CONSTRUCTION CONTRACT
for
Montrose County 2016 Asphalt Overlay Project

THIS CONTRACT is made and entered into this _____ day of June, 2016, by and between the COUNTY OF MONTROSE, Colorado, by and through its Board of County Commissioners (or BOCC), hereinafter called "Owner" or "County", and _____________________________, (hereinafter called "Contractor"), for the Construction Project known as: Montrose County 2016 Asphalt Overlay Project.

The OWNER’S REPRESENTATIVE (OR) is Dean Cooper, County Engineer, or his designee.

The Effective Date of this Contract and the date written above shall be the date of final approval by the Montrose County Board of County Commissioners at a public meeting of the Board.

The Owner and Contractor agree as follows:

ARTICLE 1
THE WORK:

The Contractor shall provide all labor, materials, equipment, supervision and incidentals necessary to complete all the work as specified, described, shown, and as otherwise required by the Contract Documents (the Contract Documents are defined in Article 6 of this Agreement), and which Contract Documents are hereby fully incorporated into this Agreement by this reference. The Work generally consists of furnishing, delivering, and placing approximately 14,000 tons of Hot Mix Asphaltic Concrete (HMAC), Asphalt Milling, Traffic Control, and ancillary work at various locations as shown and described in the Contract Documents.

The Owner, at its discretion, may authorize any fraction of alternate bid items for Site #7 and Site #8.
ARTICLE 2
TIME OF COMMENCEMENT AND COMPLETION:

2.1 The Work to be performed under this Contract for the PRIMARY BID ITEMS shall be commenced upon receipt of a Notice to Proceed and completed within 60 calendar days thenceforth. If the Contractor fails to complete the PRIMARY BID ITEMS within the stated time period, Liquidated Damages will be enforced per Article 26 unless otherwise authorized in writing by the Owner.

2.2 If the Owner authorizes construction of ALTERNATE BID ITEMS, additional contract time will be negotiated as necessary to allow for coordination with Owner’s completion of road reconstruction and road base preparation ahead of the authorized additional work. Additional contract time for additional work is not part of the completion time required for the PRIMARY BID ITEMS.

2.3 Except as otherwise required for the safety or protection of persons or the Work or property at the Work Site or adjacent thereto, all Work at the Site shall be performed between the hours of 7 AM and 5:30 PM, Monday through Friday, unless otherwise provided in writing by Owner or OWNER’S REPRESENTATIVE, such consent not to be unreasonably withheld.

ARTICLE 3
CONTRACT AMOUNT AND BASIS:

The Owner shall pay the Contractor the nominal contract sum of $____________ for the Primary Bid items and $____________ for the Alternate Bid items (if authorized) for the satisfactory performance of the Work, subject to additions and deductions by Change Order as provided in Article 20, and the following provisions:

Contractor shall be paid for the actual installed quantities of Hot Mix Asphaltic Concrete (HMAC) and base course gravel (BCG). Any HMAC or BCG in excess of bid quantity placed by Contractor shall be deemed a result of inadequate control of asphalt placement operations by Contractor, and shall not be eligible for compensation. Contractor has verified the pay quantities in the Bid Schedule, has negotiated any changes Contractor deems necessary, and accepts the Contractual Pay Quantities as the basis for payment for the work. The unit prices set forth in the Bid Schedule shall be the basis for the contract price. Payment at the unit price will be based on actual measured quantities in the Work, except where the unit is a lump sum, in which case payment will be based upon the lump sum price as stated. Amount of payments and contract price may be subject to price reduction provisions as specified in the Project Specifications.

The Owner states, pursuant to C.R.S. 24-91-103.6(2)(a), that the amount of money appropriated for this Contract is equal to or in excess of the contract amount set forth in this Contract.
Pursuant to C.R.S. 24-91-103.6(2)(b), the Owner shall not issue any change order or other directive requiring additional compensable work to be performed under this Contract, which work causes the aggregate amount payable under the contract to exceed the appropriated amount for the original contract, unless the Contractor is given written assurance by the 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 Contract and Project Specifications.

ARTICLE 4
PROGRESS PAYMENTS:

Owner shall make progress payment to the Contractor based upon Application for Payment submitted to the OWNER’S REPRESENTATIVE by the Contractor as follows:

Monthly progress payments shall be remitted by Owner to Contractor within thirty (30) days of issuance of Certificate for Payment by the OWNER’S REPRESENTATIVE to the Owner.

Retainage: Five percent (5%) of each amount certified for payment shall be retained by the Owner until satisfactory completion of the work and issuance of final payment pursuant to state law.

ARTICLE 5
FINAL PAYMENT:

After completion of the Work, provided the Contract has been fully performed and subject to the provisions of Article 15 herein, the Owner shall publish a Notice of Final Settlement twice at least 10 days prior to the date of Final Settlement. Payment of Final Settlement requires approval by the Montrose County Board of County Commissioners at a properly noticed public hearing. The Owner shall withhold from final payments any amounts as required pursuant to C.R.S. § 38-26-107.

ARTICLE 6
CONTRACT DOCUMENTS:

6.1 The Contract Documents include, but are not limited to:

- Construction Contract, fully signed and executed
- Contract Special Provisions, if applicable
- Project Specifications
- Montrose County Standards for Road and Bridge Construction, latest edition
- CDOT Standard Specifications for Road and Bridge Construction, 2011
- Addenda, if applicable
- Written Instructions to the Contractor, if applicable
• Equipment Lists
• Reference Lists
• Change Orders, if applicable
• Modifications, if applicable
• Written Interpretations of the Contract Documents, if applicable
• Bid Bond, as provided in Article 13 herein below, if applicable
• Performance Bond, as provided in Article 13 herein below, if applicable
• Payment Bond, as provided in Article 13 herein below, if applicable
• Materials Bond, as provided in Article 13 herein below, if applicable
• Notice of Award
• Notice to Proceed
• Contractors Performance Capability Statement
• Owner’s Invitation to Bid, attached
• Contractor’s Bid Schedule, attached
• Contractor’s Certification of Immigration Compliance, C.R.S. 18-17.5-101, et seq.
• Certification of EEO Compliance
• Insurance Certificates
• Submittal samples, documents, test data, and reports provided as required in this contract and the specifications.

6.2 The aforementioned documents comprise the Contract Documents and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, materials, equipment, supervision, and other items as provided in Paragraph 10.2 necessary for the proper execution and completion of the Work and the terms and conditions of payment therefore, and also to include all Work which may be reasonably inferable from the Contract Documents as being necessary to produce the intended results.

6.3 Three copies of the Contract Documents shall be signed by the Owner and the Contractor.

6.4 The term Work as used in the Contract Documents includes all labor, equipment, materials, supervision, and incidentals necessary to produce and execute the construction required by the Contract Documents.

6.5 In the event that any of the covenants or provisions of this Contract shall conflict with any of the provisions of the Invitation to Bid (ITB) or the Contractor’s proposal, then this Contract shall control and shall be the governing document. In the event that the ITB conflicts with the Contractor’s proposal then the ITB shall control, it being the intent that the work under the project is defined in this Contract and the ITB.
ARTICLE 7
OWNER'S REPRESENTATIVE (OR)

7.1 The OWNER'S REPRESENTATIVE will provide general administration of the Contract and will be the Owner's representative during construction and until issuance of the final Certificate for Payment.

7.2 The OWNER'S REPRESENTATIVE shall at all times have access to the Work wherever it is in preparation and progress.

7.3 The OWNER'S REPRESENTATIVE will make periodic visits to the site to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of on-site observations, the OWNER'S REPRESENTATIVE will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor. The OWNER'S REPRESENTATIVE will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The OWNER'S REPRESENTATIVE will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, shall not supervise nor direct the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

7.4 Based on such observations and the Contractor's Applications for Payment, the OWNER'S REPRESENTATIVE will determine the amounts owing to the Contractor and will issue Certificates for Payment in accordance with Article 15.

7.5 The OWNER'S REPRESENTATIVE will be, in the first instance, the interpreter of the requirements of the Contract Documents. The OWNER'S REPRESENTATIVE will make decisions on all claims and disputes between the Owner and the Contractor. See ARTICLE 11 DECISION ON DISPUTES for additional requirements regarding disputes, claims, and other matters.

7.6 The OWNER'S REPRESENTATIVE will have authority to reject Work not conforming to the Contract Documents.

7.7 Except for minor field adjustments and instructions to the Contractor to address unforeseen site conditions, discrepancies in the contract documents, or other similar incidental situations, the OWNER'S REPRESENTATIVE shall not have authority to make changes to the Contractor's Scope of Work. OWNER'S REPRESENTATIVE shall notify OWNER of any such adjustments and instructions within three (3) days after such adjustments and instructions were given to Contractor.
ARTICLE 8
OWNER:

8.1 The Owner has made diligent effort to determine and provide reasonably accurate quantities in the Contractor's Bid Schedule using industry standard methods. However, the Contractor shall be responsible to verify all such quantities per Article 9, 9.13 and 9.14 prior to submitting a bid.

8.2 The Owner has secured all necessary temporary easements or real property acquisitions necessary for the Project and shall advise Contractor of the boundaries of Owner's easements, property, and right of way.

8.3 The Owner shall issue all instructions to the Contractor through the OWNER'S REPRESENTATIVE.

ARTICLE 9
CONTRACTOR:

9.1 The Contractor shall perform the work as an Independent Contractor pursuant to this Contract.

9.2 The Contractor shall supervise and direct the Work, using Contractor's best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

9.3 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, expertise, materials, freight/delivery, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.

9.4 The Contractor shall at all times enforce strict discipline and good order among his employees, and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

9.5 The Contractor represents to Owner that Contractor has the necessary personnel, experience, equipment, knowledge, expertise, and resources to construct the Work.

9.6 The Contractor shall have full and complete responsibility for jobsite safety as detailed in Article 25 Safety.

9.7 The Contractor warrants to the Owner and the OWNER'S REPRESENTATIVE that all materials incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these
standards may be considered defective.

9.8 The Contractor shall pay all sales, consumer, use and other similar taxes required by law and shall secure all permits and licenses necessary for the execution of the Work at Contractor's expense. The Owner is exempt from state and local sales and use taxes. Contractor shall take steps to obtain such exemption from the Colorado Department of Revenue pursuant to applicable provision of the Colorado Revised Statutes, currently C.R.S. § 39-26-708.

9.9 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work, and shall notify the OWNER’S REPRESENTATIVE if the Drawings, Specifications and Provisions are at variance therewith.

9.10 The Contractor shall be responsible for the acts and omissions of all Contractor's employees and all Sub-Contractors, their agents and employees and all other persons performing any of the Work under a contract with the Contractor.

9.11 The Contractor shall review, stamp with his approval and submit all samples, HMAC mix designs, aggregate test results, paving oil technical information, shop drawings, and certificates of compliance with project specifications for approval by the OWNER’S REPRESENTATIVE for conformance with the design concept and with the project specifications contained in the Contract Documents. All such submittal samples, documents, test data, reports, shop drawings, certificates and related information shall become part of the Contract Documents. The Work shall be constructed in accordance with such submitted and approved samples, documents, test data, reports, shop drawings, certificates and related information.

9.12 The Contractor at all times shall keep the premises free from accumulation of waste materials and debris caused by Contractor's operations. At the completion of the Work, Contractor shall leave the Project site in a neat and orderly condition.

9.13 The Contractor represents to Owner that Contractor has evaluated the site, has assessed local conditions, circumstances, laws and regulations which may affect the performance or cost of the Work, and has made such tests of the physical and subsurface conditions of the site as Contractor deems necessary and appropriate to determine the methods and equipment that will be required to successfully complete the Work in conformance with the Plans and Specifications, within the Contract Time, and for the Contract Price.

9.14 The Contractor represents to Owner that Contractor has verified the bid quantities and has reconciled any significant discrepancies with Owner prior to entering into this Contract.
9.15 The Contractor will be paid for Hot Mix Asphaltic Concrete (HMAC) and base course gravel (BCG) on the basis of actual installed quantities, subject to limits stated in the Article 3 of this Contract. Variations in those pay quantities from the Pay Schedule quantities are expected due to the nature of the Work. Contractor will be paid for remaining items on the basis of quantities stated in the Pay Schedule, without field measurements.

ARTICLE 10
SUBCONTRACTS:

10.1 A Subcontractor is a person who has a contract with the Contractor to perform any of the Work at the site.

10.2 Unless otherwise specified in the Contract Documents or in the Instructions to Bidders, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the OWNER'S REPRESENTATIVE in writing a list of the names of Subcontractors proposed for the principal portions of the Work. The Contractor shall not employ any Subcontractor to whom the OWNER'S REPRESENTATIVE or the Owner may have a reasonable objection. The Contractor shall not be required to employ any Subcontractor to whom he has a reasonable objection. Contracts between the Contractor and the Subcontractor shall be in accordance with the terms of this Contract and shall include the General Conditions of this Contract insofar as applicable.

ARTICLE 11
DECISIONS ON DISPUTES:

11.1 The provisions of this Article shall govern the procedures to be followed in the event of a dispute.

11.2 OWNER'S REPRESENTATIVE shall be the initial interpreter of the requirements of the Contract Documents and shall judge the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and changes in the Work and Contract Times will be referred initially to the OWNER'S REPRESENTATIVE in writing with a request for a decision. Written notice of each such claim, dispute or other matter will be delivered by the Contractor to the OWNER'S REPRESENTATIVE promptly after the occurrence or event giving rise thereto. The OWNER'S REPRESENTATIVE will render a decision in writing promptly after receipt of the submittal, allowing sufficient time for review of the matter. The OWNER'S REPRESENTATIVE's decision on such claim, dispute or other matter will be final and binding upon the Contractor unless an appeal is made to the County Engineer per 11.4.
11.3 When functioning under these provisions, the OWNER'S REPRESENTATIVE will remain impartial to both the Contractor and the County, and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

11.4 The Contractor may appeal the decision of the OWNER'S REPRESENTATIVE regarding claims, disputes, or other matters to the County Engineer. The County Engineer's decision on such claim, dispute or other matter will be final and binding upon the Contractor.

ARTICLE 12
ROYALTIES AND PATENTS:

The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall hold the Owner harmless from loss on account thereof.

ARTICLE 13
BONDS:

13.1 Contractor has submitted bid security made payable to Owner in an amount of ten percent (10%) of the Bidder's maximum Bid price and in the form of a certified cashier's check, certified bank check, or a Bid Bond as a guarantee that the Bidder, if selected as the successful bidder for this work, will faithfully enter into a contract with Montrose County in accordance with the terms of the Invitation to Bid and the Bidder's Proposal, and that the Bidder will faithfully furnish Performance, Payment, and Materials Bonds to Montrose County in conformance with the terms of this Contract. The Bid Security of the Successful Bidder will be returned to Bidder upon execution of the Contract and delivery of Performance, Payment, and Materials Bonds to Owner.

13.2 Concurrent with execution of this Contract, Contractor shall submit Performance, Payment and Materials Bonds as security for the faithful performance and payment of all of Contractor's obligations under this Contract. Each bond shall be in the amount of the One Hundred Percent (100%) of contractor's bid price and shall either be in the form supplied by Owner or shall be in such other form as approved by Owner. The purpose of the bond is to secure the performance of and the compliance with this Contract by and between the Contractor and Owner. The bond shall not be transferable. Each bond shall comply with the requirements of C.R.S. §§ 38-26-105 and 106.

13.3 SURETY: Contractor's Bid Bond, Performance Bond, Payment Bond, and Materials Bond shall be provided by surety or insurance companies that are duly licensed to do business in Colorado, and which appear on the list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as
Acceptable Reinsuring Companies” as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or if its right to do business in Colorado is terminated, or if it ceases to appear on Treasury Circular 570 noted above during the term of this Contract, Contractor shall promptly notify Montrose County, Colorado, and shall, within 20 days after the event giving rise to such notification, provide another bond and surety in compliance with this section.

ARTICLE 14
WORK DELAYS:

14.1 All of the Work will be completed and ready for final payment by the completion date specified in this Contract.

14.2 If the Contractor is delayed at any time in the progress of the Work by adverse weather which, in the opinion of the OWNER’S REPRESENTATIVE would compromise the quality of the Work, or by changes ordered in the Work, by labor disputes, fire, unusual delay in transportation, unavoidable casualties, causes beyond the Contractor's control, or by any cause which the OWNER’S REPRESENTATIVE may determine justifies the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the OWNER’S REPRESENTATIVE may determine. Contractor shall submit requests for extensions of time to the Owner’s Representative within 48 hours of occurrence of the event.

ARTICLE 15
PAYMENTS:

15.1 Payments shall be made as provided in Article 4 of this Contract.

15.2 Payments may be withheld on account of (1) defective Work not remedied, (2) failure of the Contractor to make timely payments to Sub-Contractors, or for labor, materials, or equipment, (3) unresolved claims asserted by subcontractors or material suppliers against the Contractor deriving from work on this project, or evidence which indicates probable assertion of claims, (4) injury or property damage to third parties which may result in claims against the Contractor and/or the Owner, or (5) unsatisfactory performance or execution of the Work by the Contractor.
15.3 Final Payment to Contractor shall be made by Owner after (1) the Owner has inspected the Work and determined it has been completed in substantial conformance with the plans and specifications and all other requirements of the Contract Document have been satisfied; (2) the Contractor has delivered to the Owner lien waivers and / or lien releases, in a form satisfactory to the Owner, from all principal subcontractors and material suppliers, including specifically, but not limited to, all trucking contractors and paving oil suppliers; (3) the Contractor has delivered to the Owner a bond, irrevocable letter of credit, cash or other security satisfactory to the Owner indemnifying Owner against any claim which has been asserted for labor, materials, equipment or otherwise arising out of the contract, or on account of any claim which either Owner or Contractor believes may be asserted; (3) written consent of surety, if any is given, (4) Contractor has delivered all manufacturers’ or suppliers’ warranties, equipment literature, and certificates of compliance with project specifications by material suppliers (specifically including paving oil suppliers); (5) Contractor has delivered “as built” plans to Owner, and (6) the Owner and Contractor have complied with all requirements for Final Settlement imposed by applicable law.

15.4 See Article 27, 27.9 for additional information regarding payments

ARTICLE 16
PROTECTION OF PERSONS AND PROPERTY AND RISK OF LOSS:

The Contractor shall have full and complete responsibility for jobsite safety and shall perform all work in full conformance with all Federal, State, and local safety regulations. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the Work and other persons who may be affected thereby, (2) the traveling public passing through the Work area, (3) all the Work and all materials and equipment to be incorporated therein, and (4) other property at the site or elsewhere. Contractor shall bear all risk of loss to the work, or materials or equipment for the work due to fire, theft, vandalism, or other casualty or cause, until the work is fully completed and accepted by the Owner. Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property, or to protect them from damage, injury or loss. All damage or loss to any property caused in whole or in part by the Contractor, any Sub Contractor, any Sub-Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor.
ARTICLE 17
INDEMNIFICATION AND INSURANCE:

Indemnification

17.1 The Contractor shall indemnify and hold harmless the Owner and the OWNER’S REPRESENTATIVE and their respective elected officials, officers, agents and employees, insurers, and self-insurance pool, from and against all liability, claims and demands, on account of injury, loss or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any way connected with this Contract, if such injury, loss, or damage was caused in whole or in part by, or is claimed to have been caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Contractor or any Subcontractor of the Contractor, or any officer, employee, representative, or agent of the Contractor or any Subcontractor of the Contractor, or which arise out of any worker’s compensation claim of any employee of the Contractor or any Subcontractor of the Contractor.

17.2 The Contractor agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Contractor, or at the option of the Owner, agrees to pay the Owner or reimburse the Owner for defense costs incurred by the Owner in connection with, any such liability, claims or demands. In carrying out any of the provisions of this Contract or in exercising any power or authority thereby, there shall be no personal liability of the Owner or the OWNER’S REPRESENTATIVE, or officials, attorneys, employees and agents thereof.

17.3 The Contractor also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether any such liability claims or demands alleged are groundless, false or fraudulent. The obligation of these provisions shall not extend to any injury, loss or damage which is caused by the act, omission or other fault of the Owner.

Insurance

17.4 The Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Contractor pursuant to Section 18.1. Such insurance shall be in addition to any other insurance requirements imposed by this contract or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section 18.1 by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
17.5 Contractor shall procure and maintain, and shall cause any Subcontractor of the Contractor to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to Owner. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant to Section 18.1. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

(a) Worker's Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this contract.

(b) Commercial General Liability insurance with minimum combined single limits of TWO MILLION DOLLARS ($2,000,000) each occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

(c) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS ($1,000,000) each occurrence and ONE MILLION DOLLARS ($1,000,000) aggregate with respect to each of Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the services. If the Contractor has no owned automobiles, the requirements of this Paragraph shall be met by each employee of the Contractor providing services to the Owner under this contract.

17.6 The policy required by paragraphs (b) and (c) above shall be endorsed to include Owner and the OWNER'S REPRESENTATIVE, and officers and employees thereof, as additional insureds. Every policy required above shall be primary insurance and any insurance carried by Owner, its elected officials, officers, or its employees, or carried by or provided through any insurance pool of Owner, shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement to any policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under any policy required above.
17.7 The certificate of insurance form provided to Owner shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by Owner prior to commencement of Work under the contract. No other form of certificate shall be used. The certificate shall identify this Contract and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to Owner. Any statement of the certificates which describe this 30-day prior written notice as being less than obligatory shall be stricken and initialed by the insurance agent completing the certificates. The completed certificate of insurance shall be sent to Owner.

17.8 Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which Owner may immediately terminate this contract, or at its discretion Owner may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by Owner shall be repaid by Contractor to Owner upon demand, or Owner may offset the cost of the premiums against any monies due to Contractor from Owner.

17.9 Owner reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

17.10 The parties hereto understand and agree that Owner is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently $150,000 per person and $600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq., as amended, or otherwise available to Owner, its officers, or its employees.

17.11 The Contractor shall not proceed with the Work, nor shall notice or authorization to proceed shall be given to Contractor until the Certificates required above are submitted and approved by the Owner.

ARTICLE 18
OTHER INSURANCE REQUIREMENTS

18.1 The Contractor shall file a copy of all required insurance policies with the Owner prior to the commencement of the Work.

18.2 The Owner and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance required by this contract. The Contractor shall require similar waivers by Subcontractors and Sub-Subcontractors.
ARTICLE 19
ACCEPTANCE OF THE WORK:

19.1 No act of, or failure to act by, the Owner or the OWNER'S REPRESENTATIVE during the course of the Work, nor any extension of time for the completion of the Work, shall be regarded as an acceptance of such Work or any part thereof, or of materials used therein, either wholly or in part. Acceptance shall be evidenced only by the Final Payment by the Owner to Contractor. Before any final certificate shall issue, Contractor shall execute an affidavit on the certificate that it accepts the same in full payment and settlement of all claims on account of Work done and materials furnished under this Contract, and that all claims for materials provided or labor performed have been paid or set aside in full. No waiver of any breach of this Contract by the Owner or anyone acting on Owner's behalf shall be held as a waiver of any other subsequent breach thereof.

19.2 Contractor agrees to guarantee all work under this Contract for a period of one year from the date of Final Payment by the Owner or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required under terms of Owner's conditional acceptance of elements of the Work the Owner deems marginally substandard. If any unsatisfactory condition or damage develops within the time of this guarantee period due to materials or workmanship that are defective, inferior, or not in accordance with the Contract, as reasonably determined by the Owner or the OWNER'S REPRESENTATIVE, then the Contractor shall, when notified by the Owner or OWNER'S REPRESENTATIVE, immediately place such guaranteed Work in a condition satisfactory to the Owner or OWNER'S REPRESENTATIVE. Such guarantee shall be in addition to any implied warranty under law or other manufacturer's or product supplier's warranty. The provisions of this Article apply to Work done by Subcontractors as well as to Work done by direct employees of the Contractor, and are in addition to any other remedies or warranties provided by law.

ARTICLE 20
CHANGES IN THE WORK:

20.1 The Owner may, without invalidating the Contract, order Changes in the Work consisting of additions, deletions, or modifications, with the Contract Sum and the Contract Time being adjusted accordingly.

20.2 All such changes in the Work shall be authorized by written Change Order signed by the Owner and Contractor. Any work undertaken by the Contractor without a written Change Order shall be deemed work done for the convenience of the Contractor, and shall not be eligible for additional compensation.
20.3 The Contract Sum and the Contract Time may be changed only by Change Order.

20.4 Cost increases or credits to the Owner associated with a Change Order shall be determined by the Bid Schedule unit prices, or by negotiated agreement between Owner and Contractor.

ARTICLE 21
TERMINATION BY THE CONTRACTOR:

If the Contractor terminates the Contract through no fault of the Owner, all bonds shall be surrendered to the Owner to the fullest amount provided by law and the contract documents.

ARTICLE 22
TERMINATION BY THE OWNER:

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Owner may, after fourteen (14) days' written notice to the Contractor and without prejudice to any other remedy Owner may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor or, at Owner's option, may terminate Contractor's work under the Contract and take possession of the site and of all materials thereon owned by the Contractor and may finish the Work by whatever method Owner may deem expedient, and if the unpaid balance of the Contract Sum exceeds the expense of finishing the Work, such excess shall be paid to the Contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the Owner. These rights and remedies are in addition to any right to damages or other rights and remedies allowed by law.

ARTICLE 23
PERMITS:

Contractor shall obtain and pay for all necessary permits and licenses relative to the Project. A right of way use permit from Montrose County is not required.

ARTICLE 24
CONDITIONS OF THE WORK SITE:

24.1 The information and data shown or indicated in the Contract Documents with respect to existing underground facilities at or contiguous to the site is based upon information and data furnished to the Owner by other parties, and may be inaccurate or incomplete. The Owner shall not be responsible for the accuracy or completeness of any such information or data, to the extent that it does not concern County-owned facilities.
24.2 Contractor shall be wholly responsible to locate, preserve, and protect all underground facilities within Contractor’s Work Area, and to coordinate all Work with the owners of such facilities. Contractor shall be responsible to repair any damage thereto resulting from the Work at no additional cost to the Owner.

ARTICLE 25
SAFETY:

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connections with the Work. The Contractor shall take all reasonable safety precautions and provide all reasonable protection to prevent damage, injury, or loss to all employees and Subcontractors at the work site and all other persons affected by the Work, all materials and equipment in the care and custody of the Contractor or Subcontractor, all Work, and all property at the work site. All work shall be performed in full conformance with all applicable Federal, State, and local safety regulations.

ARTICLE 26
LIQUIDATED DAMAGES:

26.1 Owner and Contractor recognize that time is of the essence to complete the project within the specified time period. Owner will suffer financial loss if the Work is not complete within the time specified per Article 2, 2.1, plus any extensions thereof allowed. If the Contractor fails to perform the Work within the specified time set forth in the Contract Documents as adjusted pursuant to this Article, the Owner and Contractor agree that as liquidated damages, and not as a penalty for delay in performance, the Contractor shall pay the Owner in the amount stipulated in 26.4 below for each and every calendar day that expires after 60 calendar days from the date of the Notice to Proceed, plus any extensions granted by Change Order. Where the Work is not complete and ready for Final Payment, the Owner shall have the right to deduct liquidated damages from any amount due or that may become due to the Contractor, or to collect such liquidated damages from the Contractor or the Surety (i.e. performance bond). The Owner has the option to enforce liquidated damages or to waive such damages.

26.2 The liquidated damages herein specified shall only apply to Contractor's delay in performance, not failure to perform. Liquidated damages are intended to compensate the Owner for additional personnel efforts in administering the Contract after normally scheduled completions dates, Owner inconvenience, lost opportunities, and lost confidence in government when work is not completed on time.

26.3 Damages to the Owner caused by failure of the Contractor to complete the project within the specified time are uncertain in amount and difficult to measure.
and prove accurately. By executing this Contract, the Contractor agrees that the liquidated damages specified herein are reasonable in amount and are not disproportionate to actual anticipated damages. Liquidated damages do not include any sums of money to reimburse the Owner for extra costs which the Owner may become obligated to pay on other contracts which are delayed or extended because of Contractor's failure to complete the Work within the time period as specified herein, including costs associated with the delay or interference with the Project. Liquidated damages are not intended to include litigation costs or attorney fees incurred by the Owner, or other incidental or consequential damages suffered by the Owner due to the Contractor's performance. If the Owner charges liquidated damages to the Contractor, this shall not preclude the Owner from commencing an action against the Contractor for other actual harm resulting from the Contractor's performance, including, but not limited to, costs associated with the delay or interference with the Project.

26.4 In order to recover liquidated damages, the Owner is under no obligation to prove the actual damages sustained by the Owner due to the Contractor's delay in performance. The parties agree that liquidated damages shall be computed according to the following schedule, based upon the Contract Price, inclusive of any applicable changes thereto, for each and every day that completion of the Work shall be delayed:

<table>
<thead>
<tr>
<th>TOTAL CONTRACT PRICE</th>
<th>Liquidated Damages/per day</th>
</tr>
</thead>
<tbody>
<tr>
<td>From</td>
<td>To and Including</td>
</tr>
<tr>
<td>$0</td>
<td>$500,000</td>
</tr>
<tr>
<td>$500,000</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>$1,000,000 (and above)</td>
<td></td>
</tr>
</tbody>
</table>

ARTICLE 27
SPECIAL CONTRACT PROVISIONS:

27.1 Each Party hereto agrees to cooperate in all reasonable respects necessary to consummate the transactions contemplated by this Contract, and from time to time to do such acts and execute and deliver such documents and instruments as may reasonably be required in order to implement the transactions contemplated hereby. Each Party hereto agrees to cooperate in the execution of subsequent Addenda, or to re-execute an amended version of this Contract, in the event that a Party discovers: 1) a clerical error; or 2) a misinterpretation of the law; or 3) an error as to form; when such error(s) obviate or hinder the consideration, performance, or enforcement of this Contract.

27.2 This contract is governed by the laws of the State of Colorado and any action to enforce any of the provisions, obligations or covenants of this contract shall be commenced only in a court of proper jurisdiction in Montrose County, Colorado.

27.3 Contractor shall not assign this contract. The provisions of the contract are
binding on the heirs, successors or assignees of the parties.

27.4 The rights and remedies available under this contract shall be in addition to any rights and remedies allowed by law.

27.5 No failure to enforce any provision of the contract on account of any breach thereof shall be considered as a waiver of any right to enforce provisions of this contract concerning any subsequent or continuing breach.

27.6 If any provision of this Contract is declared by any court of competent jurisdiction to be invalid for any reason, such invalidity shall not effect the remaining provisions. On the contrary, such remaining provisions shall be fully severable, and this Contract shall be construed and enforced as if such invalid provisions never had been inserted in this Contract.

27.7 The terms of this Contract shall remain in full force and effect following final payment.

27.8 Contractor shall comply with the requirements of Colorado Revised Statutes 8-17.5-101, et seq. and shall abide by the certification attached hereto as For Services Addendum.

BOARD OF COUNTY COMMISSIONERS
COUNTY OF MONTROSE, COLORADO

By: ________________________
Glen Davis, Chairman

Attest: ______________________
Deputy Clerk and Recorder

CONTRACTOR:

By: _________________________________

________________________________________
Printed name

Title: _________________________________