

**AGREEMENT FOR THE 2019 OVERLAY PROJECT BETWEEN  
EAGLE COUNTY, COLORADO  
AND**

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THIS AGREEMENT ("Agreement") is dated as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between Eagle County, Colorado, a body corporate and politic, acting by and through its Board of County Commissioners (hereinafter called "County" or "Owner"), and \_\_\_\_\_ a \_\_\_\_\_ (hereinafter called "Contractor").

County and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

**ARTICLE 1 – WORK**

1.1 The project which is the subject hereof is generally described as the 2019 Overlay Project (the "Project"). Contractor shall perform all the work required by the Contract Documents or reasonably inferable therefrom, for the complete construction of the Project in accordance with the Contract Documents (the "Work"). Except as otherwise provided in the Contract Documents, the Work shall include and Contractor shall provide and furnish all materials, supplies, equipment, tools, implements, all other facilities, and all labor and supervision, security, transportation, storage and all other services as and when required for or in connection with the complete construction of the Project. The Work is generally specified in **Exhibit A** ("Contractor's Bid Form") and **Exhibit B** ("Special Provisions"), which are attached hereto and incorporated herein by this reference. The Work includes construction zone traffic control, materials sampling, testing, inspection and the special provisions contained in **Exhibit B**. In the event of any conflict or inconsistency between the terms of **Exhibits A** or **B** and the terms and conditions set forth in this Agreement, the terms and conditions set forth in this Agreement shall control.

1.2 If the Work is taking place on property owned by other federal, state or local governmental entities, or a public utility or other third party, Contractor shall comply with any additional terms and conditions required by applicable law and (or) permits.

1.3 Capitalized terms that are not defined in this Agreement shall have the meanings ascribed to them in the General Conditions and (or) the Contract Documents, as applicable.

**ARTICLE 2 - REPRESENTATIVES**

2.1 The Project is under the authority of the Eagle County Road and Bridge Department, the Director of which, or his designee, shall be Owner's liaison with Contractor with respect to the performance of the Work.

2.2 The Eagle County Road & Bridge Director shall be authorized to sign change orders modifying the scope of work and associated compensation within the budget constraints set for

the Project. Change orders in excess of the budgeted amount must be signed and approved by the Board of County Commissioners.

2.3 Contractor's representative is \_\_\_\_\_.

2.4 Neither Owner's nor Contractor's representative(s) shall be changed with less than ten (10) days' prior written notice to the other party.

### **ARTICLE 3 - CONTRACT TIME**

3.1 Contractor shall diligently and continuously prosecute the Work and shall complete the Work and be ready for final payment in accordance with the Contract Documents on or before October 31, 2019 (the "Contract Time").

3.2 Time is of the essence. By executing the Agreement, Contractor confirms that the Contract Time is a reasonable period for performing the Work. Contractor shall proceed expeditiously with adequate forces and shall complete the Work within the Contract Time. No modifications shall be made to the Contract Time unless a written Change Order is executed by Owner in accordance with the Contract Documents.

3.3 Contractor shall employ all such additional labor services and supervision, including such extra shifts and overtime, as may be necessary to maintain progress in accordance with the Project Schedule and complete the Work within the Contract Time, all without an increase in the Unit Prices. Should it appear to Owner at any time that Contractor is in danger of failing to comply with the Project Schedule, Contractor shall cause its employees, subcontractors and all other parties covered by the Contract Documents to perform and work at hours and on days, in addition to the normal working hours and working days, whatever overtime work or shift work is necessary to comply with the Project Schedule and with no adjustment to the Unit Prices or Base Bid Price.

3.4 **LIQUIDATED DAMAGES:** Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not complete and ready for final payment within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner Three Hundred dollars (\$300.00) for each day that expires after the time specified in paragraph 3.1 for completion until the Work is complete.

### **ARTICLE 4 - TERMINATION**

4.1 County may terminate this Agreement, in whole or in part, for any reason, at any time, with or without cause. Any such termination shall be effected by delivery to Contractor of a written notice of termination ("Notice of Termination") specifying the date upon which termination becomes effective. In such event, Contractor shall be compensated for all materials and Work satisfactorily performed and accepted by County prior to the date of termination. Any

guarantees, or warranties with respect to the materials and Work performed shall survive termination. Any indemnification set forth in the Contract Documents shall survive termination.

## **ARTICLE 5 – BASIS FOR PAYMENT**

5.1 Contractor acknowledges that Owner is a tax-exempt entity and that Owner has appropriated funds for this Project in a sum equal to or in excess of the Base Bid Price.

5.2 Upon and subject to the provisions and conditions of this Section 5 and as set forth in the Contract Documents, Owner shall pay Contractor, for Contractor's performance of the Work under the Contract Documents, in accordance with the unit prices set forth in Contractor's Bid Form, attached here to as **Exhibit A** (the "Unit Prices"). The total compensation for Contractor's Work on the Project **shall not exceed** \_\_\_\_\_ ("Base Bid Price"). The Base Bid Price was calculated by the parties based upon the Unit Prices set forth in Contractor's Bid Form.

5.3 The Base Bid Price includes, without limitation, the entire amount of overhead and profit payable to Contractor in connection with the Work under the Contract Documents. Contractor shall not have the right to, nor shall it seek to recover, any additional compensation for overhead and profit. Unit quantities actually incorporated in the Project may be adjusted subject to the not to exceed Base Bid Price in Section 5.2 above and in accordance with the Contract Documents. In no event shall the Unit Prices set forth in **Exhibit A** (Contractor's Bid Form) be adjusted.

5.4 Where the quantity of Work with respect to any item that is covered by a Unit Price differs materially and significantly from the quantity of such Work indicated in the Contract Documents, an appropriate Change Order (additive or deductive) may be issued with written approval of Owner in accordance with the Contract Documents. Notwithstanding the foregoing, in no event will a change modify the Base Bid Price without a Change Order approved by Owner.

5.5 County will not withhold any taxes from monies paid to the Contractor hereunder and Contractor agrees to be solely responsible for the accurate reporting and payment of any taxes related to payments made pursuant to the terms of this Agreement.

5.6 Pursuant to the provisions of Section 24-91-103.6 C.R.S., and notwithstanding anything to the contrary contained elsewhere in the Contract Documents, no Change Order or other form of order or directive by Owner, and no amendment to this Agreement, requiring additional compensable Work to be performed which Work causes the aggregate amount payable under the Agreement to exceed the amount appropriated for the original Agreement, shall be of any force or effect unless accompanied by a written assurance by Owner 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 the Agreement.

5.7 The signatories to this Agreement aver to their knowledge, that no employee of the County has any personal or beneficial interest whatsoever in the Work, service or property described in this Agreement. Contractor has no interest and shall not acquire any interest, direct

or indirect, that would conflict in any matter or degree with the performance of Contractor's Work or services and Contractor shall not employ any person having such known interests.

5.8 Notwithstanding anything to the contrary contained in this Agreement, County shall have no obligations under this Agreement after, nor shall any payments be made to Contractor in respect of any period after December 31 without an appropriation therefore by County in accordance with a budget adopted by the Board of County Commissioners in compliance with Article 25, Title 30 of the Colorado Revised Statutes, the Local Government Budget Law (C.R.S. § 29-1-101 et seq.) and the TABOR Amendment (Colorado Constitution, Article X, Sec. 20).

## **ARTICLE 6 – CHANGES IN THE WORK**

6.1 Owner, without invalidating the Contract Documents, may order Changes in the Work consisting of additions, deletions or other revisions of the Work, with the Base Bid Price and(or) the Contract Time being adjusted accordingly (individually a "Change" and collectively "Changes"). All such Changes in the Work shall be authorized by "Change Order", and shall be performed pursuant to the Contract Documents. A Change may result in a modification to the quantities set forth in **Exhibit A** hereto, but any such Change shall be priced in accordance with the Unit Prices.

6.2 Within three (3) business days of receipt of an order for Change(s) from Owner, Contractor shall prepare and submit to Owner, a detailed breakdown (with all supporting documentation) sufficient to enable Owner to determine the effect on the Base Bid Price, if any, and the effect on the Project Schedule, if any, of a proposed Change. Such breakdown and documentation shall reflect all labor, services and materials altered, added, omitted or changed by the proposed Change(s), with the detailed breakdowns, estimates and verification of prices by Contractor and each applicable subcontractor (but with no change in the Unit Prices). Contractor shall not have the right to, nor shall it seek to recover, any additional compensation for overhead and profit. When a Change request requires immediate commencement of Work described, then Contractor shall submit a rough order of magnitude cost estimate within three (3) business days of commencing such Work. Owner will, on periodic basis and in accordance with the Contract Documents and C.R.S. 24-91-103.6 (2)(c), make periodic reimbursements for additional Work that is directed by Owner and performed by Contractor until a Change Order is finalized. In no instance, shall the periodic reimbursement be required before the Contractor has submitted an estimate of cost to the Owner for the additional Work to be performed.

6.3 Upon issuance of a Change Order by Owner, Contractor and its subcontractors will perform the Change(s) in the Work incorporated by the Change Order.

6.4 If there is a disagreement regarding the amount of adjustments to the Base Bid Price and(or) Contract Time in a Change Order, the Base Bid Price and the Contract Time shall be adjusted unilaterally by Owner by the amounts shown in the Change Order executed by Owner. Contractor may oppose any such unilateral decisions of Owner only by utilizing the dispute resolution provisions set forth in Section 19.7 the General Conditions and without any stoppage of the Work. As to any adjustments to the Base Bid Price set forth in said Change Order, the same shall be ultimately calculated as set forth in the Contract Documents (without any change in the Unit Prices).

6.5 Notwithstanding and pending resolution of any dispute regarding any adjustment in the Base Bid Price or Contract Time with respect to a Change, Contractor shall promptly proceed with Work required by any Change Order issued by Owner.

6.6 No Change Orders or other form of order or directive which requires additional compensable work to be performed may be issued or be effective unless accompanied by a written assurance to the Contractor 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 of the Agreement.

6.7 Owner will have authority to order minor changes in the Work not involving changes in the Base Bid Price or the Contract Time. Such changes shall be written orders and shall be binding on the Contractor and Owner. Contractor shall carry out such written orders promptly.

#### **ARTICLE 7 - CONTRACTOR NOTICE OF CLAIM FOR CHANGE ORDER**

7.1 If Contractor contends that any order from Owner or other event or occurrence shall cause Change(s) in the Work entitling Contractor to an adjustment to the Base Bid Price (as the same relates to quantity, but not including Unit Prices) or Contract Time, Contractor shall submit a written Notice of Claim to Owner as set forth in Section 19 of the General Conditions.

7.2 Owner shall review any timely Claim submitted by Contractor. In conducting its review, Owner shall have the right to require Contractor to submit such additional or supporting documents, data and other information as Owner may require. If, upon completion of such review, Owner determines a Change is justified, Owner shall issue a Change Order amending the Base Bid Price (subject to the provisions and conditions of the Contract Documents) or Contract Time or both, as appropriate. Otherwise, Owner may determine not to so issue a Change Order amending the Base Bid Price or Contract Time. If Contractor disputes the determination made by Owner, Contractor shall notify Owner in writing within three (3) business days following receipt of the determination and permit Owner five (5) additional days to reconsider and, if it deems it appropriate, modify its decision. If Owner does not modify its decision and Contractor still disputes Owner's determination, then Contractor may pursue the dispute resolution procedures set forth in Section 19.7 of the General Conditions. Notwithstanding the foregoing, the parties acknowledge and agree that Contractor shall not be entitled to a Change Order unless Contractor submits a written Notice of Claim to Owner and otherwise follows the processes and procedures set forth in Section 19 of the General Conditions within the time limitations set forth in Section 19 of the General Conditions, time being of the essence with respect thereto.

7.3 No Change in the Work, whether by alteration or addition to the Work, shall be the basis of an addition to the Base Bid Price or a change in the Contract Time unless and until such alteration or addition has been authorized by a written Change Order executed and issued in accordance with and in strict compliance with the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor verbal change orders or express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any Claim for an increase in the Base Bid Price or Change in the Contract Time. In the event that a written Change Order is not timely executed and issued in accordance with and in strict compliance with the Contract Documents, time being of the essence with respect thereto, Contractor's rights with respect to such Claims shall be deemed waived.

## **ARTICLE 8 - PAYMENT PROCEDURES**

8.1 Contractor shall submit Applications for Payment in accordance with the General Conditions and Contract Documents. Applications for Payment will be processed as provided in the General Conditions and Contract Documents.

8.2 **PROGRESS PAYMENTS:** Based upon monthly Applications for Payment submitted in accordance with the General Conditions, Owner shall make monthly progress payments on account of the Base Bid Price on the basis of Contractor's Applications for Payments, as provided below. All progress payments will be on the basis of the progress of the Work. Owner shall have the right to request and inspect supporting documentation for progress payments, including but not limited to receipts and invoices evidencing payments of charges associated with the Work.

8.2.1 Request for progress payments and retainage of funds shall occur in compliance with Paragraph 20 of the General Conditions and C.R.S. §24-91-103. The Owner shall authorize monthly progress payments of properly requested amounts of at least ninety five percent (95%) of the calculated value of the Work completed. The withheld percentage of the Base Bid Price may be retained until the Work is completed satisfactorily and finally accepted by County as provided for herein.

8.2.2 The period covered by each Application for Payment shall be one calendar month beginning on the first of each month and ending on the last day of the month.

8.2.3 Each Application for Payment shall be based upon the Unit Prices and Base Bid Price and otherwise in accordance with the Contract Documents. Each Application of Payment shall show actual quantities incorporated into the Project for each portion of the Work as of the end of the period covered by such Application for Payment.

8.3 **FINAL PAYMENT:** Within sixty (60) days of completion and acceptance of the Work by County in accordance with Paragraphs 21 and 22 of the General Conditions, County shall pay the remainder of the Base Bid Price. The final payment shall not be made until after final settlement of this Agreement has been duly advertised at least ten (10) days prior to such final payment by publication of notice thereof at least twice in a public newspaper of general circulation published in Eagle County, and the Board of County Commissioners has held a public hearing, thereupon and complied with C.R.S. §38-26-107. Final payment shall be made in accordance with the requirements of the aforesaid statute.

8.4 County may withhold from any payments due to Contractor, to such extent as may be necessary to protect County from loss, because of defective Work or material not remedied or the failure of Contractor to carry out the Scope of Work in accordance with this Agreement.

8.5 Contractor shall maintain comprehensive, complete and accurate records and accounts of its performance relating to this Agreement for a period of three (3) years following termination, which period shall be extended at County's reasonable request. County shall have the right within such period to inspect such books, records and documents upon demand, with reasonable

notice and at a reasonable time. Owner and Owner's accountants shall be afforded access to, and shall be permitted to audit and copy Contractor's records, books, correspondence, instructions, drawings, receipts, Subcontracts, purchase orders, vouchers, memoranda and other data relating to the Contract Documents. All documents (including electronic files) which are obtained during or prepared in the performance of the Work shall remain the property of Owner and are to be delivered to Owner before final payment is made to Contractor or upon earlier termination of this Agreement.

8.6 In taking action on Contractor's Applications for Payment, Owner shall be entitled to rely on the accuracy and completeness of the information furnished by Contractor and shall not be deemed to represent that: (i) Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted by Contractor; (ii) Owner has made exhaustive or continuous on-site inspections of the Work; or (iii) Owner has made examinations to ascertain how or for what purposes Contractor has used amounts previously paid on account of the Base Bid Price.

8.7 The Contractor acknowledges that payment shall be made in accordance with C.R.S. 24-91-103 and C.R.S. 38-26-107 and hereby waives its right to lien the property that is the subject of the Project. Contractor shall include the language of this paragraph in any subcontracts for the Project.

#### **ARTICLE 9 – CONTRACTOR'S REPRESENTATIONS**

In order to induce County to enter into this Agreement Contractor makes the following representations:

9.1 Contractor has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions, and federal, state, and local laws, ordinances, rules and regulations that in any manner may affect cost, progress, or performance of the Work.

9.2 Contractor has made, or caused to be made, examinations, investigations, and tests and studies of such reports and related data as he deems necessary for the performance of the Work at the Base Bid Price, within the Contract Time, and in accordance with other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports, or similar data are, or will be required by Contractor for such purposes.

9.3 Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents.

9.4 Contractor has given Owner written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Owner is acceptable to Contractor.

9.5 In performing the Work under this Agreement, the Contractor acts as an independent contractor and is solely responsible for necessary and adequate worker's compensation insurance, personal injury and property damage insurance, as well as such other insurance required by the Contract Documents. The Contractor, as an independent contractor, is obligated

to pay federal and state income tax on moneys earned. The personnel employed by the Contractor are not and shall not become employees, agents or servants of the Owner because of the performance of any Work by this Agreement.

9.6 All guarantees and warranties related to the materials furnished to Contractor by any manufacturer or supplier, if any, are for the benefit of County.

9.7 Within the time set forth in the General Conditions or if no time is set forth therein then within a reasonable time after receipt of written notice as more fully set forth in the General Conditions, Contractor shall correct at its own expense, without cost to County any defects or deficiencies in the Work.

9.8 Guarantees and warranties, if any, shall not be construed to modify or limit any rights or actions County may otherwise have against Contractor in law or in equity.

9.9 The intent of the Contract Documents is to include all items reasonably necessary for the proper execution and completion of the Work. Based on Contractor's careful review of the Contract Documents, Contractor acknowledges that the Contract Documents require a completed Project in accordance with the terms hereof.

9.10 Contractor acknowledges that whenever any public works project is financed in whole or in part by funds of the County, Colorado labor shall be employed to perform at least 80% of the Work. Contractor shall comply with this requirement.

## **ARTICLE 10 - CONTRACT DOCUMENTS**

The "Contract Documents" which comprise the entire Agreement are made a part hereof, and consist of the following:

10.1 This Agreement.

10.2 Contractor's Bid Form attached as **Exhibit A.**

10.3 Special Provisions and Supplementary Information, if any, is attached as **Exhibit B.**

10.4 General Conditions attached as **Exhibit C.**

10.5 Insurance Certificate(s) as **Exhibit D.**

10.6 Project Schedule.

10.7 Performance and Payment Bonds.

10.8 Notice of Award and, if any, Notice to Proceed.

10.9 Addendum(s).

- 10.8 Any modification or amendment, including Change Orders, duly delivered after execution of Agreement.

The parties acknowledge and agree that this Agreement and the General Conditions attached hereto, shall supersede and control over any inconsistent or contrary provision in any other attachment or agreement. There are no Contract Documents other than those listed above in this Article 10. The Contract Documents may only be altered, amended, or repealed by an executed, written amendment to this Agreement signed by each party.

#### **ARTICLE 11 – BONDS**

11.1 Contractor shall deliver to the County the bonds required by the Contract Documents with the executed Contract Documents and before starting Work. Notwithstanding anything to the contrary contained in the Contract Documents, the County shall have no liability or obligation hereunder unless and until the bonds have been so delivered.

#### **ARTICLE 12- SUBCONTRACTS AND OTHER AGREEMENTS**

- 12.1 Those portions of the Work that Contractor does not customarily perform with Contractor's own personnel shall be performed under subcontracts and (or) by other appropriate agreements with Contractor (individually a "Subcontract" and collectively "Subcontracts").
- 12.2 All Subcontracts shall conform to provisions of this Agreement. The County shall have the right to review and approve each form of Subcontract. By an appropriate written agreement, Contractor shall require the subcontractor to the extent of the Work to be performed by the subcontractor, to be bound to Contractor by the terms of the Contract Documents and to assume toward Contractor all the obligation and responsibility which Contractor, by these Documents, assumes towards the County. Said agreement shall preserve and protect the rights of the County under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. Contractor shall require each subcontractor to enter into similar agreements with its subcontractors. Contractor shall make available to each proposed subcontractor, prior to the execution of the Subcontract, the Contract Documents to which the subcontractor will be bound by this paragraph 12.2. Each subcontractor shall similarly make copies of such Contract Documents available to its subcontractors. The County shall have the right to review and approve each form of Subcontract.
- 12.3 Contractor shall be responsible to the County for the acts and omissions of its agents, employees, suppliers, and subcontractors performing Work under a contract with Contractor and such subcontractors' lower-tier subcontractors, agents and employees.
- 12.4 Nothing contained in the Contract Documents shall be deemed to create any contractual relationship between any subcontractor of any tier and the County.

#### **ARTICLE 13 - MISCELLANEOUS**

13.1 No assignment by a party hereto of any rights under, or interests in this Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

13.2 County and Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, in respect to all covenants, agreements, and obligations contained in the Agreement.

13.3 This Agreement represents the entire Agreement between the parties hereto. This Agreement supersedes all previous communications, negotiations and/or contracts between the respective parties hereto, either verbal or written, and the same not expressly contained herein are hereby withdrawn and annulled. This is an integrated agreement and there are no representations about any of the subject matter hereof except as expressly set forth in the Contract Documents.

13.4 Invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed as if such invalid or unenforceable provision was omitted.

13.5 This Agreement may be amended upon mutual agreement, in writing, signed by both parties.

13.6 NOTICE: Any notice and all written communications required under this Agreement shall be (i) personally delivered, (ii) mailed in the United States mails, first class postage prepaid, or (iii) transmitted by facsimile machine together with a hard copy conveyed by delivery or mail, to the appropriate party at the following addresses:

**County:**

Board of County Commissioners,  
Eagle County, Colorado  
500 Broadway  
P. O. Box 850  
Eagle, CO 81631  
Telephone: (970) 328-8605  
Fax: (970) 328-7207

**With a copy to:**

Eagle County Road & Bridge  
P. O. Box 250  
Eagle, CO 81631  
Telephone: (970)328-3540  
Fax: (970) 328-3546

**With a copy to:**

Eagle County Attorney  
500 Broadway  
Post Office Box 850  
Eagle, CO 81631  
Telephone: 970-328-8685  
Facsimile: 970-328-8699

**Contractor:**  
*[Insert Contractor information here]*

Mailed notices will be deemed given three business days after the date of deposit in a regular depository of the United States Postal Service, and fax notices will be deemed given upon transmission, if during business hours, or the next business day. Either party can change its address for notice by notice to the other in accordance with this paragraph.

13.7 The Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) to the extent applicable shall comply with C.R.S. 24-76.5-103 prior to the effective date of this Agreement.

13.8 Any indemnity, warranty or guaranty given by Contractor to Owner under the Contract Documents shall survive the expiration or termination of the Contract Documents and shall be binding upon Contractor until any action thereunder is barred by the applicable statute of limitations or as otherwise expressly provided by the Contract Documents.

#### **ARTICLE 14 - JURISDICTION AND VENUE**

14.1 This Agreement shall be interpreted in accordance with the laws of the State of Colorado and the parties hereby agree to submit to the jurisdiction of the courts thereof. Venue shall be in the District Court of Eagle County, Colorado.

#### **ARTICLE 15 - PROHIBITIONS ON PUBLIC CONTRACT FOR SERVICES**

As used in this Article 15, the term undocumented individual will refer to those individuals from foreign countries not legally within the United States as set forth in C.R.S. 8-17.5-101 et. seq. If Contractor has any employees or subcontractors, Contractor shall comply with C.R.S. § 8-17.5-101, et seq., and this Contract. By execution of this Contract, Contractor certifies that it does not knowingly employ or contract with an undocumented individual who will perform under this Contract and that Contractor will participate in the E-verify Program or other Department of Labor and Employment program (“Department Program”) in order to confirm the eligibility of all employees who are newly hired for employment to perform Work under this Contract.

15.1. Contractor shall not:

- (i) Knowingly employ or contract with an undocumented individual to perform work under this contract for services; or
- (ii) 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 undocumented individual to perform work under the public contract for services.

15.2. Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in the E-verify Program or Department Program, as administered by the United States Department of Homeland Security.

15.3. The Contractor shall not use either the E-verify program or other Department Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

15.4. If the Contractor obtains actual knowledge that a subcontractor performing Work under the public contract for services knowingly employs or contracts with an undocumented individual, the Contractor shall be required to:

- (i) Notify the subcontractor and the County within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an undocumented individual; and
- (ii) Terminate the Subcontract with the subcontractor if within three days of receiving the notice required pursuant to subparagraph (i) of the paragraph 15.4 the subcontractor does not stop employing or contracting with the undocumented individual; 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 undocumented individual.

15.5. 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 is undertaking pursuant to its authority established in C.R.S. § 8-17.5-102(5).

15.6. If a Contractor violates these prohibitions, the County may terminate the contract for a breach of the contract. If the contract is so terminated specifically for a breach of this provision of this Contract, the Contractor shall be liable for actual and consequential damages to the County as required by law.

15.7. The County will notify the office of the Colorado Secretary of State if Contractor violates this provision of this Contract and the County terminates the Contract for such breach.

## **ARTICLE 16 – INDEPENDENT CONTRACTOR**

16.1 It is expressly acknowledged and understood by the parties hereto that nothing contained in this Agreement shall result in, or be construed as establishing, an employment relationship between County and Contractor or County and Contractor's employees. To the extent applicable, Contractor and its employees shall be, and shall perform as, independent contractors. No officer, agent, subcontractor, employee, or servant of Contractor shall be, or shall be deemed to be, the employee, agent or servant of County. Contractor shall be solely and entirely responsible for the means and methods to carry out any services and Work that may be

required under this Agreement and for Contractor's acts and for the acts of its officers, agents, employees, subcontractors and servants during the performance of this Agreement. Neither Contractor nor its officers, agents, subcontractors, employees or servants may represent, act, purport to act or be deemed the agent, representative, employee or servant of County.

#### **ARTICLE 17 – INSURANCE REQUIREMENTS**

17.1 Contractor shall maintain insurance as set forth in the General Conditions. Before permitting any of his subcontractors to perform any Work under this Agreement, Contractor shall require each of his subcontractors to procure and maintain such insurance as set forth in the General Conditions. Certificates of Insurance shall be attached hereto as **Exhibit D**.

17.2 Contractor's certificates of insurance shall include subcontractors, if any as additional insureds under its policies or Contractor shall furnish to County separate certificates and endorsements for each subcontractor.

17.3 The insurance provisions of this Agreement shall survive expiration or termination hereof.

17.4 The parties hereto understand and agree that the County is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or rights, immunities and protections provided by the Colorado Governmental Immunity Act, as from time to time amended, or otherwise available to County, its affiliated entities, successors or assigns, its elected officials, employees, agents and volunteers.

17.5 Contractor is not entitled to workers' compensation benefits except as provided by the Contractor, nor to unemployment insurance benefits unless unemployment compensation coverage is provided by Contractor or some other entity. The Contractor is obligated to pay all federal and state income tax on any moneys paid pursuant to this Agreement.

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IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

COUNTY OF EAGLE, STATE OF COLORADO,  
By and Through Its BOARD OF COUNTY  
COMMISSIONERS

By: \_\_\_\_\_  
Jeanne McQueeney, Chair

Attest:

By: \_\_\_\_\_  
Regina O'Brien, Clerk to the Board

CONTRACTOR  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

State of \_\_\_\_\_ )  
  )ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ (name of person acknowledged), its \_\_\_\_\_ (title) of \_\_\_\_\_ (name of corporation).

\_\_\_\_\_  
NOTARY PUBLIC

Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

Exhibit A

2019 Overlay Project – Contractor’s Bid Form

DRAFT

Exhibit B

2019 Overlay Project – Special Provisions

Exhibit C

2019 Overlay Project - General Conditions

DRAFT

Exhibit D

Certificates of Insurance