

APPENDIX A - SAMPLE CONTRACTS - CITY, UTILITIES, COUNTY



MUNICIPAL SERVICE CONTRACT - SAMPLE

CONTRACT NUMBER:		PROJECT NAME/TITLE	
VENDOR/CONTRACTOR			
CONTACT NAME:		TELEPHONE	FAX
ADDRESS:			
FEDERAL TAX ID #		PLEASE CHECK ONE:	<input type="checkbox"/> CORPORATION <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP
CITY CONTRACTING SPECIALIST	NAME & PHONE#	CITY DEPT REP	Name & Phone# & Department Name
NOT TO EXCEED CONTRACT AMOUNT:		CITY ACCOUNT #	Acct Code (5) Fund (3) Dept (4) Project (7)

This CONTRACT is made and entered into by and between the City of Colorado Springs, a Colorado home rule city and municipal corporation, hereinafter referred to as "City" and _____
 As an independent contractor, hereinafter referred to as "Contractor", as follows:

1. CONTRACTOR SHALL PROVIDE ALL MATERIALS, LABOR, AND EQUIPMENT TO PERFORM SAID SERVICES FOR THE CITY OF COLORADO SPRINGS: _____

2. COMPENSATION. In consideration of the services, work, equipment, supplies or materials provided herein, the City agrees to pay the Contractor the sum of :

NOT TO EXCEED \$ _____ as follows: _____ Invoices are payable net 30 days upon receipt and department approval.

In consideration of said compensation payments, the Contractor agrees to perform all services, work, and/or provide all materials, supplies and equipment, and to carry out the provisions of this Contract in a good and workmanlike manner to the satisfaction of the City. If the performance of this Contract involves the services of others or the furnishing of equipment, supplies or materials, the Contractor agrees to pay for the same in full and at the time of payment by the City, to certify in writing to the City that said payments have been so made.

3. INSURANCE Contractor understands and agrees that Contractor shall have no right of coverage under and all existing or future City comprehensive, self or personal injury policies. Contractor shall provide insurance coverage for and on behalf of Contract that will sufficiently protect Contractor, or Contractor's agents, employees, servants or other personnel, in connection with the services work which are to be provided by Contractor pursuant to this contract, including protection from claims for bodily injury, death, property damage and lost income. Contractor shall provide worker's compensation insurance coverage for Contractor and all Contractor personnel. Contractor shall file applicable insurance certificates with the City and shall also provide additional insurance as follows: **A CURRENT CERTIFICATE OF INSURANCE IS REQUIRED PRIOR TO COMMENCEMENT OF SERVICES LISTING THE CITY AS ADDITIONALLY INSURED.**

4. TERM OF CONTRACT. The term of this contract shall commence on ____ and shall terminate on ____ unless earlier terminated under this contract, or otherwise changed by Contract modification. The City shall have the unilateral option of extending services beyond the term of the contract, including all options, for a period not to exceed a total of six (6) months if additional time is necessary to solicit and award a new contract. Options to extend services shall be exercised upon written notification (mailed or otherwise furnished) to the contractor at least fifteen (15) days prior to the expiration date of the contract.

5. NOTICE. Any notice to the parties required under this contract shall be in writing delivered to the person designated below as Contract Coordinator at the indicated address unless otherwise designated in writing. Only postage by United States mail or in hand delivery shall be utilized.

<u>FOR THE CITY</u>	<u>FOR THE CONTRACTOR</u>
Contact: _____	Contact: _____
Address: _____	Address: _____
City/State: _____	City/State: _____
Zip: _____	Zip: _____

6. ADDITIONAL TERMS AND PROVISIONS. The following listed additional provisions are made a part of this contract and attached hereto, _____

7. COMPLIANCES. In the conduct of the said services/work or the labor, supplies, equipment or materials contemplated hereunder, the Contractor shall comply will all applicable state, federal and local law, rules and regulations, technical standards or specifications issued by the City. Contract must qualify for and obtain any required licenses prior to commencement of work.

8. INDEPENDENT CONTRACTOR. Contractor understands and agrees that the Contractor and Contractor's employees, agents, servants or other personnel are not City employees. Contractor shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefit to Contractor or any of Contractor's employees, agents, servants or other personnel performing the service or work or supplying equipment or materials specified herein, whether it be of a direct or indirect nature. Further in that regard, it is expressly understood and agreed that for such purposes neither Contractor nor 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.

9. NON-DISCRIMINATION. Contractor will not discriminate against any employee or applicant for employment because of race, color, sex, national origin, religion, age, handicap or veteran status. Contractor will, where appropriate or required, take affirmative action to ensure that applicants are employed, and that employees are treated, during employment, without regard to their race, color, sex, or national origin. Contractor will cooperate with the City in using Contractor's best efforts to ensure that Disadvantaged Business Enterprises are afforded the maximum opportunity to compete for subcontracts or work under this contract.

10. HOLD HARMLESS. Contractor shall indemnify, defend and hold harmless the City, its officers, agents and employees from and against any and all loss, damages, injuries, claims, cause or causes of action, or any liability of any kind whatsoever resulting from, or arising out of or in connection with the services/work or equipment/materials provided by Contractor pursuant to this contract.

11. ASSIGNMENT. Contractor shall not assign or otherwise transfer this contract of any right or obligations therein without first receiving prior written consent of the City.

12. APPROPRIATION OF FUNDS. In accord with the City Charter, performance of the City's obligations under this Contract are expressly subject to appropriations of funds by the City Council. Further, in the event 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 Contract without compensation to the Contractor.

13. CHANGE ORDERS. 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. 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 costs, and regardless of any remedy-granting provision included within this contract, the Contractor shall not be entitled to any additional compensation for any 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.

14. CONTRACT INTERPRETATION. No amendment or modification of this contract shall be valid unless expressed in writing and executed by the parties hereto in the same manner as the execution of this contract. The laws of the State of Colorado shall govern this contract. This is a completely integrated contract and contains the entire contract of the parties, and any prior written or oral contracts which are different from the terms, conditions and provisions of this contract shall be of no effect and shall not be binding upon either party. Any judicial action under the terms of this contract shall be exclusively in the District Court for El Paso County, Colorado.

15. COMPLIANCE WITH IMMIGRATION AND CONTROL ACT. Contractor certifies that Contractor has complied with the United States Immigration and Control Act of 1986. All persons employed by Contractor for performance of this contract have completed and signed Form I-9 verifying their identities and authorization for employment.

16. TERMINATION OF CONTRACT.

- A. In the event of default by the Contractor, the City may give ten (10) days written notice to the Contractor of the City's intent to terminate the contract. Contractor shall have ten (10) days from notification to remedy the conditions constituting the default. Failure to cure may result in immediate termination for default.
- B. The City may terminate the contract at any time it is found that reason beyond the control of either the City or Contractor make it impossible or against the City's interest to complete the contract. The City may also terminate this contract at any time if it is found that the Contractor has violated any term or condition of this contract or that Contractor has failed to maintain worker's compensation insurance or other insurances provided for in this contract. In such case the Contractor shall have no claims against the City except for the value of the work performed up to the date the contract is terminated.
- C. In the event that this contract is terminated in accordance with the section, the City may take possession of any work and may complete any work by whatever means the City may select.
- D. The City may terminate performance of this contract in whole, or from time to time, in part if the City determines that a termination is in the City's interest. The Contractor after receipt of a Notice of Termination shall stop work as specified under the contract, place no further subcontracts or orders for materials terminate all subcontracts to the extent they relate to the termination, assign title and interest of all work and material used in the work.
- E. If the contract is terminated for convenience, The City will conduct an audit of the Contractor's costs to determine reasonable costs expended to date of termination, or the City may determine the contractor's costs based on the schedule of values or exact cost of any bid item (s) completed and accepted. The Contractor will not be reimbursed for any anticipated profit. The cost that is most advantageous to the City will be used for determining final payment to Contractor.

17. DELIVERY AND TAXES. The City may cancel this contract or any portion thereof if delivery is not made when and as specified, time being the essence of this contract. Contractor shall pay the City for any loss or damage sustained by the City because of failure to perform in accordance with this contract. The contractor shall pay all sales and use taxes required to be paid to the State of Colorado on the work covered by this contract. The Contractor shall execute and deliver and shall cause his subcontractors to execute and deliver to the City, certificates as required, to permit the City to make application for refunds of said sales and use taxes as applicable. The City is a municipal corporation and therefore, not subject to state and local sales tax, use tax or federal excise taxes.

18. BOOKS OF ACCOUNT AND AUDITING. The Contractor shall make available to the City if requested, true and complete records, which support billing statements, reports, performance indices, and all other related documentation. The City's authorized representatives shall have access during reasonable hours to all records, which are deemed appropriate to auditing billing statements, reports, performance indices, and all other related documentation. The Contractor agrees that it will keep and preserve for at least seven years all documents related to the Contract which are routinely prepared, collected or compiled by the Contractor during the performance of this contract. The City's Auditor and the Auditor's authorized representatives shall have the right at any time to audit all of the related documentation. The Contractor shall make all documentation available for examination at the Auditor's request at either the Auditor's or Contractor's offices, and without expense to the City.

19. GRATUITIES:

- A. The right of the Contractor to proceed or otherwise perform this Contract, and this Contract may be terminated if the City Manager and/or the City Contracting Manager determine, in their sole discretion, that the Contractor or any officer, employee, agent, or other representative whatsoever, of the Contractor offered or gave a gift or

hospitality to a City officer, employee, agent or contractor for the purpose of influencing any decision to grant a City Contract or to obtain favorable treatment under any City Contract.

- B. The terms "hospitality" and "gift" include, but are not limited to, any payment, subscription, advance, forbearance, acceptance, rendering or deposit of money, services, or any thing of value given or offered, including but not limited to food, lodging, transportation, recreation or entertainment, token or award.
- C. Contract termination under this provision shall constitute a breach of contract by the Contractor, and the Contractor shall be liable to the city for all costs of reletting the contract or completion of the contract. Further, if the Contractor is terminated under this provision, or violates this provision but is not terminated, the Contractor shall be subject to debarment under the City's Procurement Regulations. The rights and remedies of the City provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract."

20. PAYMENTS. The City shall pay the Contractor, upon submission of proper invoices, the prices stipulated in the contract for services rendered and accepted, less any deductions provided in this contract within 30 days. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the City if

- A. The amount due on the deliveries warrants it; or
- B. The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

21. SUB-CONTRACTORS, OUT-SIDE ASSOCIATES, AND OTHER CONTRACTORS

- A. Any Sub-Contractor, outside associates, or other Contractors used by the Contractor in connection with Contractor's work under this Contract shall be limited to individuals or firms that are specifically identified by the Contractor in the Contractor's proposal and agreed to by the City. The Contractor shall obtain the City delegated Project Manager or Representative's written consent before making any substitution of these sub-Contractors, associates, or other Contractors.
- B. The Contractor shall include a flow down clause in all of its sub-contracts, agreements with outside associates, and agreements with other Contractors. The flow down clause shall cause all of the terms and conditions of this Contract, including all of the applicable parts of this Contract document, to be incorporated in all subcontracts, agreements with outside associates, and agreements with other Contractors. The flow down clause shall provide clearly that there is no privity of contract between the City and the Contractor's Sub-Contractors, outside associates, and other Contractors.

22. INSPECTION OF SERVICES. The Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the services furnished under this contract conform to contract requirements, including any applicable technical requirements for specified manufacturers' parts. This clause takes precedence over any City inspection and testing required in the contract's specifications, except for specialized inspections or tests specified to be performed solely by the City.

- A. Definition of "services", as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City during contract performance and for as long afterwards as the contract requires.
- C. The City has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The City shall perform inspections and tests in a manner that will not unduly delay the work.
- D. If the City performs inspections or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- E. If any of the services do not conform to contract requirements, the City may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When defects in services cannot be correct by re-performance, the City may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect and reduced value of the services performed.
- F. If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the City may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service or (2) terminate the contract for default.

23. DRUG FREE WORKPLACE.

- A. The Contractor, if other than an individual, shall—within 30 days after award, or as soon as possible for contracts of less than 30 days performance duration --
- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - (2) Establish an ongoing drug-free awareness program to inform such employees about --
 - (i) The dangers of drug abuse in the workplace,
 - (ii) The Contractor's policy of maintaining a drug free workplace,
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs, and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 - (3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph 1 of this clause.
 - (4) Notify such employees in writing in the statement required by paragraph 1 of this clause that, as a condition of continued employment on this contract, the employee will –
 - (i) Abide by the terms of the statement
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.
 - (5) Notify the City in writing within 10 days after receiving notice under Paragraph 4 (ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
 - (6) Within 30 days after receiving notice under Paragraph 4 (ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace;
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
 - (7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs 1 through 6 of this clause.
- B. The Contractor, if an individual, agrees by award of this contract, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- C. In addition to other remedies available to the City, the Contractor's failure to comply with the requirements of Paragraphs A and B of this clause may render the Contractor subject to suspension of the contract payments, termination of the contract for default, and suspension or debarment.

24. ILLEGAL IMMIGRATION ACT

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

The Contractor acknowledges, understands, agrees, and certifies that: 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 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. In The Contractor certifies in accord with Section 8-17.5-102(1) C.R.S. that, on the date the Contractor signs this contract, the Contractor does not knowingly employ or contract with an illegal alien who will perform work under this contract and that the Contractor shall participate in the e-verify program or Colorado Department of Labor and Employment program in order to confirm the employment eligibility of all employees who are newly hired for employment or to perform work under this contract. 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. 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 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 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 the three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor shall comply with any request by the City, federal government, or the Colorado Department of Labor and Employment made in the course of an investigation that the department, pursuant to the authority established in Section 8-17.5-102 C.R.S., or a City or federal investigation. 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.

CONTRACT SIGNATURE PAGE

WHEREOF THE PARTIES HAVE EXECUTED THIS CONTRACT:

This Contract is executed in one (1) original copy.

THE CITY OF COLORADO SPRINGS

SECOND PARTY

Curt DeCapite

Date

Corporate Name

Procurement Services Manager

Signature, Title

Witness/Date

CONTRACT
COLORADO SPRINGS
UTILITIES
PROCUREMENT & CONTRACT SERVICES
PO BOX 1103
Colorado Springs, Colorado 80947-0920
Phone (719) 668-3862 Fax (719) 668-3867

CONTRACT# TBD

Special Notice Regarding Sole Source Government Contracts.

To the best of UTILITIES knowledge and belief this is not a Sole Source Government Contract.
 Compliance with Colorado Constitution Article XXVIII concerning sole source government contracts. This Agreement has been identified as a sole source government contract pursuant to Colorado Constitution Article XXVIII, which is effective December 31, 2008. Contractor is obligated to comply with the provisions of Article XXVIII; further, Article XXVIII, Section 15 is incorporated herein as if fully set forth verbatim. The parties hereby agree that a contract holder who intentionally violates Section 15 or Section 17(2) of Article XXVIII shall be ineligible to hold any sole source government contract or public employment with or within Colorado for three (3) years.

SELLER NAME TBD PHONE _____ FAX _____

ADDRESS _____ ZIP _____

SOCIAL SECURITY OR FEDERAL TAX I.D. NO. _____ SELLER EMAIL _____

REQUESTOR, DEPT. & ADDRESS _____

BUYER & PHONE Amy Watson 719-668-8081

This contract is made and entered into by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a

Colorado home rule municipal corporation ("UTILITIES") and

as an independent contractor ("SELLER") as follows:

1. SELLER shall perform the following Work to Colorado Springs Utilities: (Reference to an Exhibit shall be listed here)

(Specific Delivery Schedules shall be referenced in a dated Exhibit or Attachment)

(Renewal options shall be listed here)

2. COMPENSATION. In consideration of the Work provided hereto, UTILITIES agrees to pay SELLER the sum of:

***** (\$) **Spell out dollar amount**

(Insert any additional Specific Payment Provisions or reference an Exhibit with approved specific payment provisions beyond Article 1 deliverables)

Payment of undisputed invoices at the prices stipulated herein is due and payable Net Thirty (30) Days from UTILITIES receipt of a complete and accurate invoice for supplies or services accepted by UTILITIES. Each invoice shall be accompanied by supporting documentation as required by UTILITIES.

3. TERM OF CONTRACT. The term of this Contract shall commence _____ day of _____, on the _____

and shall terminate on _____ day of _____, unless earlier terminated under this Contract, or the _____ otherwise

agreed in writing by the parties. Specific delivery schedules are included in Article 1 above as applicable.

4. NOTICE. Any notice to either party necessary or required under this Contract shall be in writing, delivered to the person designated below at the indicated address unless otherwise designated in writing. All notices shall be personally delivered, sent by overnight delivery service, or mailed by certified mail, postage prepaid and return receipt requested. Notice given by personal delivery, overnight delivery, or mail shall be effective upon actual receipt.

FOR UTILITIES:

Name Amy Watson

Address _____

City, COLORADO SPRINGS, CO 80947-0920

State _____

FOR SELLER:

Name _____

Address _____

City, _____

State _____

IN WITNESS WHEREOF, the parties have executed this contract:

FOR UTILITIES: _____

Signature

Typed name **Amy Watson**

Typed title **Sr. Procurement Specialist**

DATED AT: **COLORADO SPRINGS, COLORADO**

City

State

This _____ day of _____,

FOR SELLER: _____

Signature

Typed name _____

Typed title _____

DATED AT: _____

City

State

This _____ day of _____,

THIS CONTRACT INCORPORATES ALL TERMS AND CONDITIONS LISTED ON THE FACE, GENERAL PROVISIONS T22-00076 ATTACHED HERETO AND ANY ATTACHMENTS IDENTIFIED IN SECTIONS 1 AND/OR 2 ABOVE. GENERAL PROVISIONS T22-00076 ARE AVAILABLE AT WWW.CSU.ORG

COLORADO SPRINGS UTILITIES

GENERAL PROVISIONS

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Unless otherwise stated, this is not a sole source contract.

Special Notice Regarding Sole Source Government Contracts.

To the best of UTILITIES knowledge and belief this is not a Sole Source Government Contract.

Compliance with Colorado Constitution Article XXVIII concerning sole source government contracts. This Contract has been identified as a sole source government contract pursuant to Colorado Constitution Article XXVIII, which is effective December 31, 2008. SELLER is obligated to comply with the provisions of Article XXVIII; further, Article XXVIII, Section 15 is incorporated herein as if fully set forth verbatim. The parties hereby agree that a contract holder who intentionally violates Section 15 or Section 17(2) of Article XXVIII shall be ineligible to hold any sole source government contract or public employment with or within Colorado for three (3) years.

1. **Definitions**

The following terms shall have the meanings set forth below:

- (a) "Contract" means the contract or purchase order attached hereto, these general provisions, any special terms and conditions, and all referenced attachments.
- (b) "Laws and Regulations" means any and all applicable state, federal and local laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
- (c) "Materials" shall mean the goods, deliverables, software, machinery, equipment, supplies and materials constituting the subject matter of this Contract.
- (d) "SELLER" means the vendor or seller set forth on the contract or purchase order attached hereto.
- (e) "UTILITIES" means Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home rule city and municipal corporation, with its principal place of business at 121 South Tejon Street, Colorado Springs, Colorado 80903
- (f) "Work" means all Materials, maintenance, construction and services constituting the subject matter of this Contract.

2. **Acceptance of Contract.** SELLER's acknowledgement, acceptance of a purchase order or payment, shipment of Materials or commencement of performance, whichever occurs first, shall constitute SELLER's unqualified acceptance of this Contract, whether or not SELLER otherwise signs this Contract, unless SELLER objects to such terms in writing within ten (10) days of placement of order by UTILITIES. This writing does not constitute a firm offer within the meaning of C.R.S. § 4-2-205, and may be revoked at any time prior to acceptance.

3. **Appropriation of Funds.** In accord with the City Charter, performance of UTILITIES obligations under this Contract are expressly subject to appropriation of funds by the City Council or Utilities Board. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of UTILITIES obligations under this Contract, or appropriated funds may not be expended due to City Charter spending limitations, then this Contract shall thereafter become null and void by operation of law, and UTILITIES shall thereafter have no liability for compensation or damages to SELLER in excess of UTILITIES authorized appropriation for this Contract or the applicable spending limit, which ever is less. UTILITIES shall notify SELLER as soon as reasonably possible in the event of non-appropriation or in the event a spending limitation becomes applicable. The funds appropriated for this Contract are equal to or exceed the Contract amount for the year in which this Contract was awarded. For Work to be completed in subsequent fiscal years, if any, UTILITIES will notify SELLER of the appropriation of funds for such Work after the adoption of UTILITIES annual appropriation ordinance for those years. SELLER and UTILITIES agree and acknowledge as a part of this Contract, that no change order or other form or order or directive may be issued by UTILITIES 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 SELLER has been given a written assurance by UTILITIES that lawful appropriations to cover the cost of the additional Work have been made or unless such Work is covered under a remedy-granting provision in this Contract.

4. **Assignment.** There shall be no assignment of the rights or obligations contained in this Contract by either party without the prior written consent by the other party, and any such assignment in violation of the foregoing shall be null and void. Notwithstanding the foregoing, upon written notice to SELLER, UTILITIES may assign this Contract without consent to the City of Colorado Springs, Colorado.

5. **Audit.** SELLER shall maintain accurate documents, papers and records of all amounts billable to and payments made by UTILITIES hereunder and related to the Work in accordance with recognized accounting practices, and as required by Laws and Regulations, and in a format that will permit audit, for a period of three (3) years after payment of the last invoice related to this Contract or resolution of claim, whichever is later. Such records shall be open to reasonable inspection and subject to audit and/or reproduction, during normal working hours, by UTILITIES or its authorized representative.

6. **Changes.** UTILITIES may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance or point of delivery; and (iv) delivery schedule. Subject to Section 3 "**Appropriation of Funds**" above, if any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, UTILITIES may agree to an equitable adjustment in the Contract price and/or delivery schedule, and the Contract will be modified accordingly upon mutual written agreement by authorized representatives of the parties. Any claim for an equitable adjustment by SELLER must be submitted in writing to UTILITIES within thirty (30) days from the date of notice of the change, unless the parties agree in writing to a longer period. Failure to agree to any adjustment shall be resolved in accordance with Section 10 "**Dispute Resolution**" below.

However, nothing contained in this provision shall excuse SELLER from proceeding without delay in the performance of this Contract as changed.

7. **Compliances.** In performing or providing the Work hereunder, SELLER shall comply with all Laws and Regulations as well as technical standards or specifications issued by UTILITIES. SELLER must qualify for and obtain any required licenses and permits prior to commencing Work.

Compliance with C.R.S. Sec. 8-17.5.101. (July 2008) Pursuant to Colorado Revised Statutes Section 8-17.5-101, SELLER certifies that SELLER shall comply with the provisions of C.R.S. Sec. 8-17.5-101 *et seq.* SELLER shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to SELLER that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. SELLER represents, warrants, and agrees that it (i) has confirmed that it does not employ any illegal aliens, **either** through participation in the **eVerify** program administered by the Social Security Administration and Department of Homeland Security **or by means of the Colorado Department of Labor program**, and (ii) otherwise will comply with the requirements of C.R.S. Sec. 8-17.5-102(2)(b). SELLER shall comply with all reasonable requests made in the course of an investigation under C.R.S. Sec. 8-17.5-102 by the Colorado Department of Labor and Employment. If SELLER fails to comply with any requirement of this provision or C.R.S. Sec. 8-17.5-101 *et seq.*, UTILITIES may terminate this contract for breach.

8. **Confidentiality.**

- (a) SELLER acknowledges that UTILITIES is a public entity subject to the provisions of the Colorado Public Records Act. SELLER acknowledges that it has been or may be exposed to confidential or proprietary information, oral or written, ("Confidential Information"), including, but not limited to, customer information, financial and business information (including, without limitation, revenues, expenses, taxes and contracts), partner relationships, patents, trade secrets, technical processes, formulae related to products and services, pricing and any device, technique or compilation of information used in UTILITIES business. SELLER agrees that it shall not use, commercialize or disclose such Confidential Information to any person or entity, except to its own employees having a "need to know." SELLER may only disclose Confidential Information to third parties upon prior written approval by UTILITIES, and shall comply with UTILITIES approval in making such disclosure. SELLER shall use at least the same degree of care in safeguarding Confidential Information as it uses in safeguarding its own confidential information, but in no event less than reasonable care. Nothing is intended to or shall grant SELLER an ownership right, a license or other right of any nature to use Confidential Information except as expressly provided herein.
- (b) The recipient shall hold such information confidential to the extent provided by law and shall not engage in any use or disclosure of such information not expressly provided for in this Agreement. In the event either party receives a request for such confidential and/or proprietary information from a third party, notice thereof shall promptly be given to the other party. The recipient shall take all reasonable steps to prevent any unauthorized possession, use, transfer or disclosure of such confidential information. Should the recipient learn of any such unauthorized possession, use, transfer or disclosure, it shall promptly notify the other party. If requested, the recipient shall deliver to the other party all confidential information (including all copies) disclosed to it with respect to this Agreement.
- (c) The disclosure provisions of this section shall not apply to information that a) the parties had in their possession prior to disclosure by the other party; b) becomes public knowledge through no fault of SELLER; c) the recipient lawfully acquires from a third party not under an obligation of confidentiality to the disclosing party; or d) is required to be disclosed by law or court order.
- (d) SELLER shall not disclose any such confidential information or documents to any third party without the prior written authorization of UTILITIES.

9. **Delivery.** Time is of the essence. If the Work is not completed by the designated time, UTILITIES reserves the right without liability, in addition to its other rights and remedies, to terminate this Contract under Section 33 "Termination for Convenience" as to Materials not yet shipped or services not yet rendered and to purchase substitute Materials or services elsewhere and charge SELLER with any loss incurred.

10. **Dispute Resolution.** If a dispute arises between the parties relating to this Contract, the following procedure shall be followed:

- (a) The parties shall hold a meeting promptly, but in no event later than thirty (30) calendar days from the initial written notice of the dispute, attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute; provided, however, that no such meeting shall be deemed to vitiate or reduce the obligations and liabilities of the parties thereunder or be deemed a waiver by a party hereto of any remedies to which such party would otherwise be entitled thereunder unless otherwise agreed to by the parties in writing.
- (b) If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation and to bear equally the costs of the mediation.
- (c) The parties will jointly appoint a mutually acceptable mediator. If they fail to do so within twenty (20) calendar days from the conclusion of the negotiation period, they shall each select a mediator. The two mediators will then appoint a third mediator who shall, as the sole mediator, conduct mediation for the parties.

The parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) calendar days. The substantive and procedural law of the State of Colorado shall apply to the proceedings. If the parties are not successful in resolving the dispute through mediation, then the parties shall be free to litigate the matter.

11. **Entire Agreement.** This Contract constitutes the entire agreement between the parties and supersedes all previous written or oral communications, understandings, and agreements between the parties unless specifically stated herein. The terms and conditions of this Contract shall prevail notwithstanding any variance with the terms and conditions of any acknowledgement or other document submitted by SELLER. The parties specifically agree that any language or

provisions contained on SELLER's web site, product schedule or other ordering document, or contained in any shrinkwrap or "clickwrap" agreement, shall be of no force and effect and shall not in any way supersede, modify, supplement or amend this Contract. This Contract may only be amended by a written agreement signed by both parties. Email and all other electronic (including voice) communications from UTILITIES in connection with this Contract are for informational purposes only. No such communication is intended by UTILITIES to constitute either an electronic record or an electronic signature, or to constitute any agreement by UTILITIES to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

12. **Force Majeure.** (May 2009) Neither party shall be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition beyond its reasonable control without fault or negligence including strikes, riots, wars, floods, fires, explosions, acts of nature, acts of government, or labor disturbances.

13. **Governing Law.** This Contract shall be construed in accordance with the laws of the State of Colorado without reference to conflicts of laws, the Colorado Springs City Charter, City Code, Ordinances, Rules and Regulations. In the event of litigation, this Contract shall be enforceable by or against the City of Colorado Springs on behalf of UTILITIES as provided in Colorado Springs City Code § 12.1.108. In the event of any dispute over the Contract's terms and conditions, the exclusive venue and jurisdiction for any litigation arising thereunder shall be in the District Court of El Paso County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

14. **Indemnification.** To the fullest extent permitted by law, SELLER shall release, defend and hold harmless UTILITIES, the City of Colorado Springs, their officers, City Council, Utilities Board, directors, employees, agents and representatives from and against any and all losses, damages (including attorney's fees, expert fees, and all litigation expenses), injuries, claims, cause or causes of action, or any liability of any kind whatsoever resulting from, or arising out of, or in connection with the Work provided by SELLER pursuant to this Contract, including, without limitation, (i) any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated clean up costs, (ii) any claim based on the negligence, omissions or willful misconduct of SELLER or any of its employees, consultants or agents, and (iii) any claim by a third party against UTILITIES alleging that the Work, the results of such Work, or any other products or processes provided under this Contract, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party; provided, however, that if the Work performed is construction, then SELLER's obligations under this entire paragraph are limited to the extent of the negligence attributed to such acts or omissions of SELLER or any of SELLER's employees, consultants, agents, subcontractors, any subcontractor's subcontractor, or other person or entity employed directly or indirectly by any of them, and anyone for whose acts they may be liable.

15. **Independent Contractor.** SELLER understands and agrees that SELLER and SELLER's employees, agents, subcontractors or other personnel are not UTILITIES' employees. SELLER shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefits to SELLER or any of SELLER's employees, agents, subcontractors or other personnel performing, directly or indirectly, the Work specified herein. Further, it is expressly understood and agreed that neither SELLER nor SELLER's employees, agents, subcontractors or other personnel shall be entitled to any UTILITIES' payroll, insurance, unemployment, Worker's Compensation, retirement or any other benefits whatsoever.

16. **Inspection/Testing.** Payment for any Work supplied hereunder shall not constitute acceptance thereof. UTILITIES shall have the right to inspect Work and to reject any or all of Work which are in UTILITIES' judgment defective or nonconforming. Work rejected and Materials supplied in excess of quantities called for herein may be returned to SELLER at SELLER's expense and, in addition to UTILITIES' other rights, UTILITIES may charge SELLER all expenses of unpacking, examining, repacking and reshipping the Materials. In the event UTILITIES receives Work with defects or nonconformity not apparent on examination, UTILITIES reserves the right to require replacement, as well as payment of damages. Nothing contained in this Contract shall relieve in any way the SELLER from the obligation of testing, inspection and quality control. Use of a portion of the Materials for testing shall not constitute acceptance of the Materials. Nonconforming Materials will be returned to SELLER freight collect and risk of loss will pass to SELLER upon UTILITIES' delivery to the common carrier.

17. **Insurance/Bonds.** SELLER agrees to maintain at its own expense all legally required insurance for its premises, associates, and employees. SELLER shall maintain the following insurance with limits not less than as follows: Workers' Compensation in accordance with the requirements of the State of Colorado and Employer's liability insurance of not less than \$500,000 per occurrence; Commercial General Liability insurance with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage; Automobile Liability insurance including owned and hired vehicles with a combined single limit of \$500,000 per occurrence for bodily injury and property damage insurance with a combined single limit of \$500,000 per occurrence, and excess liability of \$1,000,000 combined single limit per occurrence. Upon request, SELLER shall provide UTILITIES with certificates of insurance. In the event the amounts due under this Contract exceed One Hundred Thousand Dollars (\$100,000), and upon request by UTILITIES, SELLER shall furnish performance, payment and/or maintenance bonds acceptable to UTILITIES, each in an amount at least equal to the price of the Contract, as security for the faithful performance of SELLER's obligations under the Contract.

18. **Invoicing/Payment.** Payment of undisputed invoices at the prices stipulated herein is due and payable Net Thirty (30) Days from UTILITIES' receipt of a complete and accurate invoice for supplies or services accepted by UTILITIES. Each invoice shall be accompanied by supporting documentation as required by UTILITIES. Unless otherwise specified in this Contract, payment shall be made on partial deliveries accepted by UTILITIES if (i) the amount due on the deliveries warrants it, or (ii) SELLER requests it and the amount due on the deliveries is at least \$1,000 or 50% of the total contract price. Original invoices for payment shall be submitted and addressed to Accounts Payable - MC 929, Colorado Springs Utilities, PO Box 1103, Colorado Springs, Colorado 80947-0929. Unless otherwise stated in this Contract, a copy of each invoice, duly marked "COPY", shall be sent directly to the project manager or contract administrator as identified in this contract and as otherwise advised in writing.

19. **Late Payment.** UTILITIES is committed to paying invoices within the terms of the Contract. UTILITIES will not pay any late charges or service charges that may be incurred due to late payment.
20. **Limitation of Liability.** IN NO EVENT SHALL UTILITIES BE LIABLE TO SELLER OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS CONTRACT, WHETHER OR NOT UTILITIES WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. UTILITIES liability on any claim of any kind for any loss or damage arising out of, in connection with or resulting from this Contract or from the performance or breach thereof shall in no case exceed the price allocable to the Work which gives rise to the claim. UTILITIES shall not be liable for penalties of any kind. Any action resulting from any breach on the part of UTILITIES as to the Work hereunder must be commenced within one (1) year after the cause of action has accrued. Nothing in this Contract shall be interpreted to limit or prevent the protections afforded to UTILITIES under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*
21. **No Publicity.** SELLER shall not advertise or promote using the name or description of UTILITIES, without prior written consent of UTILITIES.
22. **Non-Discrimination.** UTILITIES is committed to equal employment opportunity for all and maintains and implements equal opportunity and affirmative action where necessary in all of its daily operations. UTILITIES' policy is that no person shall be discriminated against because of race, color, national origin or ancestry, sex, age, religious convictions, veteran status, disability or political beliefs. SELLER shall comply with all Federal and State nondiscrimination laws and have an equal employment opportunity policy. SELLER shall also comply with UTILITIES' Equal Employment Opportunity Affirmative Action policies regarding nondiscrimination and harassment, which includes sexual harassment, in the conduct of its business while on UTILITIES' property and/or interacting with UTILITIES employees. SELLER will cooperate with UTILITIES in using SELLER's best efforts to ensure that disadvantaged business enterprises are afforded the full opportunity to compete for subcontracts or Work under this Contract.
23. **Non-Exclusive Contract.** This is not an exclusive contract. UTILITIES is free to engage others to perform the Work.
24. **Ownership of Work Product.** For purposes of this Contract, "Work Product" shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by SELLER alone or with others which result from or relate to the Work performed hereunder. Standard Materials manufactured by SELLER and sold to UTILITIES without having been designed, customized or modified for UTILITIES do not constitute Work Product. All Work Product shall at all times be and remain the sole and exclusive property of UTILITIES. SELLER hereby agrees to irrevocably assign and transfer to UTILITIES and does hereby assign and transfer to UTILITIES all of its worldwide right, title and interest in and to the Work Product including all associated intellectual property rights. UTILITIES will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name or to follow any other procedure that UTILITIES deems appropriate. SELLER agrees: (i) to disclose promptly in writing to UTILITIES all Work Product in its possession; (ii) to assist UTILITIES in every reasonable way, at UTILITIES' expense, to secure, perfect, register, apply for, maintain, and defend for UTILITIES' benefit all copyrights, patent rights, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to the Work Product in UTILITIES' name as it deems appropriate; and (iii) to otherwise treat all Work Product as UTILITIES Confidential Information as described above. These obligations to disclose, assist, execute and keep confidential survive the expiration or termination of this Contract. All tools and equipment supplied by UTILITIES to SELLER shall remain the sole property of UTILITIES.
25. **Price Warranty.** SELLER warrants that the prices and rates stated herein represent currently established prices and rates and are no higher than would be charged to any other customer, whether commercial or a United States agency of local, state or federal government, for similar services in like quantities.
26. **Setoff.** All claims for money due or to become due from UTILITIES shall be subject to deduction or setoff by UTILITIES by reason of any counterclaim arising out of this or any other transaction with SELLER.
27. **Severability.** Any provision or part of this Contract held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties who agree that the Contract shall be reformed to replace such stricken provision with a new provision that comes as close as possible to expressing the intention of the stricken provision.
28. **Shipment; Risk of Loss.** A complete packing list shall be enclosed with all shipments describing the contents of each package or container showing weight, quantity and Contract number. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the UTILITIES Contract number, dates of shipment, and names and addresses of consignor and consignee. Delivery shall be F.O.B. UTILITIES designated facility. Title, and the risk of loss while in transit, to Materials will pass to UTILITIES upon UTILITIES' receipt at the designated facility. SELLER shall not substitute Materials or ship more than the quantity of Work ordered without express written authority from UTILITIES. If, in order to comply with UTILITIES' required delivery date, it becomes necessary for SELLER to ship by a more expensive way than specified in this Contract, any increased transportation costs resulting therefrom shall be paid for by SELLER unless the necessity for such rerouting or expedited handling has been caused by UTILITIES and the increased costs are pre-approved by UTILITIES in writing.
29. **Stop Work Order.** SELLER shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from UTILITIES, or for such longer period of time as the parties may agree, and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by this Contract during the period of Work stoppage. Within such period, UTILITIES shall either terminate or continue the Work by written order to SELLER. In the event of a continuation, an equitable adjustment in accordance with Section 6 "Changes", shall be made to the price,

delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made in writing within thirty (30) days after such continuation.

30. **Survival of Obligations.** All representations, indemnifications, warranties, ownership of work products, license grants, and guarantees made in, required by, or given in accordance with this Contract will survive the payment, completion, and acceptance of the Work or termination or completion of the Contract.

31. **Taxes.** UTILITIES is an enterprise of the city of Colorado Springs and is exempt from taxes as follows.

(a) **FEDERAL: 84-6000574**

(b) **FEDERAL EXCISE: 138557**

(c) **STATE SALES TAX: 98-03479**

32. **Termination for Cause.** In the event SELLER fails to perform any term or condition hereof ("Default") and the Default continues for a period of seven (7) days after UTILITIES shall have given SELLER written notice thereof, then UTILITIES may, at its option, terminate this Contract or any part hereof for cause. Default shall include, but not be limited to, late deliveries, deliveries of Materials which are defective or which do not conform to this Contract, and failure to provide UTILITIES, upon request, of reasonable assurances of future performance. In the event that this Contract is terminated in accordance with the foregoing, UTILITIES may take possession of any Work and may complete any Work by whatever means UTILITIES may select. The cost of completing said Work shall be deducted from the balance which would have been due to SELLER had the Contract not been terminated and Work completed in accordance with the Contract. SELLER may terminate this Contract upon written notice to UTILITIES if UTILITIES fails to pay SELLER within sixty (60) days after SELLER notifies UTILITIES that payment is past due.

33. **Termination for Convenience.** UTILITIES reserves the right to terminate this Contract or any part hereof for its sole convenience. In the event of such termination, SELLER shall immediately stop all Work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such Work. SELLER shall be paid a reasonable termination charge consisting of a percentage of the Contract price reflecting the percentage of the Work completed and accepted by UTILITIES prior to the effective date of termination, plus actual and reasonable direct costs resulting from termination, which shall not include loss of anticipated profits or revenue. SELLER shall not be paid for any Work done after receipt of the notice of termination, or for any costs incurred by SELLER's suppliers or subcontractors which SELLER could reasonably have avoided.

34. **Waiver.** UTILITIES' failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or UTILITIES' waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

35. **Warranty.**

(a) SELLER expressly represents and warrants that all Work furnished under this Contract shall be completed in a professional, workmanlike manner, with the degree of skill and care that is required by current, good and sound professional procedures. Further, SELLER represents and warrants that: (i) the Work shall conform to all specifications and appropriate standards and shall be free from defects in material or workmanship; (ii) all Work furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which Work of that kind are normally used; (iii) all Materials will be new and will not be used or refurbished; and (iv) it has all necessary right, power and authority to enter into this Contract. If SELLER knows or has reason to know the particular purpose for which UTILITIES intends to use the Work, SELLER warrants that such Work will be fit for such particular purpose. Inspection, testing, acceptance or use of the Work furnished hereunder shall not affect the SELLER's obligation under this warranty and such warranties shall survive inspection, testing, acceptance and use. If the Materials include hazardous materials, SELLER represents and warrants that SELLER understands the nature of any hazards associated with the manufacture, handling and transportation of such hazardous materials.

(b) SELLER's warranty shall run to UTILITIES, its successors, assigns and customers, and users of the Work. SELLER agrees to replace or correct defects of any Work not conforming to the foregoing warranty promptly without expense to UTILITIES, when notified of such nonconformity by UTILITIES, provided UTILITIES elects to provide SELLER with the opportunity to do so. In the event of failure of SELLER to correct defects in or replace nonconforming Work promptly, UTILITIES, after reasonable notice to SELLER, may such corrections or replace such Work and charge SELLER for the cost incurred by UTILITIES in doing so.

**El Paso County
Financial and Contract Services Division**

GENERAL SERVICES CONTRACT

CONTRACT NUMBER:

SUBJECT MATTER:

COUNTY DEPARTMENT:

CONTRACTOR:

NAME

ADDRESS
CITY, STATE, ZIP
TELEPHONE NUMBER
FAX NUMBER

EFFECTIVE DATE:

EXPIRATION DATE:

THIS CONTRACT, entered into on the date set forth below, is made by and between the **BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO** ("**COUNTY**") and ("**CONTRACTOR**").

WHEREAS, the **COUNTY** desires to purchase and receive from **CONTRACTOR** the services described in **APPENDICES A, B & C**; and

WHEREAS, **CONTRACTOR** is an entity qualified and able to provide the type of services required by the **COUNTY**; and

WHEREAS, the parties to this **CONTRACT** desire to reduce to written terms the manner and conditions under which these services will be provided and compensated.

NOW, THEREFORE, in consideration of the above, and in accordance with the mutual terms, conditions, requirements and obligations set forth in this **CONTRACT**, the **COUNTY** and **CONTRACTOR** agree as follows:

SECTION 1. SERVICES

The **COUNTY** agrees to retain **CONTRACTOR** to perform the services described in **Appendices A, B & C**. **CONTRACTOR** agrees to provide those services in accordance with the provisions of this **CONTRACT**.

SECTION 2. CONTRACTOR'S RESPONSIBILITIES

- 2.1 The scope of services to be performed by **CONTRACTOR** is set forth in **Appendices A & B** attached to this **CONTRACT** and incorporated by reference.
- 2.2 All issues or questions of **CONTRACTOR** about this **CONTRACT** arising during the term of this **CONTRACT** shall be addressed to the designated County Representative identified in Section 3 below.
- 2.3 **CONTRACTOR** shall attend meetings and submit reports, plans, drawings and specifications as required in **Appendices A & B** and shall be reasonably available to the County Representative to respond to any issues that may arise during the term of this **CONTRACT**.
- 2.4 All employees, agents, representatives and sub-contractors of **CONTRACTOR** who will have significant responsibility for performance under this **CONTRACT** shall be identified to and be subject to approval by the County Representative prior to the commencement of any work by these individuals.
- 2.5 All governmental permits or licenses specified in **Appendices A & B** to be acquired by **CONTRACTOR** shall be obtained by **CONTRACTOR** in a prompt and legally sufficient manner and at **CONTRACTOR'S** own expense. Upon demand by the **COUNTY**, **CONTRACTOR** shall provide the **COUNTY** with evidence of the permits or licenses.

- 2.6 All services to be performed under this **CONTRACT** by **CONTRACTOR** shall be performed in accordance with generally recognized professional practices and standards of **CONTRACTOR'S** profession and to the reasonable satisfaction of the **COUNTY**.
- 2.7 **CONTRACTOR** represents, warrants and covenants that the prices, charges and/or fees set forth in this **CONTRACT** (on the whole) are at least as favorable as the prices, charges and/or fees **CONTRACTOR** charges (on the whole) to other of its customers or clients for the same or substantially similar products or services provided under the same or substantially similar circumstances, terms and conditions.
- 2.8 If **CONTRACTOR** agrees or contracts with other customers or clients similarly situated during the term of this **CONTRACT**, and offers or agrees to financial terms more favorable than those set forth herein (on the whole), **CONTRACTOR** hereby agrees that it will reduce the prices, charges and/or fees charged to the **COUNTY** with respect to the products or services hereunder to the most favorable rates received by those other customers or clients.

SECTION 3. COUNTY'S RESPONSIBILITIES

- 3.1 The **COUNTY** agrees to compensate **CONTRACTOR** as set forth in Section 5 below for services rendered in accordance with this **CONTRACT**.
- 3.2 The County's Representative is **(NAME, TITLE, TELEPHONE NUMBER)**. The County Representative shall have authority to transmit instructions, receive information and documents and resolve any issues arising out of the performance of this **CONTRACT**. The County Representative shall provide **CONTRACTOR** with the identity of an alternate contact person in the event the County Representative is unavailable to respond to **CONTRACTOR'S** inquiries.

SECTION 4. TIME OF PERFORMANCE AND DELAY

CONTRACTOR'S time of performance shall commence as of the effective date of this **CONTRACT**, and shall remain in effect unless otherwise terminated in accordance with Section 13 below, or until the expiration date specified on the first page of this **CONTRACT**, whichever comes first.

SECTION 5. COMPENSATION

- 5.1 The **COUNTY** agrees to pay **CONTRACTOR** for the complete and satisfactory performance of services under this **CONTRACT** in the following amount and per the following payment schedule:

\$ _____
(AMOUNT SPELLED OUT) DOLLARS AND 00/100

PURCHASE ORDER # _____

The amount and terms of compensation referenced above shall not be modified except in accordance with Section 19 below.

- 5.2 **CONTRACTOR** shall provide the **COUNTY** written evidence of services actually performed, and at the **COUNTY'S** request, shall itemize all hourly labor expenses and direct expenses incurred by **CONTRACTOR**.
- 5.3 If the County Representative determines that **CONTRACTOR** is not making sufficient progress or is performing unsatisfactory work under this **CONTRACT**, the County Representative may protest **CONTRACTOR'S** written invoice or statement by providing written notice to **CONTRACTOR** within ten (10) days following receipt of the invoice or statement. The written notice shall identify the nature of the problem and request an appropriate remedial action by **CONTRACTOR**. **CONTRACTOR** shall either correct the problem and advise the County Representative of the correction, or shall provide a detailed written response to the notice within ten (10) days following receipt of the **COUNTY'S** notice. If the resolution of the problem cannot be achieved, the dispute will be resolved in accordance with Section 12 below. During the term of any dispute resolution, payment of **CONTRACTOR'S** invoice or statement may be withheld by the **COUNTY**.
- 5.4 Unless otherwise agreed upon in writing by the **COUNTY**, **CONTRACTOR** shall be solely responsible for compensation of third parties, including subcontractors, consultants and suppliers, which are retained at the request of **CONTRACTOR** to perform this **CONTRACT**. Such third parties shall not be considered third-party beneficiaries to this **CONTRACT**.
- 5.5 No payment made under this **CONTRACT** shall be conclusive evidence of the performance of this **CONTRACT**, either in whole or in part, and no payment, including final payment, shall be construed to be a consent on the part of the **COUNTY** to accept unsatisfactory or deficient work.

SECTION 6. FUNDING AVAILABILITY

- 6.1 On or about December 15, 2008, the Board of County Commissioners of El Paso County, Colorado appropriated adequate funds to pay for services rendered in accordance with this **CONTRACT** for fiscal year 2009. This amount is equal to or in excess of the contract amount of this **CONTRACT**.
- 6.2 Financial obligations of the **COUNTY** payable after the current fiscal year are contingent on appropriation or budgeting of funds for those obligations. Should the performance of this **CONTRACT** continue past the current fiscal year, the **COUNTY** shall notify **CONTRACTOR** in writing that sufficient funds are available for continuance of **CONTRACTOR'S** performance under this **CONTRACT** into the new fiscal year. Unless **CONTRACTOR** is notified in writing of availability of funds prior to the end of the current fiscal year, **CONTRACTOR** shall not commence any work in the new fiscal year for which a new appropriation is required to make payment.
- 6.3 Any renewal of this **CONTRACT** is contingent upon available funding and satisfactory performance by the **CONTRACTOR**, as determined by the **COUNTY**. It shall be the **CONTRACTOR'S** responsibility to provide the **COUNTY** representative (with a copy to the Procurement and Contracts Department) all requested **CONTRACT** changes and/or price adjustments at least 120 days prior to the expiration of the **CONTRACT** or **CONTRACT** renewal date. After review by the **COUNTY** of the **CONTRACTOR'S** requested changes or price adjustments, the **COUNTY** will enter into negotiations with the **CONTRACTOR** to determine if the requested contract changes and/or price adjustments are acceptable to the **COUNTY**. Negotiations must be completed 90 days prior to expiration of the **CONTRACT** or **CONTRACT** renewal date. Failure of the **COUNTY** and the **CONTRACTOR** to agree upon the terms and conditions for the renewal may result in resolicitation of the goods or services covered by the original **CONTRACT**. Continued performance by the **CONTRACTOR** outside of the **CONTRACT** term will be at the **CONTRACTOR'S** risk.

SECTION 7. INDEPENDENT CONTRACTOR

CONTRACTOR is rendering services as an independent contractor, not as an employee, and shall be accountable to the **COUNTY** for the ultimate results of its actions, but shall not be subject to the direct supervision and control of the **COUNTY**, except as otherwise provided herein. Neither **CONTRACTOR** nor any agent, employee, or servant of **CONTRACTOR** shall be or shall be deemed to be an employee, agent or servant of the **COUNTY**. **CONTRACTOR** shall pay when due all required employment taxes and income tax withholding, shall provide and keep in force worker's compensation (and show proof of such insurance) and unemployment compensation insurance in the amounts required by law, and shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants and the subcontractors, during the performance of this **CONTRACT**.

SECTION 8. INSURANCE

- 8.1 During the entire term of this **CONTRACT**, **CONTRACTOR** shall maintain, at its own expense, insurance in the following minimum amounts and classification:

LIMITS OF LIABILITY

Workmen's Compensation/Employer's Liability AS REQUIRED BY STATUTE

Commercial General liability (including blanket contractual liability insurance)

Bodily Injury
\$150,000 each person
\$600,000 each occurrence

Property Damage
\$600,000

Comprehensive Automobile Liability

Bodily Injury
\$150,000 each person
\$600,000 each occurrence

Property Damage
\$600,000

Professional Liability (if applicable)
 Commensurate with risks of services

provided under this Agreement

- 8.2 **CONTRACTOR** shall furnish certificates of such insurance to the County Procurement & Contracts Director ("**DIRECTOR**") prior to the performance of this **CONTRACT**. The **COUNTY** shall be named as an additional insured on all policies of liability insurance.

SECTION 9. INDEMNIFICATION

To the extent authorized by law, the **CONTRACTOR** shall defend, indemnify and hold the **COUNTY** free and harmless from and against any and all liabilities, demands, claims, damages, suits, judgments and decrees, and Court awards including costs, expenses and attorneys' fees, on account of injuries to or death or any person or persons or damage to any property arising out of or related to the **CONTRACTOR'S** intentional or negligent acts, errors or omissions or that of its agents, officers, servants and employees, subcontractors or assignees, whether contractual or otherwise, during the performance of this contract and pursuant to its terms. Nothing in this section shall be deemed to waive or otherwise limit the defenses available to the **COUNTY** pursuant to the Colorado governmental Immunity Act or otherwise provided by law.

SECTION 10. AUDIT AND INSPECTION

- 10.1 **CONTRACTOR** shall at all times during the term of this **CONTRACT** maintain such books and records as shall sufficiently and properly reflect all direct costs of any nature in the performance of this **CONTRACT**, and shall utilize such bookkeeping procedures and practices as will reflect these costs. Books and records shall be subject, at any reasonable time, to inspection, audit or copying by Federal, State or County personnel, or such independent auditors or accountants as are designated by the **COUNTY**.
- 10.2 **CONTRACTOR** shall permit the County Representative or other authorized Federal, State or County personnel, at any reasonable time, to inspect, transcribe or copy any and all data, notes, records, documents and files of the work **CONTRACTOR** is performing in relation to this **CONTRACT**.

SECTION 11. OWNERSHIP

- 11.1 All data, plans, reports, notes and documents provided to or prepared by **CONTRACTOR** in performance of this Agreement shall become the property of the **COUNTY** upon payment of services rendered by **CONTRACTOR**, and shall be delivered to the County Representative.
- 11.2 Except as provided in Section 10 above, all such documents shall remain confidential and shall not be made available by **CONTRACTOR** to any individual or entity without the consent of the County Representative.
- 11.3 If the **CONTRACTOR** deems any documents submitted by **CONTRACTOR** to the **COUNTY** under this **CONTRACT** confidential business data, trade secrets, or data not otherwise subject to public disclosure, **CONTRACTOR** shall clearly mark the documents as "Confidential" prior to delivering or making them available to the **COUNTY**. If the **COUNTY** receives a request for the production or disclosure of documents so marked, it will decline disclosure and notify the **CONTRACTOR** of such request; *provided, however*, that if any action is commenced against the **COUNTY** under the Colorado Public (Open) Records Act or otherwise seeking to compel production or disclosure of the documents, **CONTRACTOR** or any other person asserting the confidentiality privilege of such documents shall immediately intervene in such action, and whether or not such intervention is permitted, shall defend, indemnify and hold **COUNTY** harmless from any costs, damages, penalties or other consequences of **COUNTY'S** refusal to disclose or produce such documents.

SECTION 12. DISPUTES

- 12.1 Any dispute concerning the performance of this **CONTRACT** which is not resolved by mutual agreement of the parties shall be resolved by an independent committee under the direction of the **DIRECTOR**. The disputing party must provide written notice to the **DIRECTOR** within fifteen (15) working days from the date the dispute was known or should have been known. The written notice must provide the following information: 1) contract number; 2) cause of the dispute; 3) contract language in dispute, if any; 4) amount of dollars in controversy, if any.

Within five (5) working days following receipt of the written notice, a meeting with the County Representative, **CONTRACTOR** and the independent committee will be scheduled. In the event additional meetings are required, a maximum of three (3) meetings will be held over the course of a ten (10) day period. In the event the dispute cannot be resolved after the third meeting, a final statement will be issued by the independent committee and delivered to the parties within ten (10) days of the final meeting.

- 12.2 **CONTRACTOR** shall not cease performance of this **CONTRACT** during the term of the dispute resolution process unless the parties mutually agree in writing that performance may be suspended.

SECTION 13. SUSPENSION AND TERMINATION

- 13.1 Without terminating this **CONTRACT**, the **COUNTY** may suspend **CONTRACTOR'S** services following written notice to **CONTRACTOR**. Within five (5) days following receipt of such notice, **CONTRACTOR** shall have

completed all reasonable measures to cease its services in an orderly manner. **CONTRACTOR** shall be paid for all reasonable costs incurred and for services rendered through the date services were suspended, but in no case no later than five (5) days after **CONTRACTOR'S** receipt of suspension. If resumption of **CONTRACTOR'S** services requires any waiver or change in this **CONTRACT**, the parties must mutually agree to such waiver or change in writing and the writing must be attached as an addendum to this **CONTRACT**.

- 13.2 The **COUNTY** shall have the right to terminate this **CONTRACT**, in whole or in part, at any time during the course of performance by providing written notice to **CONTRACTOR**. Within ten (10) days following receipt of such notice, **CONTRACTOR** shall have completed all reasonable measures to cease its services in an orderly manner. If a new contractor is retained to complete the services, **CONTRACTOR** will cooperate fully with the **COUNTY** in preparing the new contractor to take over completion of the services. **CONTRACTOR** will be paid for all reasonable costs incurred and for services rendered through the date of termination of this **CONTRACT**, but in no case will **CONTRACTOR** be paid for services rendered later than the date of termination.

SECTION 14. COMPLIANCE WITH LAWS

At all times during the performance of this **CONTRACT**, **CONTRACTOR** shall strictly observe and conform to all applicable federal, state and local laws, rules, regulations and orders that have been or may hereafter be established.

14.1 Federal Immigration Law Compliance: The **CONTRACTOR** certifies that the **CONTRACTOR** has complied with the United States Immigration and Control Act of 1986. All persons employed by the **CONTRACTOR** for performance of this **CONTRACT** have completed and signed Form I-9 verifying their identities and authorization for employment.

Illegal Aliens: Public Contracts for Services. CRS 8-17.5-101 and 102, and Public Law 208, 104th Congress, as amended and expanded in Public Law 156, 108th Congress, as amended.

CONTRACTOR certifies that the **CONTRACTOR** shall comply with the provisions of CRS 8-17.5-101 et seq. **CONTRACTOR** shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a 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**. **CONTRACTOR** represents, warrants, and agrees that it (i) has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment in the United States through participation in the basic pilot program administered by the Social Security Administration and Department of Homeland Security, and (ii) otherwise will comply with the requirements of CRS 8-17.5-102(2)(b). The **CONTRACTOR** shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. If the **CONTRACTOR** fails to comply with any requirement of this provision or CRS 8-17.5-101 et seq., the **COUNTY** may terminate this contract for breach and the **CONTRACTOR** shall be liable for actual and consequential damages to the **COUNTY**.

14.2 Compliance with Colorado Constitution Article XXVIII:

CONTRACTOR agrees, for the duration of this **CONTRACT** and for two (2) years thereafter, to cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on behalf of the **CONTRACTOR** or on behalf of his or her immediate family members and for the benefit of any political party or of any candidate for any elected office of the state or any of its political subdivisions.

If this **CONTRACT** relates to a ballot issue of the State of Colorado or any of its political subdivisions, **CONTRACTOR** certifies that **CONTRACTOR** has not made or caused to be made any contribution intended to promote or influence the result of the election on said ballot issue.

The parties hereby agree that if the **CONTRACTOR** intentionally violates Section 15 or Section 17(2) of Colorado Constitution Article XXVIII, as embodied in this Section 14.2, then as contractual damages, **CONTRACTOR** shall be ineligible to hold any sole source government contract, or public employment with the State of Colorado or any of its political subdivisions, for three (3) years. The parties acknowledge that the governor may temporarily suspend any remedy under this paragraph during a declared state of emergency.

SECTION 15. NON-DISCRIMINATION

CONTRACTOR shall not hire, discharge, transfer, promote or demote, or in any manner discriminate against any person otherwise qualified and capable because of race, color, sex, marital status, age, religion, disability or national origin. **CONTRACTOR** agrees to comply with all applicable Federal and State statutes and regulations concerning non-discrimination.

SECTION 16. APPLICABLE LAW

The laws, rules and regulations of the State of Colorado and El Paso County shall be applicable in the enforcement, interpretation and execution of this **CONTRACT**. The parties to this **CONTRACT** understand and agree that, in the event of any litigation which may arise between the parties under this **CONTRACT**, jurisdiction and venue shall lie in the Fourth Judicial District of El Paso County, Colorado.

SECTION 17. RIGHTS OF THIRD PARTIES

This **CONTRACT** does not and shall not be deemed to confer on any third party the right to the performance or proceeds under this **CONTRACT**, to claim any damages or to bring any legal action or other proceeding against the **COUNTY** or **CONTRACTOR** for any breach or other failure to perform this **CONTRACT**.

SECTION 18. ASSIGNMENT/SUBCONTRACTS

CONTRACTOR shall not assign its interest in this **CONTRACT** or subcontract any of the work to be performed under this **CONTRACT** without the written consent of the **COUNTY**.

SECTION 19. CHANGES OR MODIFICATIONS

19.1 No modification, amendment, notation, change or other alteration of this **CONTRACT** shall be valid unless mutually agreed by the parties in writing and executed as an addendum to this **CONTRACT**.

19.2 No change order resulting in an increase to the contract price set forth in Section 5 above shall be executed or effective unless the increase is approved by the appropriate County official(s) and the additional funds have been appropriated or otherwise made available. **CONTRACTOR** shall prepare a cost calculation for the additional costs and submit it to the County Representative prior to approval of any change order. The County Representative then will arrange for a change order, confirming with **CONTRACTOR** that funds have been appropriated or made available to cover the additional costs.

SECTION 20. SEVERABILITY

If any section, subsection, clause or phrase of this **CONTRACT** is, for any reason, held to be invalid, such holding shall not affect the validity of the remaining portions of this **CONTRACT**.

SECTION 21. CONFLICT OF TERMS IN THE CONTRACT DOCUMENTS

In the event there is found any conflict in any of the terms between the **COUNTY'S** contract documents and the **CONTRACTOR'S** contract documents, the parties understand and agree that the terms contained in the **COUNTY'S** contract documents shall be controlling and shall take precedence over any conflicting terms found in the contract documents.

Further, if there are any conflicting terms as between the **COUNTY'S** contract and the **COUNTY'S** Purchase Order or any other **COUNTY** documents which are included as a part of the contract documents, those terms which the **COUNTY** deems most favorable toward the protection of the **COUNTY** and the goals of the **CONTRACT** shall be deemed to control and take precedence over any conflicting contract terms. The conflicting contract terms may be deleted at the **COUNTY'S** sole discretion.

In the event that one of the **COUNTY'S** contract documents contains a word, statement, or clause which is not contained in any other of the **COUNTY'S** contract documents nor in those of the **CONTRACTOR'S** contract documents, the parties understand and agree that such word, statement or clause shall be included as a part of the contract terms at the sole discretion of the **COUNTY**.

Finally, in the event that there is found in the **CONTRACTOR'S** contract documents a word, statement or clause not contained in the **COUNTY'S** contract documents and which the **COUNTY**, in its sole discretion, wishes to delete from the contract terms, the parties understand and agree that the **COUNTY** shall have the discretion to include or delete such word, statement or clause from the contract terms.

SECTION 22. ENTIRE CONTRACT

This **CONTRACT**, including attached Appendices, constitutes the entire understanding of the parties. At the time of execution of this **CONTRACT**, there are no other terms, conditions, requirements or obligations affecting this **CONTRACT** which are not specifically set forth herein.

SECTION 23. APPENDICES

The following appendices are attached to and made a part of this **CONTRACT**:

- | | |
|-------------|-------------------------------|
| Appendix A: | IFB/RFP NO.: |
| Appendix B: | COMPANY'S RESPONSE |
| Appendix C: | INSURANCE CERTIFICATES |

IN WITNESS WHEREOF, the parties hereto have executed this **CONTRACT** on the _____ day of _____, 2009.

**BOARD OF COUNTY COMMISSIONERS
EL PASO COUNTY, COLORADO
AUTHORIZED REPRESENTATIVE)**

**(NAME OF COMPANY)
(NAME OF**

**BY: _____
BY: _____
CHAIRMAN
AUTHORIZED REPRESENTATIVE**

**ATTEST:
APPROVED AS TO FORM:**

**BY: _____
BY: _____
COUNTY CLERK & RECORDER
COUNTY ATTORNEY**

OFFICE OF THE