\_\_\_, **2010** For the following project:

**2015 Fountain Gateway Improvement Project No. 4149613**

Contract # \_\_\_\_\_ which contract is by reference made a part hereof, and referred to as the Contract.

3. NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the Principal shall promptly and faithfully perform all terms, conditions and other obligations of the Contract, and any modifications or extensions thereof granted by the Obligee, then this obligation shall be null and void: otherwise this obligation shall remain in full force and effect.

4. The Surety for value received agrees that no extension of time, change in, addition to, or other alteration modification of the terms, conditions or obligations of the Contract or work to be performed thereunder, or any forbearance on the part of either the Obligee or the Principal to the other shall in any way release or affect the liability or obligation of this Bond, and the Surety hereby waives notice of any such extension of time, change, addition, modification, alteration or forbearance.

Signed and sealed on the dates set forth below:

\_\_\_\_\_  
(Witness) FOR: \_\_\_\_\_  
(Principals Name)

BY: \_\_\_\_\_

(Seal) ITS: \_\_\_\_\_

This \_\_\_\_\_ Day of \_\_\_\_\_

\_\_\_\_\_  
(Witness) FOR: \_\_\_\_\_  
(Surety's Name)

BY: \_\_\_\_\_

(Seal) ITS: \_\_\_\_\_

This \_\_\_\_\_ Day of \_\_\_\_\_

Bond # \_\_\_\_\_ This Bond \_\_ (is) \_\_ (is not) a SBA Guaranteed Bond.

CITY OF FOUNTAIN

EXHIBIT 3 - CITY OF FOUNTAIN LABOR & MATERIAL PAYMENT BOND

1. KNOW ALL MEN BY THESE PRESENTS, THAT:

(Name)

As Principal, hereinafter called Principal, and

(Address)

(SURETY Name)

a corporation organized and existing under the laws of the State of:

(SURETY Address)

and AUTHORIZED TO DO BUSINESS IN THE STATE OF COLORADO, as Surety, hereinafter called Surety, are held firmly bound to the CITY OF FOUNTAIN, COLORADO, as Obligee, hereinafter called the Obligee, in the sum of: (Insert Proposal Amount in Words)

(\$ DOLLARS),

lawful money of the United States of America, for payment of which sum well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS, the Principal and the Obligee have entered into,

a contract dated the \_\_\_\_\_ day of \_\_\_\_\_, 2010 For the following project:

**2015 Fountain Gateway Improvement Project No. 4149613**

Contract # \_\_\_\_\_ which contract is by reference made a part hereof, and referred to as the Contract.

3. NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the Principal shall promptly make payments of all amounts lawfully due to all persons supplying or furnishing the Principal or the Principals subcontractors with labor, materials, rental machinery, tools or equipment used or performed in the prosecution of the work provided for in the Contract; and if the Principal shall indemnify and save harmless the Obligee to the extent of any payments in connection with the carrying out of the Contract which the Obligee may be required to pay under the law, all in accord with Colorado State Law, Section 38-26-105 C.R.S., then this obligation shall be null and void; otherwise this obligation shall remain in full force and effect.

AND FURTHER, should the Principal or the Principals subcontractors fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by the Principal or the Principals subcontractors in the performance of the work contracted to be done or fails to pay any person who supplies rental machinery, tools or equipment, all amounts due as the result of the use of such machinery, tools, or equipment, in the prosecution of the work under the Contract, the Surety shall pay the same in an amount not exceeding the sum specified in this Bond together with interest at the rate of eight percent per annum, in accord with Colorado State Law, Section 38-26-106 C.R.S.

In accord with Colorado State Law, Section 38-26-105 C.R.S., actions against the Principal and Surety under this Bond shall be brought within six months after the final completion of the Contract as defined by the ordinances, rules and regulations of the City of Fountain, Colorado, a home rule City, and not afterwards.

4. The Surety for value received agrees that no extension of time, change in, addition to, or other alteration or modification of the terms, conditions or obligations of the Contract or work to be performed thereunder, or any forbearance on the part of either the Obligee or the Principal to the other shall in any way release or affect the Surety's liability or obligation on this Bond, and the surety hereby waives notice of any such extension of time, change, addition, modification, alteration or forbearance.

Signed and sealed on the dates set forth below:

(Witness)

FOR:

(Principals Name)

CITY OF FOUNTAIN

Page Two (2) of Labor & Material Payment Bond

(Seal) BY: \_\_\_\_\_  
ITS: \_\_\_\_\_  
This \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
(Witness) FOR: \_\_\_\_\_  
(Surety's Name)

(Seal) BY: \_\_\_\_\_  
ITS: \_\_\_\_\_  
This \_\_\_\_\_ day of \_\_\_\_\_  
This Bond \_\_\_ (is) \_\_\_ (is not) a SBA Guaranteed Bond.  
Bond # \_\_\_\_\_

CITY OF FOUNTAIN

EXHIBIT 4 - CITY OF FOUNTAIN MAINTENANCE BOND

1. KNOW ALL MEN BY THESE PRESENTS, THAT:

(Name)

As Principal, hereinafter called Principal, and

(Address)

(SURETY Name)

a corporation organized and existing under the laws of the State of:

(SURETY Address)

and AUTHORIZED TO DO BUSINESS IN THE STATE OF COLORADO, as Surety, hereinafter called Surety, are held firmly bound to the CITY OF FOUNTAIN, COLORADO, as Obligee, hereinafter called the Obligee, for the use and benefit of claimants as herein below defined, in the amount of: (Insert Proposal Amount in Words)

(\$ DOLLARS),

lawful money of the United States of America, together with interest as may be provided by law, for the maintenance and guarantee obligations of the Contract, for the payment whereof Principal and Surety bind themselves, their heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS, the Principal and the Obligee have entered into,

a contract dated the \_\_\_\_\_ day of \_\_\_\_\_, 2010 For the following project:

2015 Fountain Gateway Improvement Project No. 4149613

Contract # \_\_\_\_\_ which contract is by reference made a part hereof, and referred to as the Contract.

3. NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the Principal shall promptly, properly and without cost to Obligee perform all maintenance and other guarantee obligations under the terms of the Contract, including any modifications or extensions thereof granted by the Obligee, for a period of TWO (2) year(s) from the date of final payment upon the Contract by the Obligee, and in the case of each correction or repair, during a period of one year after the date of said correction or repair or for the remaining period of years set forth herein, whichever is longer, then this obligation shall be null and void; otherwise this obligation shall remain in full force and effect.

4. The Surety for value received agrees that no extension of time, change in, addition to, or other alteration or modification of the terms, conditions or obligations of the Contract or work to be performed thereunder, or any forbearance on the part of either the Obligee or the Principal to the other shall in anyway release affect the Surety's liability or obligation on this Bond, and the surety hereby waives notice of any such extension of time, change, addition, modification, alteration or forbearance.

Signed and sealed on the dates set forth below:

(Witness) FOR: (Principals Name)

BY:

(Seal) ITS: This \_\_\_\_\_ day of \_\_\_\_\_

(Witness) FOR: (Surety's Name)

BY:

(Seal) ITS: This \_\_\_\_\_ day of \_\_\_\_\_

Bond # \_\_\_\_\_ This Bond \_\_ (is) \_\_ (is not) a SBA Guaranteed Bond.

CITY OF FOUNTAIN

**EXHIBIT 5 - SAMPLE CONTRACT**

Contract Number	<b>C00</b> _____	Project Name	<b>2015 Fountain Gateway Improvement Project No. 4149613</b>
Vendor/Contractor			
Address			
Federal Tax ID #		Please check one:	<input type="checkbox"/> Corporation <input type="checkbox"/> Individual <input type="checkbox"/> Partnership
<b>CITY CONTRACTS:</b>	Mrs. Kimberly Bailey Ph. 719-322-2056		
Amount & Account #	<b>\$</b>		

**CONSTRUCTION CONTRACT**

**THIS CONTRACT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, **2015** by and between the **City of Fountain, Colorado, a municipal corporation**, in the County of El Paso, State of Colorado, party to the first part hereinafter in the Contract Documents referred to as the "City", and \_\_\_\_\_, a corporation organized as existing under the laws of the State of Colorado, hereinafter in the Contract Documents called the "Contractor"; party of the second part.

**WITNESSETH:**

Whereas the City has heretofore prepared the necessary Contract Documents for **2015 Fountain Gateway Improvement Project No. 4149613** in the City of Fountain; and whereas the party of the second part did on the \_\_\_\_\_ day of \_\_\_\_\_, **2015**, submit to the City his/her written offer and proposal to do the work therein described under the terms and conditions therein set forth and furnish all labor, materials, tools, equipment, transportation and services for said work in strict conformity with the accompanying Contract Documents which include: Notice to Bidders, Instructions to Bidders, Bid Proposal, Notice of Award, Contract, Performance, Labor and Material Payment and Maintenance Surety Bonds, Notice to Proceed, General and Special Conditions, Specifications and Drawings.

**NOW, THEREFORE**, it is hereby agreed that for the considerations and amounts specified in the Bid Proposal and the total contract amount designated in the Notice of Award to be paid by the City to the Contractor, Contractor agrees to furnish all materials and to perform all work as set forth in his/her proposal and as required by the aforesaid Contract Documents.

It is further agreed that the Contractor will start work promptly and continue work diligently until completed. The Contract Period of Performance for this contract extends until **July 14, 2015** unless otherwise extended by Change Order. The Contractor shall provide a one year guarantee on all works performed under this contract after the job has been completed and accepted.

In accord with the City Charter, performance of the City's obligations under this agreement are expressly subject to appropriations of funds by the City Council. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the City's obligations under this contract, or appropriated funds may not be expended due the City Charter spending limitations, then the City may terminate this Agreement without compensation to the Contractor.

The funds appropriated for this contract are equal to or exceed the awarded contract amount.

The Contractor and the City agree and acknowledge as a part of this contract, that no Change Order or other form or order or directive may be issued by the City which requires additional compensable work to be performed, which work causes the aggregate amount payable under the contract to exceed the amount appropriated for this contract as listed above, unless the Contractor has been given a written assurance by the City that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in this contract.

CITY OF FOUNTAIN

THE CONTRACTOR hereby Certifies that at the time of this certification, the Contractor does not knowingly employ or contract with an illegal alien and that the contractor has participated or attempted to participate in the basic pilot program in order to verify that the Contractor does not employ any illegal aliens. "Basic pilot program" means the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security.

The Contractor and the City further agree and acknowledge as a part of this contract that no Change Order or other form or order or directive which requires additional compensable work to be performed under this contract shall be issued by the City unless funds are available to pay such additional compensable work performed under this contract, and expressly waives any rights to additional compensation, whether by law or equity, unless, prior to commencing the additional work, the contractor was given a written Change Order describing the additional compensable work to be performed, and setting forth the amount of compensation to be paid, which Change Order was signed by the authorized City Representative. It is the Contractor's sole responsibility to know, determine, and ascertain the authority of the City representative signing any Change Order under this contract.

**IN WITNESS WHEREOF**, the parties have caused these presents to be executed on the month, day and year first above written.

This contract is executed in Three (3) original copy.

THE CITY OF FOUNTAIN, COLORADO

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

SECOND PARTY:

\_\_\_\_\_  
Corporate Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness



CITY OF FOUNTAIN

**EXHIBIT 7 CITY CHANGE ORDER FORM**

CITY OF FOUNTAIN  
CONTRACT CHANGE ORDER

Change Order No: \_\_\_\_\_ Contract No: \_\_\_\_\_

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

Firm \_\_\_\_\_

New Expiration Date: \_\_\_\_\_ Cancel Contract: \_\_\_\_\_  
Time Extension allowed \_\_\_\_\_ Days \_\_\_\_\_

Amount of this Change Order: \_\_\_\_\_

Amount of Previous Change Orders: \_\_\_\_\_

Total of Change Orders: \_\_\_\_\_

Original / Amended Contract Amount: \_\_\_\_\_

New Contract Amount: \_\_\_\_\_

Percentage Above / Below Original / Amended Amount: \_\_\_\_\_

Account Code for Change Order: \_\_\_\_\_

Description of Amendments and/or Additional Services:

**By signing below, the Contractor accepts this change order as full and complete compensation for the above specified amendments and/or additional services.**

**Firm Approval:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Requestor/Dept:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Manager Approval:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**SPECIAL FEDERAL FUNDING PROVISION ATTACHMENTS**

**EI PASO COUNTY CDBG PROGRAM – Contract & Subcontract Provisions**

**CITY OF FOUNTAIN – CDBG ADMINISTRATION MANUAL**

- Exhibit CQS – Contractor Qualification Statement**
- Exhibit VIII-O – Contractor/Subcontractor Bid Certifications**
- Exhibit 9B – CDBG Supplemental General Conditions & Federal Labor Standards**
- Exhibit 5J – CDBG Contract Reporting Form**
- Exhibit 6A – Federal Labor Standards Provisions HUD 4010 Form**
- Exhibit 6C – HUD/CDBG Additional Classification & Wage Rate Form 4230A**
- Exhibit 6E – Preconstruction Conference Planning Guide**
- Exhibit 6F – Federal Wage Poster WH-1321**
- Colorado Minimum Wage Order 26 Poster**
- Davis Bacon Act Wage Determination – El Paso County Zone Rates**
- Exhibit 6G – Equal Employment Opportunity Poster**
- Exhibit 6H – Occupational Safety & Health Act Protection Provisions & Poster**
- Exhibit 6I – Weekly Payroll Report & Compliance Forms (WH-347 & WH348)**
- Exhibit 6J – Additional Contractor Payroll Information**
- Exhibit 6K – Record of Employee Interviews Form HUD-11**
- Exhibit 6L – Labor Standards Definitions**
- Exhibit 6M- Volunteer Certification Form**
- Exhibit 6N – Contractor’s Receipt of Required Program Materials**
- Exhibit 6O – Making Davis Bacon Work - A Contractor’s Guide**
- Exhibit 6P – Certification of Labor Compliance**

**CONSTRUCTION DETAILS**

**Project Vicinity Site Plan Map**

**Landscape Planting Plan**

**Landscape Drip Irrigation Plan**

**Verticrete Precast Wall System Specifications 03-45- # -M**

**Verticrete 6 Ft. Wall Panel, Pier & Column Detail W-01-M**

**Verticrete Fence Panel Layout & Erection Detail A1.00-M**

**Sample Verticrete Fence Wall Photo (Grinell & Wageman Intersection)**