

## DESIGN/BUILD CONTRACT

THIS CONTRACT is made on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the City of Cañon City, Colorado (the "City"), a Colorado municipal corporation, and \_\_\_\_\_, a \_\_\_\_\_ ("Design-Builder").

For the consideration described herein, the receipt and sufficiency of which is hereby acknowledged, the parties to this Contract hereby agree as follows:

1. Contract Documents. The following documents are attached to this Contract and are incorporated as part of this Contract (the "Contract Documents"):
  - A. This Contract;
  - B. Request for Proposal;
  - C. Request for Proposal addenda;
  - D. Proposal Forms and Requested Proposal Documentation;
  - E. Notice of Award;
  - F. Notice to Proceed;
  - G. Performance Bond;
  - H. Payment Bond;
  - I. Any documentation submitted by Design-Builder prior to the Notice of Award;
  - J. Any modification, including change orders, approved after execution of this Contract;
  - K. Warranty bond or other security submitted at probationary acceptance; and
  - L. Design drawings, specifications, and plans prepared after execution of this Contract.
2. Definitions. For purposes of this Contract, the following terms shall have the following meanings:
  - A. Construction Documents. The documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Design Documents unless a deviation from the Design Documents is specifically set forth in a Change Order executed by both the City and Design-Builder, as part of the design review process contemplated by Section 9 of this Contract.
  - B. Day. The word "day" means "calendar day" unless otherwise specified. When the last day for the occurrence of an event falls on a Sunday or legal holiday as

recognized by the City, the time for performance shall be automatically extended to the next business day.

- C. Design Consultant. A qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant, but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.
  - D. Design Documents. Documents, created by the Design Consultant, assist and guide in the construction of the Work.
  - E. Project. The Project is DESIGN/BUILD STREET IMPROVEMENT PROJECT (REFERENDUM #2A) 2018.
  - F. Project Manager. The Project Manager shall be the City Engineer or designee, who shall have all of the rights and authorities assigned to the City in the Contract Documents.
  - G. Subcontractor. A subcontractor is a person with whom Design-Builder has a direct contract for work at the Work Area.
  - H. Substantial Completion. The date as certified by the Project Manager when the Work or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Work or specified part can be utilized for the purposes for which it was intended; or if there be no such certification, the date when final payment is due in accordance with approval of final payment.
  - I. Work is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.
  - J. Work Area. The Work Area shall be the location of the Work as depicted on the design drawings prepared by Design-Builder and submitted to the City pursuant to this Contract. The parties understand that as design work proceeds, the boundaries of the Work Area may change.
3. Description of Work. Design-Builder shall perform the design and construction of the Project in accordance with the Contract Documents, the Cañon City Municipal Code, and all federal and state regulations (the "Work"). The design portion of the Work shall be known as the Design Work, and the construction portion of the Work shall be known as the Construction Work. Work may be further divided into Work Elements which shall be described in the Construction Documents.

Contract Price – Guaranteed Maximum Price.

- A. The City agrees to pay Design-Builder for completion of the Work subject to all of the terms and conditions of the Contract Documents, an amount not to exceed \_\_\_\_\_ dollars (\$ \_\_\_\_\_) (the "Contract Price"), which is the guaranteed maximum price. This maximum amount shall include all fees, costs, and expenses. If the cost of the work exceeds the Contract Price, Design-Builder shall pay the excess.
- B. This Contract is expressly subject to the provisions of C.R.S. § 29-1-110(1), and Design-Builder acknowledges that neither the City nor any employee or agent thereof has the authority to expend or contract for the expenditure of any monies in excess of those appropriated by the City Council of the City of Cañon City for payment under this Contract.
- C. The City acknowledges and agrees that sufficient funds have been appropriated to pay the amount set forth in Section 4.A. hereof, but Design-Builder shall not rely upon the appropriation of any monies or other funds in addition to those already appropriated unless and until the same are lawfully appropriated by the City Council of the City of Cañon City.

4. Commencement and Completion of Work.

- A. Commencement. Design-Builder shall begin the Design Work within ten (10) days of the date of the Notice to Proceed. Design Work for each Work Element to be constructed shall be completed to the ninety percent (90%) design stage, as determined by the City, and then submitted to the City for approval. No Construction Work shall commence until the City has approved the Design Work for such Work Element, and issued a signed written Release for Construction ("RFC"). Design-Builder shall commence Construction Work on the approved Work element within ten (10) days of the date of the RFC.
- B. Substantial Completion. The Work shall be substantially completed within \_\_\_\_\_ (\_\_\_\_\_) days of the date of the Notice to Proceed, which shall be the \_\_\_\_\_ day of \_\_\_\_\_, 201 \_\_\_\_.
- C. Inspection Upon Substantial Completion. When the Construction Work is substantially completed, the Project Manager and Design-Builder shall make a joint inspection thereof and shall prepare and sign a list of items remaining to be completed or which require correction. Said items shall be completed or corrected prior to the date specified in this Contract for completion of the Work. Upon completion of the items, Design-Builder shall provide a letter of certification on a form approved by the Project Manager.
- D. Final Completion. The Work shall be finally completed within \_\_\_\_\_ (\_\_\_\_\_) days of the date of the Notice to Proceed, which shall be the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

5. Design-Builder's General Services.

- A. Design-Builder's Representative shall be reasonably available to Project Manager and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Project Manager and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of the City and Design-Builder.
- B. Design-Builder shall provide Project Manager with a weekly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; and (iv) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).
- C. Unless a schedule for the execution of the Work has been attached to this Contract as an exhibit, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 6.D below, a schedule for the execution of the Work for Project Manager's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Project Manager and/or City information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Project Manager's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.
- D. The parties will meet within seven (7) days after execution of this Contract to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

6. Design Professional Services.

Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the City and any Design Consultant.

7. Standard of Care for Design Professional Services.

The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Work.

8. Design Development Services.

- A. Design-Builder and the Project Manager shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Project Manager may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Work requirements. Interim design submissions shall be consistent with the Design Documents, as the Design Documents may have been changed through the design process set forth in this Section. On or about the time of the scheduled submissions, Design-Builder and Project Manager shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Design Documents, or, if applicable, previously submitted design submissions. Changes to the Design Documents shall be processed in accordance with Section 15. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Project Manager shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.
- B. Design-Builder shall submit to Project Manager Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and the Project Manager shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 9.A. above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to the Project Manager prior to commencement of construction.
- C. Project Manager's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither the City's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to the City.
- D. To the extent not prohibited by the Contract Documents or other legal requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that

portion of the Work prior to completion of the Construction Documents for the entire Work.

9. Design-Builder's Construction Work Services.

- A. Unless otherwise provided in the Contract Documents to be the responsibility of the City or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Work consistent with the Contract Documents.
- B. Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- C. Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. The City may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Time(s) shall be adjusted to the extent that City's decision impacts Design-Builder's cost and/or time of performance.
- D. Design-Builder assumes responsibility to the City for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- E. Design-Builder shall coordinate the activities of all Subcontractors. If the City performs other work on the Project or at the Site with separate contractors under the City's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- F. Design-Builder shall ensure that all Subcontractors shall include the City and Design-Builder as additional insureds on their liability insurance policies, and that all subcontractors indemnify the City and Design-Builder to the same extent as provided herein.
- G. Design-Builder shall keep the Work Area reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit the City to occupy the Work Area or a portion of the Work Area for its intended use.

H. If Design-Builder fails to perform the cleanup work specified herein, after written notice is delivered to Design-Builder, the City may do, or cause to have done, that cleanup work. Within five (5) days after receipt of a statement for said cleanup work, Design-Builder shall pay to the City the costs incurred by the City in doing or causing to have done that cleanup work, or the City shall withhold said amount from any final payment due to Design-Builder.

10. Project Safety.

A. Design-Builder shall maintain at all times strict discipline among its employees, and Design-Builder shall not employ for the Work any person unfit or without sufficient skill to perform the job for which he or she was employed.

B. Design-Builder shall be fully responsible for the acts, negligence, and omissions of all Design-Builder's employees.

C. Design-Builder shall provide for and oversee all safety orders, precautions, and programs necessary for the safe performance of the Work. Design-Builder shall take reasonable precautions for the safety of all employees and other persons whom the Work might affect, all materials incorporated in the Work, and all property and improvements at the Work Area and adjacent thereto.

11. Warranties.

A. Warranty of Fitness of Equipment and Materials. Design-Builder represents and warrants to the City that all equipment and materials used in the Work, made a part of the structures thereon, or placed permanently in connection therewith, shall be new unless otherwise specified in the Contract Documents, of good quality, free of defects, and in conformity with the Contract Documents. It is understood that all equipment and material not in conformity with the Contract Documents are defective.

B. General Warranty. Design-Builder guarantees and warrants the Construction Work for a period of two (2) years from the date of probationary acceptance of the Work by the Project Manager. Under this warranty Design-Builder agrees, at Design-Builder's expense, to repair or replace at the discretion of the Project Manager any portion of the Construction Work which fails, which is defective, which is unsound, which is unsatisfactory because of materials or workmanship, or which is not in conformity with the Contract Documents. Should Design-Builder fail to perform any such work within the warranty period after a request by the City, the City may withdraw from the Performance and/or Payment Bonds any and all amounts necessary to complete the required work. The expiration of the warranty period shall in no way limit the City's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

12. Correction of Defective Work.

When any Work does not conform to the Contract Documents, Design-Builder shall make the necessary corrections so that such Work will so conform. Such corrections shall be accomplished within the time period approved by the Project Manager. Failure to complete such required corrections within the time period required shall constitute a breach of this Contract.

13. Probationary Acceptance. Upon Final Completion and the receipt of an acceptable warranty bond, the City will issue probationary acceptance.

14. Changes in the Work.

The City reserves the right to order changes to the Work in the nature of additions, deletions, or modifications, without invalidating this Contract, and to make corresponding adjustments in the Contract Price and the time for completion. All changes shall be authorized by a written change order signed by the Project Manager. The change order shall include appropriate changes in the Contract Documents and the time for completion. The Work shall be changed and the Contract Price and completion time shall be modified only as set out in the written change order. Any adjustment in the Contract Price resulting in a credit or a charge to the City shall be determined by mutual agreement of the parties before the work involved in the change is commenced. If a change order results in an increase in the Contract Price, Design-Builder may be required to present the change order to the City Council of the City of Cañon City for approval.

15. Delays.

- A. If Design-Builder is delayed in the progress of the Work by changes ordered in the Work, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipated, or other unavoidable casualties beyond Design-Builder's control, the time for Substantial Completion and for Final Completion may be extended for a reasonable period of time.
- B. Any request for extension of time shall be made in writing to the Project Manager not more than seven (7) days after commencement of the cause of the delay; otherwise it shall be waived. Any such request shall contain an estimate of the probable effect of such delay on the progress of the Work.
- C. Design-Builder shall not be entitled to any increase in the Contract Price, or to damages, or to additional compensation as a consequence of any such delays.

16. No Damages for Delay.

In strict accordance with C.R.S. § 24-91-103.5, the City shall not amend the Contract Price to provide for additional monetary payment for delays in performance which are not the result of acts or omissions within the control of the City or persons acting on behalf of the City.

17. Progress Payments.

- A. The City shall make periodic progress payments to Design-Builder within thirty (30) days of the Project Manager's approval of the Work completed. A progress payment shall be made only after Design-Builder has submitted an application for a progress payment on a form approved by the Project Manager, and if requested by the Project Manager, Design-Builder shall submit copies of all invoices from any subcontractors or suppliers and partial waivers executed by each subcontractor or supplier to whom payment is to be made by Design-Builder. If Design-Builder fails to complete any required Work within the time period agreed between Design-Builder and the Project Manager, or within any time period set forth in the Contract Documents, as modified or extended, the City is expressly authorized to withhold any progress payment for such Work until such Work is completed.
- B. Upon completion of the Design Work, the progress payments shall equal the full amount due to Design-Builder for the Design Work.
- C. For the Construction Work, progress payments shall not exceed ninety percent (90%) of the amount due to Design-Builder for the Construction Work until fifty percent (50%) of the Work, as determined by the Project Manager, is completed. Such determination shall include materials and equipment not incorporated in the Work but delivered to the Work Area and suitably stored. After fifty percent (50%) of the total Work is completed, the retainage may be reduced to five percent (5%), based on the assessment of the Project Manager.

18. Substantial Completion.

- A. Design-Builder shall notify the Project Manager when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of the Project Manager's receipt of Design-Builder's notice, Project Manager and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, the City shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, and (iii) provisions (to the extent not already provided in the Contract Documents) establishing the City's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment.
- B. Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, the City shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.
- C. The City, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 19.A. above, (ii) Design-Builder and the City have obtained the consent of

their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) the City and Design-Builder agree that the City's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

19. Final Payment. The City shall make final payment in accordance with C.R.S. § 38-26-107 upon receipt of the following:
  - A. An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect the City's interests;
  - B. A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to the City and remaining unsettled at the time of final payment;
  - C. Consent of Design-Builder's surety, if any, to final payment;
  - D. All operating manuals, warranties and other deliverables required by the Contract Documents; and
  - E. Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.
20. Completion and Supervision of Work. Design-Builder shall be responsible for the completion of all Work in a timely and workmanlike manner and in accordance with the terms, conditions, exhibits, and specifications in the Contract Documents, including the techniques, sequences, procedures and means, and for coordination of all Work. Design-Builder shall be responsible for Work management and the coordination of all Work. Design-Builder shall supervise and direct the Work and give it all the attention necessary for such proper supervision and direction. Design-Builder shall provide a supervisor at the Work Area at all times Design-Builder or any subcontractor is providing labor at the Work Area.
21. Furnishing of Labor and Materials.
  - A. Design-Builder shall provide and pay for all labor, materials, and equipment, including tools; construction equipment and machinery; utilities, including water; transportation; and all other facilities and services necessary for the proper completion of the Work in accordance with the Contract Documents.
  - B. In all purchases for supplies, materials and provisions to be incorporated or otherwise utilized by Design-Builder in the Work, Design-Builder shall prefer supplies, materials and provisions produced, manufactured or grown in Colorado if such preference is not for articles of inferior quality to those offered by competitors outside of Colorado.

- C. While engaged in the performance of the Work herein contracted, Design-Builder shall maintain employment practices that do not violate the provisions of the Colorado Antidiscrimination Act of 1957, C.R.S. § 24-34-301, *et seq.*, as amended.
22. Compliance with Laws and Regulations. Design-Builder shall comply with all laws, ordinances, rules, regulations, codes, and orders of all public authorities relating to the performance of the Work. If any provision of the Contract Documents is at variance therewith, Design-Builder shall promptly notify the Project Manager.
23. Royalties and License Fees. Design-Builder shall pay all royalties and license fees necessary for the Work, and shall defend all actions for infringements of copyright or patent rights, and shall save the City harmless therefrom.
24. Inspection. Design-Builder shall inspect all Contract Documents, tests and reports, if any, including, as applicable, soils tests, engineering tests, etc., and shall conduct a site or field review prior to bidding on the Work. Design-Builder assumes the risk of all conditions which are disclosed, or which are reasonably suggested, by any such tests or reports, or which are or would be disclosed by a field or site review. Design-Builder shall have the affirmative duty to advise the City of any concerns regarding site conditions prior to executing this Contract.
25. Other Contracts. The City reserves the right to let other contracts in connection with the Work. Design-Builder shall cooperate with all other contractors so that their work shall not be impeded by its Work, and Design-Builder shall give other contractors access to the Work Area necessary to perform their contracts.
26. Insurance.
- A. Design-Builder shall procure and maintain, and shall cause any subcontractor of Design-Builder to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- (1) Worker's compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of work under this Contract, and Employer's Liability insurance with minimum limits of five hundred thousand dollars (\$500,000) each accident, one million dollars (\$1,000,000) disease – policy limit, and one million dollars (\$1,000,000) disease – each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements of this paragraph.
- (2) Commercial general liability insurance with minimum combined single limits of at least two million dollars (\$2,000,000) each occurrence and five million dollars (\$5,000,000) general 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, products, and completed operations. The policy shall contain a severability of interests provision, and shall be endorsed to include the City and the City's officers, employees, and consultants as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

- (3) Professional liability insurance in the amount of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
- (4) Business Automobile liability insurance with minimum combined single limits of at least one million (\$1,000,000) each occurrence.

- C. Any insurance carried by the City, its officers, its employees, or its consultants shall be excess and not contributory insurance to that provided by Design-Builder. Design-Builder shall be solely responsible for any deductible losses under any policy.
- D. Design-Builder shall provide to the City a certificate of insurance as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. 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 the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

27. Indemnification.

- A. Design-Builder agrees to indemnify and hold harmless the City and its officers, insurers, volunteers, representatives, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, 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 manner connected with this Contract or the Contract Documents, to the extent that such injury, loss or damage is attributable to the act, omission, error, professional error, mistake, negligence or other fault of Design-Builder, any subcontractor of Design-Builder, or any officer, employee, representative, or agent of Design-Builder or of any subcontractor of Design-Builder, or which arise out of any worker's compensation claim of any employee of Design-Builder or of any employee of any subcontractor of Design-Builder.
- B. Design-Builder, to the fullest extent permitted by law, shall defend, investigate, handle, respond and provide defense for and defend against any such liability, claims, damages, losses, expenses or demands at the sole expense of Design-Builder, or at the option of the City, Design-Builder agrees to pay the City or reimburse the City for defense costs incurred by the City in connection with any such liability, claims, damages, losses, expenses or demands. Design-Builder, to the fullest extent

permitted by law, shall defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not such liability, claims or demands alleged are groundless, false or fraudulent.

- C. This indemnification provision is intended to comply with C.R.S. § 13-21-111.5(6), as amended, and shall be read as broadly as permitted to satisfy that intent.

28. Bonds.

- A. Payment and Performance Bonds. At the time of execution of this Contract, Design-Builder shall furnish to the Project Manager a Payment Bond and Performance Bond, each in the full amount of the Contract Price.

- B. Warranty Bond. At the time of probationary acceptance, Design-Builder shall provide to the City a warranty bond in the amount of ten percent (10%) of the Contract Price, which warranty bond shall be held by the City for two (2) years. Such warranty bond may be drawn upon by the City in the event the City is required to perform any Construction Work which is required of Design-Builder pursuant to the Contract Documents, but which is not performed by Design-Builder, or in the event the City is required to correct any defective Construction Work during the warranty period.

- 29. Independent Contractor. Design-Builder, for all purposes arising out of this Contract, is an independent contractor and is not an employee of the City. It is expressly understood and agreed that Design-Builder shall not be entitled to any benefits to which the City's employees are entitled including, but not limited to, overtime, retirement benefits, worker's compensation, injury leave, or other leave benefits.

30. Liquidated Damages.

- A. Failure of Design-Builder to complete the Work within the time set forth herein will result in damages being sustained by the City. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Therefore, unless otherwise provided in the Contract Documents, for each consecutive day in excess of the time specified herein for the completion of any Work, as adjusted by the City, Design-Builder shall pay to the City, or have withheld from monies due it, the following amounts:

<b>Contract Price</b>	<b>Amount per day</b>
\$0-\$50,000	\$350
\$50,000-\$100,000	\$380
\$100,000-\$250,000	\$440
\$250,000-\$500,000	\$520
\$500,000-\$1,000,000	\$640
\$1,000,000-\$2,000,000	\$820
\$2,000,000-\$4,000,000	\$1,080
\$4,000,000-\$8,000,000	\$1,450
\$8,000,000-\$12,000,000	\$1,820
\$12,000,000 or greater	\$2,250

- B. Execution of this Contract shall constitute agreement by the City and Design-Builder that the amount set forth in the schedule above is the minimum value of the costs and actual damages caused by failure of Design-Builder to complete the Work within the time specified herein. Such sum shall not be construed as a penalty, and such sum may be deducted from payments due Design-Builder if such delay occurs.
31. Confidentiality. Any and all reports, information, data, statistics, forms, designs, plans, procedures, systems, studies, and any other communication or form of knowledge given to or prepared or assembled by Design-Builder under this Contract shall, to the extent authorized and permitted by law, be kept as confidential and shall not be made available to any individual person, company or organization by Design-Builder without the prior written approval of the City. Notwithstanding the foregoing, Design-Builder shall not be restricted from releasing information in response to a subpoena, court order, or legal process, but Design-Builder shall notify the City before responding.
32. Ownership of Material.
- A. The materials, items, and Work specified in the Contract Documents together with any and all related concepts, text, drawings, plans, blueprints, schematics, sketches, drafts, negatives, graphics, content, spread sheets, documentation, materials, items, or work now or later provided or developed by Design-Builder in any form or medium, including without limitation all improvements and/or modifications (collectively, the "Design Material"), shall be exclusively owned by the City. Design-Builder expressly acknowledges and agrees that the Design Material constitutes a "work made for hire." To the extent, if at all, it shall be determined that the Design Material does not constitute a "work made for hire," Design-Builder hereby transfers, sells, and assigns to the City all of its worldwide right, title, and interest in and to the Design Material, including without limitation, all rights of copyright, patent, trade secret, trademark, service mark, trade dress, artistic and moral rights, mask rights, character rights, publicity rights, and any and all other proprietary rights of any kind whatsoever relating to the Design Material, together with any and all applications, registrations, renewal and extension rights, and rights to sue for any past, present, or future infringement (collectively, the "Rights").
- B. Design-Builder shall execute such documents and take such actions as may be requested by the City which may, in the sole discretion of the City, be required to perfect, protect, enforce, register, or transfer the City's interest in the Design Material and the Rights. Design-Builder hereby irrevocably authorizes and empowers the City to make, constitute, and appoint, in its sole discretion, any officer or agent of the City as Design-Builder's true and lawful attorney-in-fact, with the power to endorse Design-Builder's name on, and file of record, all documents, instruments, and agreements of any kind whatsoever which the City may, in its sole discretion, require for the City or its transferees, successors, or assigns to perfect, protect, enforce, register, or transfer its interest in the Design Material and the Rights.
- C. The City may, with respect to all or any portion of the Design Material, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, use in

a performance, or change the Design Material without providing notice to or receiving consent from Design-Builder. Design-Builder expressly waives any and all artistic and moral rights associated with the Design Material.

- D. Design-Builder represents and warrants that: (a) it is the exclusive owner of the Design Material and the Rights, and no other person or organization participated in the creation of the Design Material; (b) the Design Material is original; (c) the Design Material has not been published; (d) the Design Material and the Rights are not subject to any liens, claims, charges, encumbrances, or restrictions of any kind whatsoever; (e) Design-Builder has the right and authority to enter into this Contract without receiving the consent or approval of any other person or organization, and this Contract shall be binding upon and fully enforceable against Design-Builder; (f) the City's use of the Design Material and exercise of the Rights shall not infringe any copyright, trademark or service mark right, trade dress right, artistic and moral rights, mask right, trade secret right, character right, right of publicity, privacy right, or any other proprietary right of any other person or organization; and (g) no person or organization has any reversionary rights in the Design Material or the Rights.

33. Termination.

- A. Default. The City may terminate this Contract on seven (7) days written notice to Design-Builder in the event Design-Builder defaults in the timely performance of any provision hereof, or otherwise fails to perform the Work, or any part thereof, in accordance with the provisions of the Contract Documents. Termination of this Contract by the City shall not be the City's exclusive remedy, and the City may pursue such other remedies or actions lawfully available to the City including, but not limited to, an action at law for damages against Design-Builder or any surety issuing a bond hereunder, or an action in equity for injunctive relief.
- B. Post-Design. The City may terminate this Agreement after completion of the Design Work, but prior to commencement of the Construction Work, for any reason or no reason. Upon such termination, the City shall pay Design-Builder amounts due and owing for the Design Work; provided that if Design-Builder has substantially or materially breached this Agreement, the City shall have all remedies or rights of set-off available at law and equity.
- C. Convenience. The City may terminate this Agreement for any reason or no reason at any time upon seven (7) days written notice to Design-Builder.
- D. Labor Disputes. Notwithstanding any other provision contained in this Contract, in the event of any picket or other form of labor dispute at the Work Area, Design-Builder shall continue to perform the Work required herein without interruption or delay. If Design-Builder fails to continue the performance of the Work without interruption or delay because of such picket or other form of labor dispute, the City may terminate this Contract upon forty-eight (48) hours written notice.

34. Time of the Essence. The City and Design-Builder agree that time is of the essence in the performance of this Contract and that the City will suffer financial loss if the Work is not completed within the time specified.
35. Illegal Aliens.
- A. Certification. By entering into this Contract, Design-Builder hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under the Contract and that Design-Builder will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Contract.
- B. Prohibited Acts. Design-Builder shall not:
- i. Knowingly employ or contract with an illegal alien to perform work under this Contract; or
  - ii. Enter into a contract with a subcontractor that fails to certify to Design-Builder that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract.
- C. Verification.
- i. Design-Builder has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either the E-Verify Program or the Department Program.
  - ii. Design-Builder shall not use basic pilot program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.
  - iii. If Design-Builder obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien who is performing work under the Contract, Design-Builder shall:
    - a. Notify the subcontractor and the City within three (3) days that Design-Builder has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under the Contract; and
    - b. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subsection (1) hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under the Contract;





**NO EMPLOYEE AFFIDAVIT**

*[To be completed only if Design-Builder does not have any employees]*

**1. Check and complete one:**

I, \_\_\_\_\_, am a sole proprietor doing business as \_\_\_\_\_. I do not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the City, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

I, \_\_\_\_\_, am the sole owner/member/shareholder of \_\_\_\_\_, a \_\_\_\_\_ [specify type of entity – *i.e.*, corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the City, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

**2. Check one.**

I am a United States citizen or legal permanent resident.

*The City must verify this statement by reviewing one of the following items:*

- *A valid Colorado driver's license or a Colorado identification card;*
- *A United States military card or a military dependent's identification card;*
- *A United States Coast Guard Merchant Mariner card;*
- *A Native American tribal document;*
- *In the case of a resident of another state, the driver's license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card;*
- *Any other documents or combination of documents listed in the City's "Acceptable Documents for Lawful Presence Verification" chart that prove both the Design-Builder's citizenship/lawful presence and identity.*

OR

I am otherwise lawfully present in the United States pursuant to federal law.

*Design-Builder must verify this statement through the federal Systematic Alien Verification of Entitlement program, the "SAVE" program, and provide such verification to the City.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



**PERFORMANCE BOND**

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: that

(Firm) \_\_\_\_\_

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

(an Individual), (a Partnership), (a Corporation), hereinafter referred to as "the Principal", and

(Firm) \_\_\_\_\_

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

hereinafter referred to as "the Surety", are held and firmly bound unto, a Municipal Corporation hereinafter referred to as "the City", in the penal sum of \_\_\_\_\_ Dollars in lawful money of the United States, for the payment of which sum well and truly to be made, we bind our-selves, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION are such that whereas the Principal entered into a certain Contract with the City, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is hereto attached and made a part hereof for the performance of the Work, \_\_\_\_\_.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term thereof, and any extensions thereof which may be granted by the City, with or without Notice to the Surety and during the life of the guaranty period, and if shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the City from all cost and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the City all outlay and expense which the City may incur in making good any default, and then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications.

PROVIDED, FURTHER, that no final settlement between the City and Design-Builder shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in five (5) counterparts, each one of which shall be deemed an original, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

ATTEST:

By: \_\_\_\_\_

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

(Corporate Seal)

ATTEST:

By: \_\_\_\_\_

Attorney-in-Fact: \_\_\_\_\_

(Surety Seal)

PRINCIPAL

By: \_\_\_\_\_

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

Address: \_\_\_\_\_

\_\_\_\_\_

SURETY

Surety: \_\_\_\_\_

By: \_\_\_\_\_

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

Address: \_\_\_\_\_

\_\_\_\_\_

NOTE: Date of Bond must not be prior to date of Contract and Surety must be authorized to transact business in the State of Colorado and be acceptable to the City.

**PAYMENT BOND**

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: that

(Firm) \_\_\_\_\_

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

(an Individual), (a Partnership), (a Corporation), hereinafter referred to as "the Principal", and

(Firm) \_\_\_\_\_

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

hereinafter referred to as "the Surety", are held and firmly bound unto a Municipal Corporation, hereinafter referred to as "the City", in the penal sum of \_\_\_\_\_ Dollars in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION are such that whereas the Principal entered into a certain Contract with the City, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is hereto attached and made a part hereof for the performance of the Work.

NOW, THEREFORE, if the Principal shall make payment to all persons, firms, subcontractors and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such Contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, repairs on machinery, equipment and tools, consumed, rented or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications.

PROVIDED, FURTHER, that no final settlement between the City and Design-Builder shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in five (5) counterparts, each one of which shall be deemed an original, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

PRINCIPAL

ATTEST:

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

\_\_\_\_\_

(Corporate Seal)

SURETY

ATTEST:

Surety: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Attorney-in-Fact: \_\_\_\_\_

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

Address: \_\_\_\_\_

\_\_\_\_\_

(Surety Seal)

NOTE: Date of Bond must not be prior to date of Contract and Surety must be authorized to transact business in the State of Colorado and be acceptable to the City.

**WARRANTY BOND**

Bond No. \_\_\_\_\_

KNOW ALL BY THESE PRESENTS, that we, \_\_\_\_\_,  
as Principal, and \_\_\_\_\_, a corporation organized under the  
laws of the State of \_\_\_\_\_ and duly authorized to do business in the State of  
\_\_\_\_\_ as Surety, are held and firmly bound unto \_\_\_\_\_,  
as Obligee, in the penal sum of \_\_\_\_\_ dollars  
(\_\_\_\_\_), to which payment well and truly to be made we do bind ourselves, our and  
each of our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by  
these presents.

WHEREAS, the said Principal entered into a Contract with the City of Cañon City, for  
\_\_\_\_\_ dated \_\_\_\_\_, 20\_\_\_\_; and

WHEREAS, said Contract has been completed, and was approved on this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the Principal  
shall fully perform its guarantee that the Construction Work, as defined in the Contract, will be free  
of any defective materials of workmanship which became apparent during the period of two (2)  
years following completion of the Contract then this obligation shall be void, otherwise to remain in  
full force and effect, provided however, any additional warranty or guarantee, whether expressed or  
implied, is extended by the Principal or Manufacturer only, and the Surety assumes no liability for  
such a guarantee.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ .

\_\_\_\_\_  
Principal (Seal)

By: \_\_\_\_\_ (Seal)  
Name

\_\_\_\_\_  
Title (Seal)

\_\_\_\_\_  
Surety

By: \_\_\_\_\_  
Attorney-in-Fact

**NOTICE OF AWARD**

Date: \_\_\_\_\_

\_\_\_\_\_  
Design-Builder Name

\_\_\_\_\_  
Address

\_\_\_\_\_

\_\_\_\_\_

RE: \_\_\_\_\_

Dear \_\_\_\_\_:

Thank you for submitting a bid for the \_\_\_\_\_.

Your firm submitted the most qualified Proposal and you have been selected as the successful Design-Builder. Accordingly, this is your Notice of Award for the \_\_\_\_\_.

Enclosed please find an original and duplicate original Design/Build Contract. Please review and sign both, then, within ten (10) days of receipt of this letter, return both to me along with your certification of insurance, payment and performance bonds, each in the full amount of the Contract Price, and appropriate powers of attorney. When dating the above documents, please make sure that all dates, on all documents, are the same and that the insurance policy reflects the requirements of the Contract Documents. Please return all of the documents at the same time, in the same envelope.

Upon receipt of the signed Contracts, the City will execute both and return one fully executed original to you.

Should you have any questions, please call me at \_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
\_\_\_\_\_, Project Manager

**NOTICE TO PROCEED**

Date: \_\_\_\_\_

\_\_\_\_\_  
Design-Builder Name

\_\_\_\_\_  
Address

\_\_\_\_\_

\_\_\_\_\_

RE: \_\_\_\_\_

Dear \_\_\_\_\_:

This letter is your Notice to Proceed, effective as of the date cited below. This notice is in reference to the Design Build Contract between you and the City of Cañon City concerning the \_\_\_\_\_.

Please note that in accordance with the Design/Build Contract, Design Work must commence within ten (10) days of the date of this Notice, and all Work must be substantially completed within \_\_\_\_\_ (\_\_\_\_\_) days of the date of this Notice, and finally completed within \_\_\_\_\_ (\_\_\_\_\_) days of the date of this Notice, which shall be the \_\_\_ day of \_\_\_\_\_, 20\_.

If you have any questions, please call me at \_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
\_\_\_\_\_, Project Manager

\_\_\_\_\_  
Date

**RELEASE FOR CONSTRUCTION**

Date: \_\_\_\_\_

\_\_\_\_\_  
Design-Builder Name

\_\_\_\_\_  
Address

\_\_\_\_\_

\_\_\_\_\_

RE: \_\_\_\_\_

Dear \_\_\_\_\_:

This letter is your Release for Construction for the attached Work Element(s). Construction of the attached Work Element(s) shall begin within ten (10) days of the date cited below.

Please note that construction of the entire Work shall be Substantially Completed within \_\_\_\_\_ (\_\_\_\_\_) days from the date of the Notice to Proceed. Final Completion for the entire Work shall be within \_\_\_\_\_ (\_\_\_\_\_) days from the date of the Notice to Proceed.

If you have any questions, please call me at \_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
\_\_\_\_\_, Project Manager

\_\_\_\_\_  
Date