

# BOULDER COUNTY CONTRACT FOR CONSTRUCTION SERVICES

SUMMARY	
<b>Contract Identification</b>	
Oracle Contract Number	303868
Contract Name	Mountain Constructors - PW - ENG - East County Line Road Widening
<b>County Information</b>	
Office or Department	Public Works
Division/Program	Engineering
Mailing Address	PO BOX 471 Boulder, CO 80306
Project Manager Name and Email	Dave Webster <span style="float: right;">dwebster@bouldercounty.gov</span>
Contact Name and Email	Laura Konersman <span style="float: right;">lkonersman@bouldercounty.gov</span>
Office or Department Accounting Email	pwinvoices@bouldercounty.gov
<b>Vendor Information</b>	
Vendor Legal Name	Mountain Constructors, Inc.
Vendor Other Name	<input type="checkbox"/> COI <input type="checkbox"/> DBA <input type="checkbox"/> W-9
Vendor Business Address	622 Main Street, Platteville, CO 80651
Vendor Mailing ("Remit to") Address	622 Main Street, Platteville, CO 80651
Vendor Signer Name and Email	Joe Kuntz <span style="float: right;">bids@mntconstructors.com</span>
Vendor Contact Name and Email	Joe Kuntz <span style="float: right;">bids@mntconstructors.com</span>
Vendor Invoicing Email	bids@mntconstructors.com
<b>Contract Dates</b>	
Authorization to Start Work	Only Upon Issuance of a Task Order
End Date	12/31/2025
<b>Contract Amount</b>	
Contract Not to Exceed	\$ 913,937.08
Highest Annual Contract Amount	\$ 913,937.08
<i>Pricing details, including annual limits, if any, detailed in Exhibit B</i>	
<b>Contract Documents</b>	
<input checked="" type="checkbox"/> Exhibit A: Insurance Requirements <input checked="" type="checkbox"/> Exhibit B: Scope of Work and Pricing Details <input type="checkbox"/> Exhibit C: Boulder County Data and Cyber Security Requirements <input type="checkbox"/> Exhibit D: Federal Award Requirements for Procurement Contracts ("FEMA Addendum") <input checked="" type="checkbox"/> Exhibit E: Bid Tab _____ <input type="checkbox"/> Exhibit F: _____	

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<b>Funding Source Information – County Internal Use Only</b>	
Funding Source for Contract	Boulder County Funds
Fund Availability	N/A
OFS# for Associated Revenue Contract(s)	
<b>Procurement Details – County Internal Use Only</b>	
Procurement Process	Formal Procurement Number Provided (award info attached in supporting documents)
Formal Procurement Number	BID 086-24
Award Date (if awarded)	7/13/2024
Office/Department Project #	
Does this include new FTE's or require additional budget approval?	No
<b>Accounting Details – County Internal Use Only</b>	

THIS CONTRACT ("Contract") is entered into by and between the Board of County Commissioners on behalf of the County of Boulder, State of Colorado, a body corporate and politic, for the benefit of Public Works ("County") and Mountain Constructors, Inc. ("Contractor" or "Vendor"). County and Contractor are each a "Party," and collectively the "Parties."

In consideration of the mutual covenants contained in this Contract, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation into Contract: The **Summary** is incorporated into this Contract. The **Contract Documents** are incorporated into this Contract by reference, except to the extent that contractor-drafted documents, if any are incorporated, contain any obligations placed upon County and not otherwise contained in this Contract. The Contractor's proposal in response to the solicitation is incorporated to the extent that it is responsive to the County's solicitation, which is also incorporated. In the event of any conflict between any **Contract Documents** or other documents incorporated into this Contract, the language shall be interpreted in favor of the County.

2. Authorization to Start Work:

County will assign the work or portions of the work described in Exhibit B – Scope of Work and Pricing Details to Contractor through written task orders sent to the Vendor Contact Name and Email. The task order(s) may be a purchase order or purchase orders. Contractor may only commence work and County will only be obligated to pay for work as described in each task order issued pursuant to this Contract. County is not obligated to issues any task orders under this Contract. Contractor may not commence any work until the County sends a task order specifying the work to be performed at that time.

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3. Work to be Performed: Contractor will provide all labor and equipment and do all tasks necessary and incidental to performing the work as described in the **Contract Documents** (“**Work**”). In addition to the requirements set forth in the **Contract Documents**:

- a. Contractor will perform all Work (i) in a good and workmanlike manner, (ii) at its own cost and expense, (iii) in accordance with recognized industry standards of care, skill, and diligence for the type of work being performed, and (iv) in strict accordance with the Contract. County and its representatives shall have access to the Work at all times.
- b. Contractor shall supervise and direct the Work and shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.
- c. Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for the proper execution and completion of the Work. Contractor warrants that all materials incorporated into the Work will be new unless otherwise specified.
- d. Contractor shall at all times enforce good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to such person. Contractor shall initiate, maintain, and supervise all safety precautions and programs in connection with the Work to ensure safe conditions on the premises at all times. Contractor shall comply with all laws, regulations, ordinances, rules, and orders of any public authority bearing on the safety of persons and property. In the event that County notifies Contractor of any unsafe conditions or practices, Contractor shall immediately take all actions required to remediate them at no expense to County. County reserves the right to immediately suspend the Work in the event of imminent hazard, as determined by County.
- e. At all times, Contractor shall keep the premises free from accumulation of waste materials or rubbish caused by Contractor’s operations. Upon completion of the Work, Contractor shall remove all of its waste materials and rubbish from the premises, as well as its tools, construction equipment, machinery, and surplus materials.
- f. Contractor shall confine operations on the premises to areas permitted by law, ordinances, permits, this Contract, and as directed by County, including storage of any materials or equipment.
- g. Any claim for an increase in the Contract Not to Exceed shall be made and generally described by Contractor in writing and delivered to County promptly, in no event later than thirty (30) days after the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered to County within sixty (60) days after such occurrence and shall be accompanied by Contractor’s written statement that the amount claimed covers all known amounts to which Contractor is entitled as a result of the occurrence of said event. All claims for increase in the Contract Not to Exceed shall be determined by County if the Parties are unable to otherwise reach agreement on the claim. Any increase in the Contract Not to Exceed requires a written amendment, which may require the approval of the Board of County Commissioners, the County Administrator, or County Department Heads/Elected Officials. If necessary, the written amendment will incorporate an updated Scope of Work and/or updated Insurance Requirements.
- h. Before ordering any materials or performing any Work, Contractor shall verify all measurements for the Work and shall be responsible for the correctness of same.

4. Time to Complete Work: Contractor must complete all Work before the **End Date** of this Contract and in compliance with any additional timing requirements identified in Exhibit B. Any extension of the **End Date** requires a written amendment, which may require the approval of the Board of County Commissioners, the County Administrator, or County Department Heads/Elected Officials. An amendment may require Contractor to provide a then-current Certificate of Insurance to the County that complies with the Insurance Requirements set forth in Exhibit A of this Contract.

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5. Payment for Work Performed: In consideration of the **Work** performed by Contractor, and subject to conditions contained in this Contract, County will pay an amount not to exceed the **Contract Not to Exceed** amount identified above to Contractor in accordance with the **Contract Documents**.

6. Invoicing: Contractor will promptly provide a copy of its Form W-9 and invoice template to County upon request. Contractor must submit an invoice to the County by the fifteenth (15th) day of the month for completion of any part of the **Work** performed in the prior calendar month. All invoices submitted require the following components: Contractor's name and address (submitted W-9 address must match remit address), detailed description of services, dates of services, itemization of labor and materials costs, "Bill to: Boulder County" language, payment remittance address, date of invoice, unique invoice number, and total amount due. Contractor must send all completed invoices to the **Office or Department Accounting Email** in the **Summary**. Failure to submit invoices in a timely manner and in accordance with the terms of this Contract will relieve County of its obligation to make timely payment. Further, County will have no liability for any financial obligations under this Contract if Contractor fails to submit an accurate invoice to the County by January 15<sup>th</sup> of any calendar year for Work performed in the previous calendar year. County may recoup any damages incurred because of Contractor's failure to submit invoices pursuant to the terms of this paragraph. County's acceptance or payment of an invoice will not constitute acceptance of any **Work** performed under this Contract.

a. Applications for Payment: If the Contract Not to Exceed amount exceeds \$150,000.00, the following provisions apply:

- i. Contractor will submit to County an itemized "Application for Payment" in a format acceptable to County and prepared in accordance with the schedule of values for completed portions of the Work. The Application must be supported by all data substantiating Contractor's right to payment that the County requires, such as copies of requisitions, and releases and waivers of liens from subcontractors and suppliers, and must reflect retainage.
- ii. Payments will be made on account of materials and equipment delivered and incorporated in the Work. If approved in advance by County, payment may similarly be made for materials and equipment suitably stored at the site for subsequent incorporation in the Work or off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site will be conditioned upon compliance by Contractor with procedures satisfactory to County to establish County's title to such materials and equipment or otherwise protect County's interest, and will include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.
- iii. Contractor warrants that title to all Work covered by an Application for Payment will pass to County no later than the time of payment. Contractor further warrants that upon submittal of an Application for Payment, all Work for which payment has been made, will, to the best of Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

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7. **No Additional Services:** In order for Contractor to provide additional services for additional compensation beyond the initial **Contract Not to Exceed** amount, the Parties must first execute a written amendment before the then-current **End Date**. A written amendment may require the approval of the Board of County Commissioners, the County Administrator, or County Department Heads/Elected Officials. If necessary, the written amendment will incorporate an updated Scope of Work and/or updated Insurance Requirements.

8. **Schedule of Work:** County may designate the hours (on a daily or weekly basis) during which Contractor may perform the **Work** strictly for the purposes of minimizing inconvenience to the County and interference with County operations. Contractor will otherwise set its own work schedule. Contractor shall promptly notify County of any aspect of the Work that will not be delivered or accomplished according to the work schedule.

9. **Indemnity:** Contractor will indemnify and hold harmless County, its elected officials and appointed department heads, and its employees, agents and representatives (the "indemnified parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including attorneys' fees, which may be made or brought or which may result against any of the indemnified parties as a result or on account of the actions or omissions of Contractor, its employees, agents or representatives, or other persons acting under Contractor's direction or control. This indemnification obligation will extend to claims based on Contractor's unauthorized use or disclosure of confidential information and intellectual property infringement. County will not be obligated to indemnify or defend Contractor under any circumstances. Contractor's obligations under this provision shall survive expiration or termination of this Contract. Nothing contained in this Contract or the **Contract Documents** is intended to limit or restrict the indemnification rights or obligations of any Party under this provision, or damages available for breaches of the obligations herein. In addition, Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to Contractor's failure to comply with §§24-85-101, et seq., C.R.S., or the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

10. **Nondiscrimination:** Contractor will comply with the Colorado Anti-Discrimination Act, C.R.S. § 24-34-401, **et seq.**, as amended, and all applicable local, State and Federal laws concerning discrimination and unfair employment practices. County prohibits unlawful discrimination on the basis of race, color, religion, gender, gender identity, national origin, age 40 and over, disability, socio-economic status, sexual orientation, genetic information, or any other status protected by applicable Federal, State or local law. Contractor must require that its subcontractors, if any, similarly comply with all applicable laws concerning discrimination and unfair employment practices.

11. **Information and Reports:** Contractor will provide to authorized County, State, and Federal government representatives all information and reports that may be required for any purpose authorized by law. Contractor will permit access to such representatives to Contractor's facilities, books, records, accounts, and any other relevant sources of information. Where information required by a representative is in the exclusive possession of a person or entity other than Contractor, Contractor must so certify to the County and explain what efforts it has made to obtain the information.

12. **Independent Contractor:** Contractor is an independent contractor for all purposes in performing the Work. None of Contractor, its agents, personnel or subcontractors are employees of the County for any purpose, including the Federal Insurance Contribution

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Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the Colorado Workers' Compensation Act, the Colorado Unemployment Insurance Act, and the Public Employees Retirement Association. Accordingly, County will not withhold or pay any income tax, payroll tax, or retirement contribution of any kind on behalf of Contractor or Contractor's employees. As an independent contractor, Contractor is responsible for employing and directing such personnel and agents as it requires to perform the Work. Contractor will exercise complete authority over its personnel and agents and will be fully responsible for their actions.

13. Termination

- a. Breach: Either Party's failure to perform any of its material obligations under this Contract, in whole or in part or in a timely or satisfactory manner, will be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, will also constitute a breach. In the event of a breach, the non-breaching Party may provide written notice of the breach to the other Party. If the breaching Party does not cure the breach, at its sole expense, as reasonably determined by the non-breaching Party in its sole discretion, within thirty (30) days after delivery of notice, the non-breaching Party may exercise any of its remedies provided under this Contract or at law, including immediate termination of this Contract.
- b. Non-Appropriation: The other provisions of this Contract notwithstanding, County is prohibited by law from making commitments beyond the current fiscal year. Payment to Contractor beyond the current fiscal year is contingent on the appropriation and continuing availability of funding in any subsequent year. County has reason to believe that sufficient funds will be available for the duration of the Contract. Where, however, funds are not allocated for any fiscal period beyond the current fiscal year, County may terminate this Contract without penalty by providing seven (7) days' written notice to Contractor.
- c. Convenience: In addition to any other right to terminate under this Section 13, County may terminate this Contract, in whole or in part, for any or no reason, upon seven (7) days' written notice to Contractor.

14. Contractor Obligations upon Termination or Expiration: By the **End Date** or effective date of termination, if earlier, Contractor must (1) remove from County property all of its personnel, equipment, supplies, trash and any hazards created by Contractor, (2) protect any serviceable materials belonging to the County, and (3) take any other action necessary to leave a safe and healthful worksite. Any items remaining on County property after the **End Date** or the effective date of termination, if earlier, will be deemed abandoned by Contractor.

15. Payable Costs in Event of Early Termination: If County terminates this Contract before the **End Date**, Contractor's payments (and any damages associated with any lawsuit brought by Contractor) are limited to only (1) payment for **Work** satisfactorily executed and fully and finally completed, as determined by County in its sole discretion, prior to delivery of the notice to terminate, and (2) the reasonable and actual costs Contractor incurred in connection with performing the Work prior to delivery of the notice to terminate. Contractor explicitly waives all claims it may have against the County for any other compensation, such as anticipatory profits or any other consequential, special, incidental, punitive or indirect damages.

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16. Remedies for Non-Performance: If Contractor fails to perform any of its obligations under this Contract, County may, at its sole discretion, exercise one or more of the following remedies (in addition to any other remedies provided by law or in this Contract, including in Exhibit), which shall survive expiration or termination of this Contract:

- a. Suspend Performance: County may require that Contractor suspend performance of all or any portion of the Work pending necessary corrective action specified by the County and without entitling Contractor to an increase in compensation or extension of the performance schedule. Contractor must promptly stop performance and incurring costs upon delivery of a notice of suspension by the County.
- b. Withhold Payment Pending Corrections: County may permit Contractor to correct any rejected Work at the County's discretion. Upon County's request, Contractor must correct rejected work at Contractor's sole expense within the time frame established by the County. Upon full and final completion of the corrections satisfactory to the County, County will remit payment to Contractor.
- c. Deny Payment: County may deny payment for any Work that does not comply with the requirements of the Contract or that Contractor otherwise fails to provide or fully and finally complete, as determined by the County in its sole discretion. Upon County request, Contractor will promptly refund any amounts prepaid by the County with respect to such non-compliant Work.
- d. Removal: Upon County's request, Contractor will remove any of its employees or agents from performance of the Work, if County, in its sole discretion, deems any such person to be incompetent, careless, unsuitable, or otherwise unacceptable.

17. Binding Arbitration Prohibited: County does not agree to binding arbitration by any extra-judicial body or person.

18. Conflicts of Interest: Contractor may not engage in any business or personal activities or practices or maintain any relationships that conflict in any way with the full performance of Contractor's obligations.

19. Notices: All notices provided under this Contract must be in writing and sent by Certified U.S. Mail (Return Receipt Requested), electronic mail, or hand-delivery to the other Party's **Contact Name and Email** specified in the **Summary**. For certified mailings, notice periods will begin to run on the day after the postmarked date of mailing. For electronic mail or hand-delivery, notice periods will begin to run on the date of delivery.

20. Statutory Requirements: This Contract is subject to all statutory requirements that are or may become applicable to counties or political subdivisions of the State of Colorado generally, including but not limited to:

- a. C.R.S. § 38-26-107, which requires withholding funds where the County receives a claim for payment from a supplier or subcontractor of Contractor upon notice of final settlement (required for public works contracts that exceed \$150,000);
- b. C.R.S. § 8-17-101 et seq.;
- c. C.R.S. § 18-8-301, et seq.;
- d. C.R.S. § 18-8-401, et seq.; and

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- e. C.R.S. §§ 24-85-101, et seq., C.R.S.. Specifically, Contractor shall comply with and the Work Product provided under this Contract shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. Contractor shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards. The County may require Contractor's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Contractor's Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

21. No Suspension or Debarment: Contractor certifies and warrants for the duration of the **Work** and the duration of the Contract, that neither it nor its principals nor any of its subcontractors are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any Federal or State department or agency. Contractor shall comply, and shall require its subcontractors to comply, with subpart C of 2 C.F.R. § 180.

22. Entire Agreement/Binding Effect/Amendments: This Contract represents the complete agreement between the Parties and is fully binding upon them and their successors, heirs, and assigns, if any. This Contract terminates any prior agreements, whether written or oral in whole or in part, between the Parties relating to the Work. This Contract may be amended only by a written agreement signed by both Parties.

23. Assignment/Subcontractors: This Contract may not be assigned or subcontracted by Contractor without the prior written consent of the County. If Contractor subcontracts any of its obligations under this Contract, Contractor will remain liable to the County for those obligations and will also be responsible for subcontractor's performance under, and compliance with, this Contract.

24. Governing Law/Venue: The laws of the State of Colorado govern the construction, interpretation, performance, and enforcement of this Contract. Any claim relating to this Contract or breach thereof may only be brought exclusively in the Courts of the 20<sup>th</sup> Judicial District of the State of Colorado and the applicable Colorado Appellate Courts.

25. No Waiver: The failure of either Party to exercise any of its rights under this Contract will not be deemed to be a waiver of such rights or a waiver of any breach of the Contract. All remedies available to a Party in this Contract are cumulative and in addition to every other remedy provided by law.

26. Severability: If any provision of this Contract becomes inoperable for any reason but the fundamental terms and conditions continue to be legal and enforceable, then the remainder of the Contract will continue to be operative and binding on the Parties.

27. Third-Party Beneficiary: Enforcement of the terms and conditions and all rights and obligations of this Contract are reserved to the Parties. Any other person receiving services or benefits under this Contract is an incidental beneficiary only and has no rights under this Contract. Notwithstanding, where the beneficiary Department or Office is led by an Elected Official, such Elected Official shall be considered a third-party beneficiary.

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28. Colorado Open Records Act: County may disclose any records that are subject to public release under the Colorado Open Records Act, C.R.S. § 24-72-200.1, et seq.
29. Conflict of Provisions: If there is any conflict between the terms of the main body of this Contract and the terms of any of the **Contract Documents**, the terms of the main body of the Contract will control.
30. Governmental Immunity: Nothing in this Contract shall be construed in any way to be a waiver of the County's immunity protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended.
31. Representations and Warranties: Contractor represents and warrants the following:
- a. Execution of this Contract and performance thereof is within Contractor's duly authorized powers;
  - b. The individual executing this Contract is authorized to do so by Contractor;
  - c. Contractor is authorized to do business in the State of Colorado and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Work and the Contractor; and
  - d. Contractor and its subcontractors, if any, are financially solvent, able to pay all debts as they mature, and have sufficient working capital to complete the Work and perform all obligations under the Contract.
32. Legal Compliance: Except as otherwise specified in Exhibit B, Contractor assumes full responsibility for obtaining and maintaining any permits and licenses required to perform the Work. Contractor is solely responsible for ensuring that its performance under this Contract and the Work itself will comply with all Federal, State, and local laws, regulations, ordinances and codes. Contractor shall promptly notify County if any drawings or specifications are at variance with any laws, regulations, ordinances, or codes. If Contractor performs any Work contrary to such laws, regulations, ordinances, or codes, Contractor shall bear all costs arising therefrom. County approval of the Work or any aspect of Contractor's performance, such as plans, designs, or other Contractor-drafted documents, shall not be interpreted to mean that Contractor has satisfied its obligations under this Section.
33. Litigation Reporting: Contractor represents that Contractor is not currently involved in any action before a court or other administrative decision-making body that could affect Contractor's ability to perform the Work. Contractor will promptly notify the County if Contractor is served with a pleading or other document in connection with any such action or initiates any action impacting this Contract or the Work contemplated by this Contract.
34. Tax Exemption: County is exempt from payment of Federal, State, and local government taxes. Contractor shall collect no tax from the County, and the County shall not be liable to pay any taxes imposed on Contractor. County shall provide its tax exemption status information to Contractor upon request.
35. Delegation of Authority: The Parties acknowledge that the Board of County Commissioners has delegated authority to the Department Head or Elected Official that leads the beneficiary Department or Office and their designees to act on behalf of the County under the terms of this Contract, including but not limited to the authority to terminate this Contract.

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36. Ownership of Work Product: All work product, property, data, documentation, information or materials conceived, discovered, developed or created by Contractor pursuant to this Contract ("Work Product") will be owned exclusively by the County. To the extent possible, any Work Product will be deemed to be a work made for hire. Contractor unconditionally and irrevocably transfers and assigns to the County all right, title and interest in and to any Work Product.

37. Publicity Releases: Contractor will not refer to this Contract or the County in commercial advertising without prior written consent of the County. This provision shall survive expiration or termination of this Contract.

38. Execution by Counterparts; Electronic Signatures: This Contract may be executed in multiple counterparts, each of which will be deemed an original, but all of which will constitute one agreement. The Parties approve the use of electronic signatures, governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24 71.3 101 to 121. The Parties will not deny the legal effect or enforceability of this Contract solely because it is in electronic form or because an electronic record was used in its creation. The Parties will not object to the admissibility of this Contract in the form of electronic record, or paper copy of an electronic document, or paper copy of a document bearing an electronic signature, because it is not in its original form or is not an original.

39. Limitation on Public Statements and Lobbying Activity. Contractor may receive from the County its confidential data, work product, or other privileged or confidential information that is protected by law. To maintain the fact and appearance of absolute objectivity, Contractor shall not, without the prior written consent of the County, which shall not be unreasonably withheld, do any of the following: (a) disclose information obtained because of this contractual relationship to any third party; (b) lobby any State or Federal agency on any pending matter while this Contract is effective; or (c) make any public statements or appear at any time to give testimony at any public meeting on the subject matters regarding which Contractor is or was retained by the County. County may set reasonable conditions on any disclosure authorized by the County under this provision. Notwithstanding, Contractor may make disclosures as required by law, and to law enforcement officials in connection with any criminal justice investigation.

40. Sustainability: All construction, deconstruction, remodel, and office move projects are required to follow construction waste procedures in accordance with Boulder County BuildSmart Code, International Green Construction Code (IGCC), International Energy Conservation Code (IECC), and Leadership in Energy and Environmental Design (LEED) certification, as an effort to achieve maximum jobsite waste diversion, energy efficiency, and water conservation. All demolition projects will follow deconstruction procedures. Instead of demolition project materials being crushed and primarily sent to the landfill, these projects will be systematically dismantled, typically in the opposite order they were constructed, in order to maximize the salvage of materials. Contractor will follow all state and federal standards related to hazardous materials when Contractor encounters hazardous materials. Contractor will be responsible for all costs related to proper disposal of construction waste, including all hazardous material costs. The development of a project diversion plan is encouraged to include material types and volume/weight estimations as well as planned destinations. Contractor must track all jobsite waste.

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41. Limitation of Liability: COUNTY SHALL NOT BE LIABLE TO CONTRACTOR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES ARISING FROM OR RELATING TO THIS CONTRACT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. COUNTY'S AGGREGATE LIABILITY, IF ANY, ARISING FROM OR RELATED TO THIS CONTRACT, WHETHER IN CONTRACT, OR IN TORT, OR OTHERWISE, IS LIMITED TO, AND SHALL NOT EXCEED, THE AMOUNTS PAID OR PAYABLE HEREUNDER BY COUNTY TO CONTRACTOR. ANY CONTRACTUAL LANGUAGE LIMITING CONTRACTOR'S LIABILITY SHALL BE VOID.

42. Legal Interpretation. Each Party recognizes that this Contract is legally binding and acknowledges that it has had the opportunity to consult with legal counsel of its choice about this Contract. The rule of construction providing that any ambiguities are resolved against the drafting Party will not apply in interpreting the terms of this Contract.

43. County Opportunity to Review: Contractor shall provide County with the opportunity to review and approve or take other appropriate action upon the Contractor's submittals, such as Shop Drawings, Product Data, and Samples, but only for conformance with the design concept of the **Work** and with the information given in the **Contract Documents**.

44. Retainage: County may retain partial payment pending completion and County acceptance of the **Work** as satisfactory and fully and finally complete. For contracts that exceed \$150,000, the retention rate shall not exceed five percent (5%). C.R.S. § 24-91-103. Contractor is responsible for submitting a final invoice for any retainage held by County. If It becomes necessary for County to take over completion of the **Work**, all of the amounts owing to Contractor, including the withheld percentage, shall be applied: First, towards completion of the **Work**; second, towards performance of the withholding requirement set forth in C.R.S. § 38-26-107; third, to the surety furnishing bonds for the **Work**, to the extent such surety has incurred liability or expense in competing the **Work** or made payments pursuant to C.R.S. § 38-26-106; then, to Contractor. Such retained percentage as may be due to Contractor shall be due and payable as provided by C.R.S. § 38-26-107.

45. Bonds: Upon County's request, Contractor shall obtain and deliver to County payment and performance bonds each equal to 100% of the total **Contract Not to Exceed** amount. Bonds shall be executed by a qualified corporate surety and must be acceptable to County. County reserves the right to accept other acceptable forms of surety in lieu of a bond, and to reduce the bond requirements set forth herein consistent with C.R.S. § 38-26-106.

46. Change Orders: If unforeseen modifications or changes are required, Contractor may submit a Change Order request to County, which must include a complete description, timeline, and fee schedule for the proposed work. Overhead and profit shall be limited to 15% total figured on time and material costs only. Change Orders are not effective until approved by County in writing. Any work performed on a requested Change Order prior to approval by the County will be at Contractor's risk. Any Change Order that results in an increase to the **Contract Not to Exceed** amount requires a written amendment to the **Contract**, which may require the approval of the Board of County Commissioners, the County Administrator, or County Department Heads/Elected Officials.

*Approved for use June 2024*

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47. Permits/Licenses/Code Compliance: Prior to starting the **Work**, Contractor will identify and obtain, and maintain during this Contract, all permits and licenses necessary to perform the **Work**. Contractor shall comply with all State and local codes. Contractor is responsible for locating all public utilities, as necessary. Contractor shall require its subcontractors to comply with this provision. HVAC, roofing, and general contractors must be licensed through Boulder County Community Planning & Permitting. Electricians and plumbers must be licensed through the State and registered with Boulder County Community Planning & Permitting. Architects, Professional Engineers and Professional Land Surveyors must be fully-licensed through the State. All required permits and licenses must be provided to County prior to Contractor beginning the **Work**.

48. Stormwater Quality Protection Requirements: Contractor will take all measures necessary to prevent pollutants from entering storm drains and watercourses. To eliminate stormwater pollution, Contractor shall implement effective Best Management Practices (BMPs). BMPs include general good housekeeping practices, appropriate scheduling of activities, operational practices, maintenance procedures and other measures to prevent the discharge of pollutants directly or indirectly to the storm drain system. These BMPs shall be maintained for the duration of this Contract. Contractor shall also be responsible for proper disposal of all waste materials, including wastes generated by the implementation of BMPs. Contractor shall otherwise comply with the Federal Clean Water Act, Colorado Water Quality Control Act, and Boulder County's local Clean Water Act, Illegal Discharge Ordinance (No. 2012-4). For work performed in urbanized areas, Contractor must comply with the requirements of MS4 permit (COR090000), which is available through the Colorado Department of Public Health and Environment. A Boulder County Stormwater Quality Permit may be required by the County for the work to be performed. The contractor will need to request determination by contacting the Stormwater Permitting section at [stormwater@bouldercounty.gov](mailto:stormwater@bouldercounty.gov).

49. Guaranties and Warranties: Upon completion of the **Work**, Contractor will provide County with a written guaranty covering all labor, materials and workmanship incorporated into the **Work** for one (1) year, or within any such longer period of time as may be prescribed by law, the specifications, or any other applicable special warranty required by the **Contract Documents**. Final payment upon full and final completion of the **Work** will not relieve Contractor of responsibility for faulty material or workmanship, which County may require Contractor to fix at Contractor's sole expense, in addition to County's other remedies. This provision shall apply to **Work** completed by Contractor's employees and subcontractors.

50. Final Payment: A final inspection of the **Work** shall be conducted by County. If a list of deficiencies results from such final inspection, Contractor shall promptly rectify all items appearing thereon before final payment will be made. When County provides acceptance of the **Work** in writing, Contractor may request final payment from County, including any retained amounts. Final payment shall be subject to C.R.S. § 38-26-107.

51. Notice of Final Settlement: Prior to remitting final payment to Contractor, County shall publish a Notice of Final Settlement in accordance with C.R.S. § 38-26-107. Final payment will be rendered in accordance with the statute and the other terms of this Contract. Final payment will not be rendered until County, in its sole discretion, determines full and final completion of the **Work**.

52. Geographic Information System (GIS) Data: Contractors agree that the following, specified data formats, shall be used and/or adhered to when submitting required data to the County:

- a. All GIS data must be ArcGIS 10.x compatible. Shapefiles may be accepted with written, pre-approval, from the County.
- b. All GIS data must have complete metadata, following Boulder County GIS Metadata Standards located at: <https://assets.bouldercounty.gov/wp-content/uploads/2018/03/metadata-standards-contractors.pdf>
- c. All Computer Aided Design (CAD) files must have an assigned real world coordinate system to ensure compatible conversion into the County's GIS system, if necessary.
- d. All spatial or georeferenced data will be provided to the county in the following coordinate system:
  - i. Name:  
NAD 1983 HARN State Plane Colorado  
North FIPS 0501 Feet
  - ii. Unit:  
Foot US
  - iii. Projection:  
Lambert Conformal Conic
  - iv. Horizontal Datum:  
North American Datum 1983 HARN
  - v. Vertical Datum:  
North American Vertical Datum 1988
  - vi. Spheroid:  
GRS 1980
- e. Contractors are responsible for capturing section corners or quarter corners for specific projects to be added into the Public Land Survey System (PLSS) project for updating the section corners, Contractors shall provide high-accuracy PLSS monument coordinates for each corner section or quarter corner section monument used as control points or that occur within the project area ("putting it on the cap") as is reasonable, depending on the difficulty to access the point. All positions to be collected shall be required to use (at a minimum) the Real-Time Kinematic (RTK) method.

53. State Specifications: When any part of the **Work** includes the construction or maintenance of roads or bridges, the version of the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction in effect as of the date of the County approved construction drawings, or as otherwise set forth in Exhibit B, is expressly incorporated into this Contract by reference.

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54. Determination of Unit Prices: County will determine the actual quantities and classifications of the Unit Price Work performed by Contractor. The Parties will review the County's preliminary determinations before County renders a written decision thereon (by recommendation of an Application for Payment or otherwise), which shall be final and binding upon Contractor. The value of any Unit Price Work covered by a Change Order or claim for an increase or decrease in the **Contract Not to Exceed** shall be determined by applying the unit prices to the quantities of items. Any increase in the Contract Not to Exceed amount requires a written amendment, which may require the approval of the Board of County Commissioners, the County Administrator, or County Department Heads/Elected Officials. If necessary, the written amendment will incorporate an updated Scope of Work and/or updated Insurance Requirements.

- a. Where the Contract Documents provide that all or part of the **Work** is to be Unit Price Work, the Parties agree that the **Contract Not to Exceed** includes the total cost of Unit Price Work, determined by multiplying the quantity of each item by its unit price. Initial quantity determinations are estimates, which must be adjusted to reflect actual quantities. Contractor shall make a claim in writing to County for any additional amounts owed where actual quantities exceed estimated quantities. Contractor shall provide such written claim within twenty (20) days of providing the items and shall be accompanied by supporting documentation. The written claim shall include a statement that the claimed amount covers all known amounts (direct, indirect and consequential) to which Contractor is owed. County shall only pay Contractor for actual quantities of items provided hereunder.
- b. The Parties agree that each unit price adequately covers Contractor's overhead and profit for each item.

55. Records Retention/Access/Audits: Contractor shall maintain all records and documents pertaining to this Contract in accordance with the requirements prescribed by County. Such records shall be maintained for a period of five (5) calendar years after the date of Contractor's final payment from County under this Contract. Contractor agrees that County or its designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Contract as necessary and upon request, throughout the term of this Contract, and for five (5) calendar years after the date of the final payment hereunder. Contractor agrees to allow County or its designated representative access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. County and Contractor acknowledge that protected information is exempt from this requirement without proper client release.

56. Insurance: Prior to commencing the **Work**, Contractor will provide a Certificate of Insurance to the County demonstrating adequate insurance coverage for each type of insurance identified in Exhibit A. All policies evidencing coverage required by the Contract will be issued by insurance companies satisfactory to the County. Contractor will forward Certificates of Insurance directly to the **County Contact Name and Email** listed in the **Summary**.

**[Signature Page to Follow]**

*Approved for use June 2024*

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IN WITNESS WHEREOF, the Parties have executed and entered into this Contract as of the latter day and year indicated below.

<b>SIGNED for and on behalf of Boulder County</b>		<b>SIGNED for and on behalf of Contractor</b>	
Signature:		Signature:	
Name:		Name:	
Title:		Title:	
Date:		Date:	
↓↓ <i>For Board-signed documents only</i> ↓↓			
Attest:	<i>Initials</i>		
Attestor Name:			
Attestor Title:			