



EXHIBIT D

RFTA SOLICITATION NO. 18-029

PRO-FORMA CONTRACT

This Contract is made and entered into this ____ day of _____ 2018 (“Effective Date”) between the ROARING FORK TRANSPORTATION AUTHORITY, a regional transportation authority and a political subdivision of the State of Colorado (“RFTA”) and _____ a [*indicate corporation, partnership or sole proprietorship*] organized pursuant to the laws of the State of Colorado (the “CONTRACTOR”). RFTA and Contractor may hereinafter from time to time be referred to as “Party” or “Parties”.

RECITALS:

WHEREAS, RFTA desires to engage a qualified and experienced CONTRACTOR to repair/replacement of the under floor waste plumbing in both the women’s and men’s showers at the Aspen Maintenance Facility (AMF) described in Exhibit A – Scope of Work attached hereto (“Work”); and

WHEREAS, RFTA has chosen CONTRACTOR to provide the Work following a competitive procurement process wherein RFTA issued a Request for Quotes, attached hereto as Exhibit B and incorporated herein, and CONTRACTOR submitted a bid in response to the Request for Quotes, attached hereto as Exhibit C and incorporated herein, that was determined by RFTA to be the most advantageous bid to RFTA; and

WHEREAS, the CONTRACTOR has represented to RFTA that it is sufficiently qualified and experienced to provide those Services described in Exhibit A and RFTA has relied on such representations; and

WHEREAS, sufficient authority exists in RFTA’s rules and regulations and state statute, sufficient funds have been budgeted for these purposes and are available, and other necessary approvals have been obtained.

NOW, THEREFORE, in consideration of the mutual understandings and agreements set forth, RFTA and the CONTRACTOR agree as follows:

ARTICLE 1 – SCOPE OF WORK

The required Work is as enumerated and described in Exhibit A – Scope of Work, which document is attached hereto and incorporated as if fully set out herein.

ARTICLE 2 – COMPENSATION AND PAYMENT

RFTA shall pay the Contractor for performance of the Work, in accordance with the Contract Documents, the amount(s) shown on Contractor's Bid attached hereto as Exhibit D, not to exceed **Zero Thousand Dollars (\$00,000.00)**.

This is a Unit Price Contract. The total dollar amount of the Contract as specified herein may only be modified by written agreement of both Parties to the Contract in the form of a Contract Amendment or Change Order as defined in Article 14.

Notwithstanding anything to the contrary contained in this Contract, no charges shall be made to RFTA nor shall any payment be made to the Contractor in excess of the approved amount for any Work performed without written approval in accordance with a budget adopted by RFTA's Board of Directors, in accordance with provisions of the Colorado Revised Statutes. Moreover, the Parties agree that RFTA is a governmental entity and that all obligations of RFTA beyond the current fiscal year are subject to funds being budgeted and appropriated.

ARTICLE 3 – TERM OF CONTRACT

CONTRACTOR shall commence the Services on the Effective Date set forth above and will expire on *TBD*. Any extension of the Term of Contract shall be in writing and signed by both parties in advance of the contract expiration date.

Any revision to the Contract or extension of the Term of Contract must be in writing and signed by both parties to the Contract in the form of a Contract Amendment as set forth in Article 14 below.

ARTICLE 4 – NEGOTIATED RATE

This Contract will be based upon the Contractor's submitted Bid Schedule. The contract amount will not exceed *TBD*. The total dollar amount of the Contract as specified herein may only be modified by written agreement of both parties to the Contract in the form of a Contract Amendment as specified in Article 14 below.

ARTICLE 5 – CONTRACT AND CONTRACT DOCUMENTS

The Contract consists of the following documents:

- (1) Contract for Shower Repairs at the Aspen Maintenance Facility between RFTA and CONTRACTOR;
- (2) Exhibit A – Scope of Work;
- (3) Exhibit B – Request for Quotations for the AMF Shower Repair Package; and
- (4) Exhibit C – Quotation Submitted by CONTRACTOR in Response to RFQ.

In addition, all modifications to the Contract after contract execution that are made in the form of Contract Amendments in accordance with Article 14 below shall be incorporated into and made part of the Contract.

The documents specified in the paragraph above form the Contract for the AMF Shower Repair Package between RFTA and CONTRACTOR. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Contract Amendment as defined in Article 14 below.

ARTICLE 6 – ORDER OF PRECEDENCE OF CONTRACT DOCUMENTS

In the event of an inconsistency between any provisions of the documents that comprise the Contract as specified in Article 5 above, the inconsistency will be resolved by giving precedence to the Contract documents in the following order:

- (1) Change Orders;
- (2) Contract for Shower Repairs at the AMF between RFTA and CONTRACTOR, including Exhibit A - Scope of Work;
- (3) Exhibit B – Request for Quotes for the AMF Shower Repair Package, fully-conformed and inclusive of all addenda to the RFQ; and
- (4) Exhibit C - Contractor's Quote in Response to RFQ.

ARTICLE 7 – CONTRACTOR'S SERVICES AND RESPONSIBILITIES

The CONTRACTOR agrees that it will furnish all of the technical, administrative, professional and other labor; all supplies, materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations; and all other resources necessary to provide the professional and technical services required by Exhibit A – Scope of Work.

ARTICLE 8 – PROJECT AUTHORIZATION AND PERFORMANCE

The CONTRACTOR agrees to perform the required Work in accordance with the Project Schedule as agreed upon by RFTA and the CONTRACTOR.

Upon issuance and full execution of a Contract, the CONTRACTOR shall begin the work not later than *TBD*, pending full contract execution.

RFTA's Project Manager will be on site daily to evaluate the CONTRACTOR'S performance.

ARTICLE 9 –RFTA PROJECT MANAGER

The RFTA Project Manager for this Contract is Joe Bair, Project Manager, unless otherwise designated in writing by the RFTA Director of Facilities.

ARTICLE 10 – INDEPENDENT CONTRACTOR

CONTRACTOR shall perform the Work required under this Contract as an Independent Contractor, not as an agent or employee of RFTA. CONTRACTOR has no authority to make any statement, representation, or commitment of any kind or to take any action binding upon RFTA, without RFTA's written authorization. RFTA is only interested in the results achieved by the Work provided by the CONTRACTOR; the manner of legally achieving those results is the responsibility of the CONTRACTOR.

All of the Work required by this Contract shall be provided by CONTRACTOR or under its supervision, and all personnel engaged in the provision of the Work shall be fully qualified.

Furthermore, it is understood that RFTA will not provide insurance or benefits of any nature to the CONTRACTOR, its employees, or subcontractors.

The CONTRACTOR agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its Work hereunder. The CONTRACTOR further agrees that in the performance of the Contract, no person having any such interests shall be employed.

ARTICLE 11 – INVOICING AND PAYMENT

(1) CONTRACT SUM

- a. The Contract Sum is stated in the RFTA-Contractor Agreement and, including authorized adjustments thereto, is the total amount payable by RFTA to the Contractor for the performance of the Work under the Contract Documents.
- b. The Contractor will not be allowed any claims for anticipated profits, for loss of profits, or for any damages or additional costs incurred because of a difference between the estimate of any item and the amount of the item actually required, or for the elimination of any part of the Work. Funds for construction of the Work herein contemplated are limited. RFTA reserves the right to eliminate or reduce the items of the bid or any of the Work as may be required to bring the cost of the Work within the limits of available funds.

(2) SCHEDULE OF VALUES

- a. Before the Pre-Construction Conference, the Contractor shall submit to the Project Manager a schedule of values for all Lump Sum line items in excess of \$2,500.00 allocated to the various portions of the Work that have not already been defined in the Bid Schedule, which in the aggregate equals the total Contract Sum, supported by such evidence of correctness as the Project Manager may direct. This Schedule along with the individual Bid Items, when approved by the Project Manager, shall be used to monitor the progress of the Work and as a basis for Certificates for Payment.

(3) APPLICATIONS FOR PAYMENT

- a. No later than five days after the agreed upon progress payment cut-off date established in the RFTA-Contractor Agreement, the Contractor shall submit to the Project Manager an itemized Application for Payment for operations completed in accordance with the Bid Schedule and Schedule of Values. Such application shall be supported by such data substantiating the Contractor's right to payment as the Project Manager may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents.
 - i. Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.
 - ii. Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a subcontractor or supplier because of a dispute or other reason.
- b. Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance by RFTA, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing for subsequent incorporation in the Work. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory

to RFTA to establish RFTA's title to such materials or equipment or otherwise protect RFTA's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.

- c. The Contractor warrants that title to all work, materials and equipment covered by an Application for Payment will pass to RFTA either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.
- d. When application for payment includes materials stored off the project site or stored on the project site but not incorporated in the Work, for which no previous payment has been requested, a complete description of such material shall be attached to the application. Suitable storage which is off the project site shall be a bonded warehouse or appropriate storage approved by the Project Manager with the stored materials properly tagged and identifiable for this project and properly segregated from other materials. The Project Manager's written approval shall be obtained before the use of offsite storage is made. Such approval may be withheld in the Project Manager's sole discretion.

(4) CERTIFICATES FOR PAYMENT

- a. The Project Manager will, within seven (7) days after the receipt of the Contractor's Application for Payment, either issue a Certificate for Payment to RFTA, with a copy to the Contractor, for such amount as the Project Manager determines is properly due, or notify the Contractor in writing his/her reasons for withholding a certificate in whole or in part as provided in Subparagraph 9.5.1.
- b. The issuance of a Certificate for Payment will constitute a representation by the Project Manager, based on his/her observations at the site as provided in Subparagraph 4.2.2 and on all other information available to the Project Manager including, without limitation, the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents and that all lien waivers and certificates required under the Contract Documents have been furnished to the Project Manager in proper form. The foregoing representations are subject to specific qualifications stated by the Project Manager in the Certificate for Payment. However, the issuance of a Certificate for Payment will not be a representation that the Project Manager has made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

(5) DECISIONS TO WITHHOLD CERTIFICATION

- a. The Project Manager may decline to certify payment and may withhold the

certificate in whole or in part, to the extent reasonably necessary to protect RFTA, if in the Project Manager's opinion, the Project Manager is unable to make representations to RFTA as provided in subparagraph 9.4.2. If the Project Manager is unable to make representations to RFTA as provided in subparagraph 9.4.2 and to certify payment in the amount of the application, the Project Manager will notify the Contractor as provided in subparagraph 9.4.1. If the Contractor and the Project Manager cannot agree on a revised amount, the Project Manager will promptly issue a Certificate for Payment for the amount for which the Project Manager is able to make such representations to RFTA. The Project Manager may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, the Project Manager may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his/her opinion to protect RFTA from loss because of:

- i. defective work not remedied,
 - ii. third party claims filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment;
 - iv. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
 - v. damage to RFTA or another Contractor;
 - vi. reasonable evidence that the Work will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vii. failure to carry out the Work in accordance with the Contract Documents;
 - viii. failure to maintain accurate job progress schedules; or
 - ix. failure to maintain accurate and up-to-date as-built drawings.
- b. When the above grounds are removed, Certificates for Payment shall be made by the Project Manager for amounts withheld because of them.

(6) PROGRESS PAYMENTS

- a. After the Project Manager has issued a Certificate for Payment, RFTA shall make payment in a timely manner not to exceed thirty (30) days from the time the Project Manager issued the Certificate for Payment. RFTA may refuse to make payment on any Certificate for Payment for any default of the Contract, including, but not limited to those defaults set forth in Clauses 9.5.1.1 through 9.5.1.8. RFTA shall not be deemed in default by reason of withholding payment while any of such

defaults remain uncured.

- b. The Contractor shall promptly pay each subcontractor, upon receipt of payment from RFTA, out of the amount paid to the Contractor on account of such Subcontractor's work, the amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's work. The Contractor shall, by an appropriate agreement with each subcontractor, require each subcontractor to make payments to its sub-subcontractors in similar manner.
- c. The Project Manager may, on request and at the Project Manager's discretion, furnish to any subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Project Manager on account of Work done by such subcontractor.
- d. RFTA shall not have any obligation to pay or to see the payment of any monies to any subcontractor except as may otherwise be required by law.
- e. Payment to suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3, and 9.6.4.
- f. No certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the project by RFTA, shall constitute an acceptance of any work not in accordance with the Contract Documents.
- g. Retainage.[Check statute 24-91-103, CRS: The section appears to comply]
 - i. In addition to any amounts withheld from payment pursuant to any other provision in this Contract, and if the Contractor is satisfactorily performing the Contract, RFTA shall retain from progress payments, until payment is due under the terms and conditions governing final payments, amounts as follows:
 - 1. RFTA shall retain five percent (5%) of each progress payment until the Work is at least fifty percent (50%) complete.
 - 2. After the Work is fifty percent (50%) complete, RFTA may, at its sole discretion, reduce retainage to three percent (3%) of each progress payment. A retainage of three percent (3%) of any progress payment shall not limit RFTA's discretion to retain five percent (5%) of any subsequent progress payment.
 - ii. In no event shall the amount retained pursuant to Subparagraph 9.6.7 be reduced to less than three percent (3%) of the Contract price until after final acceptance of the project by RFTA. In addition, the amount retained shall never be less than the cost to complete the punch list items as determined by the Project Manager.

(7) **FAILURE OF PAYMENT**

- a. If the Project Manager does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if RFTA does not, for reasons other than a default of the Contract, including, but not limited to those defaults set forth in Clauses 9.5.1.1 through 9.5.1.8, pay the Contractor within thirty (30) days after the date established in the Contract Documents any amount certified by the Project Manager, then the Contractor may, upon seven (7) additional days' written notice to RFTA and the Project Manager, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order.

(8) **SUBSTANTIAL COMPLETION**

- a. Substantial Completion is the stage in the progress of the Work when the Work (or designated portion thereof which RFTA agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so RFTA can occupy or utilize the Work for its intended use. The Work will not be considered suitable for Substantial Completion review until all project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of RFTA's personnel in the operation of systems has been completed, and all final finishes within the Contract are in place. In general, the only remaining work shall be minor in nature, so that RFTA could occupy the building or utilize the improvements on that date and the completion of the Work by the Contractor would not materially interfere or hamper RFTA's normal operations. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining work will be completed within thirty (30) consecutive calendar days or as agreed upon following the date of Substantial Completion.
- b. When the Contractor considers that all of the Work, or a designated portion thereof which RFTA agrees to accept separately, is substantially complete, it shall request in writing that the Project Manager prepare and submit to the Contractor a list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of notice of completion of the list, the Project Manager will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Project Manager's inspection discloses any item, whether or not included on the list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such items upon notification by the Project Manager. The Contractor shall then submit a request for another inspection by the Project Manager to determine Substantial Completion. When the Work or designated portion thereof is Substantially Complete, the Project Manager will prepare a Certificate of Substantial Completion (in a form created by RFTA) which shall establish the date of Substantial Completion, shall state the responsibilities of

RFTA and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein, which time shall be no longer than thirty (30) days after the scheduled completion date. The Certificate of Substantial Completion shall be submitted to RFTA and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

- c. Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Project Manager, RFTA shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents.

(9) **PARTIAL OCCUPANCY OR USE**

- a. RFTA may occupy or use any completed or partially completed portion of the Work at any stage of construction regardless of whether the Contract Time has expired (hereinafter sometimes referred to as “partial occupancy”). Such partial occupancy may commence whether or not the applicable portion of the Work is Substantially Complete.
- b. In the event of partial occupancy, the Contractor shall promptly secure endorsement from its insurance carriers and consent from its sureties, if any.
- c. In the event of partial occupancy before Substantial Completion as provided above, the Contractor shall cooperate with RFTA in making available for RFTA’s use and benefit such building services as heating, ventilating, cooling, water, lighting, telephone, elevators, and security for the portion or portions to be occupied, and if the work required to furnish such services is not entirely completed at the time RFTA desires to occupy the aforesaid portion or portions, the Contractor shall make every reasonable effort to complete such work or make temporary provisions for such work as soon as possible so that the aforementioned building services may be put into operation and use. Similar provisions shall be made where the improvements or structures are not buildings so that RFTA may use or occupy such portions of the structure or improvement.
- d. In the event of partial occupancy prior to Substantial Completion, mutually acceptable arrangements shall be made between RFTA and Contractor in respect of the operation and cost of necessary security, maintenance and utilities, including heating, ventilating, cooling, water, lighting, telephone services, and elevators. RFTA shall assume proportionate and reasonable responsibility for the cost of the above services, reduced by any savings to Contractor for such services realized by reason of partial occupancy. Further, mutually acceptable arrangements shall be made between RFTA and Contractor in respect of insurance and damage to the Work. Contractor’s acceptance of arrangements proposed by RFTA in respect of such matters shall not be unreasonably withheld, delayed, or conditioned. Similar provisions shall be made where the improvements or structures are not buildings so that RFTA may use or occupy such portions of the structure or improvement.
- e. In each instance, when RFTA elects to exercise its right of partial occupancy as

described herein, RFTA will give Contractor advance written notice of its election to take the portion or portions involved, and immediately prior to partial occupancy, Contractor and Project Manager shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the conditions of the same.

- f. It shall be understood, however, that partial occupancy shall not: (1) constitute Final Acceptance of any work, (2) relieve the Contractor for responsibility for loss or damage because of or arising out of defects in, or malfunctioning of, any work, material, or equipment, nor from any other unfulfilled obligations or responsibilities under the Contract Documents, or (3) commence any warranty period under the Contract Documents; provided that Contractor shall not be liable for ordinary wear and tear resulting from such partial occupancy.
- g. Subject to the terms and conditions provided herein, if the Contractor claims that delay or additional cost is involved because of partial occupancy by RFTA, Contractor shall make such claim as provided elsewhere in the Contract Documents.

(10) **FINAL COMPLETION AND FINAL PAYMENT**

- a. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Project Manager will promptly make such inspection and, when the Project Manager finds the Work acceptable under the Contract Documents and the Contract fully performed, the Project Manager will promptly issue a final Certificate for Payment stating that to the best of the Project Manager's knowledge, information and belief, and on the basis of his/her observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The Project Manager's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.10.2 have been fulfilled. Final Payment is also subject to any and all RFTA requirements. Warranties required by the Contract Documents shall commence on the date that the Project Manager issues a final Certificate of Payment to RFTA.
- b. Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Project Manager:
 - i. An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which RFTA or its property might in any way be responsible have been paid or otherwise satisfied,
 - ii. Consent of surety, if any, to final payment, and
 - iii. If required by RFTA, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent

and in such form as may be designated by RFTA, and

- iv. Evidence of compliance with all requirements of the Contract Documents: notices, certificates, affidavits, other requirements to complete obligations under the Contract Documents, including but not limited to
 - 1. instruction of RFTA's representatives in the operation of mechanical, electrical, plumbing and other systems;
 - 2. delivery of keys to RFTA with keying schedules, sub-master and special keys,
 - 3. delivery to Project Manager of Contractor's general warranty as described in Paragraph 3.5, and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for Project Manager's review and delivery to RFTA,
 - 4. delivery to Project Manager of printed or typewritten operating, servicing, maintenance and cleaning instructions for the Work; parts lists and special tools for mechanical and electrical work,
 - 5. delivery to RFTA of a final waiver of liens in a form satisfactory to RFTA, covering all work including that of all subcontractors, vendors, labor, materials and services, executed by an authorized officer and duly notarized.

- v. In addition to the foregoing, all other submissions required by other articles and paragraphs of the specifications including final construction schedule shall be submitted to the Project Manager before approval of Final Payment. If any Subcontractor refuses to furnish a release or waiver required by RFTA, the Contractor may furnish a bond satisfactory to RFTA to indemnify RFTA against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to RFTA all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

- c. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Project Manager so confirms, RFTA shall, upon application by the Contractor, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Project Manager prior

to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

- d. The making of final payment shall constitute a waiver of all claims by RFTA except those arising from:
 - i. unsettled liens,
 - ii. faulty or defective Work appearing after Substantial Completion,
 - iii. failure of the Work to comply with the requirements of the Contract Documents,
 - iv. terms of any special warranties required by the Contract Documents, or
 - v. replacement of material or equipment which is rejected if found, after the date of final payment, to be defective or inferior in quality or uniformity, to the material or equipment specified, or is not as represented to the Project Manager.
- e. The acceptance of final payment by the Contractor, a subcontractor, or supplier shall constitute a waiver of all claims by that payee except those previously made in writing and identified by that payee as unsettled on payee's final Application for Payment.

ARTICLE 12 – EMPLOYMENT OF AUTHORITY'S PERSONNEL

The CONTRACTOR shall not employ any person or persons in the employ of RFTA for any work required by the terms of this Contract without the written permission of RFTA, except as may otherwise be provided for herein.

ARTICLE 13 – REVIEW OF WORK

Authorized representatives of RFTA may, at all reasonable times review and inspect the Work, financial reports, and data collected under the terms of this Contract and any amendments thereto. All reports, drawings, studies, specifications, estimates, maps, and computations prepared by or for the CONTRACTOR pursuant to this Contract, shall be available to authorized representatives of RFTA for inspection and review at all reasonable times. Acceptance shall not relieve the CONTRACTOR of its professional obligation to correct, at its expense, any of its negligent errors in the work.

ARTICLE 14 – CHANGES

- (1) RFTA shall have the right, without additional consent from CONTRACTOR and without invalidating the Contract, to add, delete, or change the required Work.
- (2) Change Orders. RFTA shall issue Change Orders to make additions, deletions, or changes to the required Work. To initiate a Change Order, RFTA shall send CONTRACTOR a Request for Change Order. Upon receipt, CONTRACTOR shall prepare an estimate of the effects of the change on the Contract Budget and/or Term of Contract. Upon agreement between CONTRACTOR and RFTA on the effects of the

change, RFTA will issue a Change Order specifying any change to the Contract Budget or the Term of Contract.

- (3) The Contract Budget and/or Term of Contract shall be subject to adjustment only by Contract Amendment(s).

ARTICLE 15 – SUBSTANTIAL CHANGES

If, prior to the satisfactory completion of the Work required under this Contract, RFTA materially alters the scope, character, complexity, or duration of the Work from those required under the Contract, a Contract Amendment may be executed between the parties.

Minor changes in the Work which do not involve increased compensation, extensions of time or changes in the goals and objectives of the Work may be made by written notification of such change by either RFTA or the CONTRACTOR with written approval by the other party.

ARTICLE 16 – INDEMNIFICATION

- (1) Professional Liability. The CONTRACTOR shall exercise in its provision of the Work the standard of care normally exercised by nationally recognized organizations engaged in providing comparable work. The CONTRACTOR shall be liable to RFTA for any loss, damages or costs incurred by RFTA for the repair, replacement or correction of any part of the project which is deficient or defective as a result of any failure of the CONTRACTOR to comply with this standard.
- (2) Indemnification. To the fullest extent permitted by law, the CONTRACTOR shall indemnify, defend, and hold harmless RFTA and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the provision of Work, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work) including the loss of use resulting there from, but only to the extent caused by the negligent act or omission of, or breach of contract by, the CONTRACTOR, any subcontractor of the CONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The Parties agree that nothing contained herein waives or is intended to waive any protections that may be applicable to RFTA under the Governmental Immunity Act, §24-10-101 et. Seq., C.R.S., or any other rights, protections, immunities, defenses or limitations on liability provided by law, and subject to any applicable provisions of the Colorado Constitution and applicable laws.

Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Contract. RFTA may, if it so desires, withhold the payments due the CONTRACTOR so long as shall be reasonably necessary to indemnify RFTA on account of such injuries.

In any and all claims against RFTA or any of its agents or employees by any employee of the CONTRACTOR, any subcontractor of the CONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any subcontractor under the Worker's Compensation acts, disability benefits acts or other employee benefits acts.

ARTICLE 17 – INSURANCE

- (1) CONTRACTOR shall procure and maintain, until all of its obligations under this Contract have been discharged, including until any warranty periods under this Contract are satisfied, the following types of insurance coverage and limits of liability. These insurance requirements and the obligations of the indemnification agreement that is part of this contract shall apply to anyone hired by CONTRACTOR to work under this agreement. CONTRACTOR shall procure and maintain in effect the following types of insurance at least as broad and with limits of liability not less than those stated below.
- (2) The insurance requirements herein are minimum requirements for this Contract. RFTA in no way warrants that the minimum limits contained herein are sufficient to protect the CONTRACTOR from liabilities that might arise out of the performance of the Work under this Contract by the CONTRACTOR, representatives, employees, or subcontractors and CONTRACTOR is free to purchase such additional insurance as may be determined necessary.
- a. Workers Compensation and Employer’s Liability Insurance
- i. Coverage A:
- | | |
|---------------------|---------------------------|
| Statutory Coverage: | Colorado Statutory Limits |
|---------------------|---------------------------|
- ii. Coverage B:
- | | |
|-------------------------------|----------------------------------|
| Employers Liability Coverage: | \$100,000 Each Accident |
| | \$500,000 Disease, Policy Limit |
| | \$100,000 Disease, Each Employee |
- b. Commercial General Liability Insurance
- i. Combined Bodily Injury and Property Damage Liability:
- | | |
|---------------------------------|-------------|
| Each Occurrence: | \$1,000,000 |
| Personal and Advertising Injury | \$1,000,000 |
| General Aggregate | \$2,000,000 |
- ii. RFTA must be shown as additional insured.
- iii. The following coverages must be included under the Commercial General Liability Policy:
- 1) Defense costs outside the limits of liability
 - 2) Premises/Operations
 - 3) Contingent liability for work performed by subcontractors and Contractors
 - 4) Advertising Injury Liability
 - 5) Contractual Liability
- c. Business Automobile Liability:

- i. Combined Bodily Injury and Property Damage Liability: \$1,000,000 each accident
 - ii. Liability Coverage for the following must be included:
 - 1) Owned Automobiles
 - 2) Non-Owned and Hired Automobiles
 - 3) Contractual Liability
- (3) Certificates of Insurance: The CONTRACTOR shall furnish to RFTA a certificate(s) of insurance (using ACORD form or equivalent) provided by the Contractor's insurance carrier or agent to show that the insurance specified in this contract is in force stating policy numbers, dates of expiration, limits of liability and coverages thereunder, the name of the project, or "Any and All Operations" if working on more than one project and further providing that the insurance shall not be cancelled until the expiration of thirty (30) days after written notice of such cancellation has been mailed to RFTA. Such notice shall be mailed certified mail, return receipt requested.
- (4) Waiver of Subrogation: CONTRACTOR and RFTA waive all rights against (1) each other and any of their Contractors, agents and employees, each of the other, and (2) RFTA, separate contractors, and any of their contractors, subcontractors, agents and employees for damages caused by fire or other perils to the extent covered by property insurance provided under the contract or other property insurance applicable to the work, except such rights as they may have to proceeds of such insurance held by the RFTA as fiduciary.
 - a. CONTRACTOR shall require their agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
- (5) Special Provisions:
 - (a) If CONTRACTOR fails to procure and maintain such insurance, CONTRACTOR will be in breach of the Contract and RFTA shall have the right to proceed with Termination of the Contract and whatever judicial remedies may be appropriate.
 - (b) Maintenance of the foregoing insurance coverage shall in no way be interpreted as relieving the CONTRACTOR of any responsibility hereunder. The CONTRACTOR may secure, at its own expense, such additional insurance as the CONTRACTOR deems necessary.
 - (c) Insurance coverage carried by the CONTRACTOR shall not be subject to limitations, conditions or restrictions reasonably deemed by RFTA to be inconsistent with the intent of the Insurance Requirements to be fulfilled by CONTRACTOR under this Article 17.
 - (d) All policies are to be written through companies duly entered and authorized to transact that class of insurance in the state in which the project is located. The

insurance companies must have an A.M. Best rating of A:IX or better in the most recent Best's Key Rating Guide.

- (e) Approval, disapproval or failure to act by RFTA regarding any insurance supplied by the CONTRACTOR shall not relieve the CONTRACTOR of full responsibility or liability pursuant to Article 16 for damages. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the CONTRACTOR from liability.
- (f) Cross-Liability Coverage. If the liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.
- (g) CONTRACTOR shall make no special payments for any insurance that the CONTRACTOR may be required to carry as identified under this Article 17; all are included in the contract price and in the contract unit prices.
- (h) CONTRACTOR shall require all subcontractors to procure and maintain all insurance as set forth in this contract.
- (i) CONTRACTOR shall furnish copies of certificates of insurance evidencing coverage for each subcontractor when required by RFTA.
- (j) RFTA shall have the right, but not the obligation, of prohibiting CONTRACTOR or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by RFTA.
- (k) CONTRACTOR and Subcontractors – CONTRACTOR shall require all of its subcontractors to provide the aforementioned coverage at levels that the CONTRACTOR and its subcontractors may consider necessary and any deficiency in the coverage or policy limits of the subcontractors will be the sole responsibility of CONTRACTOR.
- (l) Contractual Liability – The insurance provisions in this Contract in no way affect the liability of CONTRACTOR or the indemnity covenants stated elsewhere in this Contract.
- (m) Deductibles and Self-Insured Retention – All deductibles and/or self-insured retention amounts must be declared to RFTA.
- (n) Certificates of Insurance – Before commencing performance on the Contract, CONTRACTOR and its subcontractors must furnish certificate(s) of insurance (using ACORD form or equivalent) to RFTA evidencing:
 - i. Insurance coverage in accordance with this Article 17 - Insurance.
 - ii. Signature by person authorized by insurer to bind coverage on its behalf.
 - iii. Effective expiration dates of policies.
 - iv. RFTA must be given thirty (30) days written notice, in accordance with policy terms, of all cancellation, non-renewal, or material changes in policy by either Insurer or CONTRACTOR.
 - v. RFTA is added as Additional Insured party on the Commercial General Liability policies.

- vi. A waiver of subrogation endorsement has been attached to the Worker's Compensation and General Liability policies.
 - vii. Any deductible and/or self-insured retention.
 - viii. Certificate of Insurance title block format is as follows: Roaring Fork Transportation Authority, 0051 Service Center Drive, Aspen, Colorado 81611
- 6) Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of the Contract.

ARTICLE 18 – SUBLETTING, ASSIGNMENT, OR TRANSFER

It is understood by the parties to this Contract that the work of the CONTRACTOR is considered personal by RFTA. The CONTRACTOR agrees not to assign, sublet, or transfer any or all of its interest in this Contract without prior written approval by RFTA.

RFTA reserves the right to review all subcontracts prepared in connection with the Contract, and the CONTRACTOR agrees that it shall submit to RFTA any proposed subcontract documents together with subcontractor cost estimates for review and written concurrence of RFTA no later than five (5) business days in advance of their execution.

Any contract between the CONTRACTOR and any subcontractor shall comply with all provisions of this Contract. RFTA's approval of any assignment, sublet, or transfer shall not release the CONTRACTOR of any obligation under this Contract. As between RFTA and the CONTRACTOR, the CONTRACTOR shall be fully responsible for the acts and omissions of the subcontractors and persons either directly or indirectly employed by the CONTRACTOR. Nothing contained in this Contract shall create any contractual relation between any subcontractor and RFTA.

All subcontracts in the amount of \$5,000.00 or more shall include the provisions set forth in this Contract.

ARTICLE 19 – TERMINATION

The rights and remedies of RFTA under this Article shall be non-exclusive, and shall be in addition to all the other remedies available to RFTA at law or in equity.

- (1) Termination for Cause: If the CONTRACTOR fails to perform in the manner called for in this Contract or if the CONTRACTOR fails to comply with any other provisions of this Contract, RFTA may terminate this Contract for cause. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR has breached or is in default. The CONTRACTOR will only be paid the contract price for Work provided in accordance with the manner of performance set forth in this Contract.

If it is later determined by RFTA that the CONTRACTOR has an excusable reason for not performing, such as a strike, fire, flood or other events which are not the fault of or are beyond the control of the CONTRACTOR, RFTA, after setting up a new delivery of performance schedule, may allow the CONTRACTOR to continue work or treat the termination as a termination of convenience.

RFTA in its sole discretion may, in the case of a termination for cause, allow the CONTRACTOR an appropriate period of time to cure the breach or default. In such

case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If the CONTRACTOR fails to remedy to RFTA's satisfaction the breach or default, RFTA shall have the right to terminate this Contract without any further obligation to the CONTRACTOR. Any such termination for breach or default shall not in any way operate to preclude RFTA from also pursuing all available remedies against the CONTRACTOR and its sureties for said breach or default.

- (2) Termination for Convenience: RFTA may terminate this Contract for its convenience at any time by giving written notice to the CONTRACTOR of such termination and specifying the effective date thereof, at least five (5) business days before the effective date of such termination. If the Contract is terminated by RFTA for convenience, the CONTRACTOR will be paid compensation for the Work actually completed. Partially completed tasks will be compensated for based on a signed statement of completion to be submitted by the CONTRACTOR which shall itemize each task element and briefly state what work has been completed and what work remains to be done.

ARTICLE 20 – APPLICABLE LAWS AND VENUE

This Contract shall be governed by the laws of the State of Colorado. This Contract shall be deemed entered into in Garfield and Pitkin County, State of Colorado, as RFTA is located in both counties. At RFTA's option, the location for settlement of any and all claims, controversies and disputes arising out of or related to this Contract or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in either county.

ARTICLE 21 – CLAIMS AND DISPUTES

- (1) Definition. A claim is a demand or assertion by one of the Parties seeking, as a matter of right, adjustment of contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term "claim" also includes other disputes between RFTA and the CONTRACTOR arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate claims shall rest with the party making the claim.
- (2) Time limits on Claims. Claims by CONTRACTOR shall be made within 21 days after occurrence of the event giving rise to such claim or within 21 days after the claimant first recognizes, or reasonably should have recognized, the condition giving rise to the claim, whichever is the later. An additional claim made after the initial claim has been resolved will not be considered unless submitted in a timely manner.
- (3) Continuing Contract Performance. Pending final resolution of a claim, including litigation, unless otherwise directed by RFTA in writing, the CONTRACTOR shall proceed diligently with performance of the Contract and RFTA shall continue to make payments in accordance with the Contract.
- (4) Waiver of Claims: Final Payment. The making and acceptance of Final Payment shall constitute a waiver of claims by RFTA except those arising from:
 - (a) Liens, claims, security interests, or encumbrances arising out of the Contract and unsettled;
 - (b) Failure of the Work to comply with the requirements of the Contract; (c) Terms of special warranties required by the Contract; or
 - (c) Faulty or defective work appearing after Final Completion.

ARTICLE 22 - DISPUTE RESOLUTION

- (1) Negotiation. The parties will attempt in good faith to resolve promptly through negotiation any claim or controversy arising out of or relating to this Contract. If a controversy or claim should arise, RFTA's Project Manager (herein referred to as "RFTA's Project Manager") and CONTRACTOR'S principal contact with RFTA (herein referred to as "CONTRACTOR'S Representative") will meet at least once and will attempt in good faith to resolve the dispute. For such purpose, either may request the other to meet within seven (7) days, at a mutually agreed upon time and place.

If RFTA's Project Manager and CONTRACTOR'S Representative are not able to resolve the dispute within fourteen (14) days after their first meeting (or such longer period of time as may be mutually agreed upon), either party may request that RFTA's Director of Facilities (herein referred to as "Facilities Director") and the CONTRACTOR'S management representative (herein referred to as "CONTRACTOR'S Management Representative") meet at least once to attempt in good faith to resolve the dispute.

If RFTA's Facilities Director and CONTRACTOR'S Management Representative are not able to resolve the dispute within twenty-eight (28) days after the first meeting of RFTA's Project Manager and CONTRACTOR'S Field Representative (or such longer period of time as may be mutually agreed upon), RFTA's Facilities Director will notify the CONTRACTOR'S Management Representative in writing that the RFTA Chief Operating Officer (herein referred to as the "RFTA COO") shall render a decision within seven (7) days, which decision shall be considered advisory only and not binding in the event of litigation in respect of the claim. Upon expiration of such time period, the RFTA COO will render to the parties RFTA's written decision relative to the claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a CONTRACTOR'S default, RFTA may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

CONTRACTOR shall, within seven (7) days after the effective date of this Contract, designate to RFTA its Representative and Management Representative, the latter of whom shall be an executive level individual with authority to settle disputes. RFTA and CONTRACTOR may each change the designation of its Representative and Management Representative, but shall maintain at all times during the term of this Contract both a designated Representative and a designated Management Representative.

- (2) Mediation. If the dispute has not been resolved within forty-two (42) days after the first meeting of RFTA's Project Manager and CONTRACTOR'S Representative (or such longer period of time as may be mutually agreed upon), either party may refer the claim or controversy to non-binding mediation by sending a written mediation request to the other party. In the event that such a request is made, the parties agree to participate in the mediation process. Non-binding mediation of claims or controversies under this Contract shall be conducted by a professional mediator that is mutually acceptable to and agreed upon by both parties (herein referred to as the "Mediator"). The parties and the Mediator may join in the mediation any other party necessary for a mutually acceptable resolution of the dispute. Should the Mediator be unable or unwilling to continue to serve, the parties shall select a successor Mediator. The mediation procedure shall be determined by the Mediator in consultation with the parties. The fees and expenses of the Mediator shall be borne equally by the parties.

- (3) Litigation. If the dispute is not resolved within thirty (30) days after the commencement of mediation, or if no mediation has been commenced within sixty (60) days after the first meeting between RFTA's Project Manager and CONTRACTOR'S Representative (or such longer period of time as may be mutually agreed upon), either party may commence litigation to resolve the dispute in any Colorado state court of competent jurisdiction in Garfield or Pitkin County or in the United States District Court for the District of Colorado to the extent said Court shall have jurisdiction over the matter.

ARTICLE 23 – SEVERABILITY

If any provision of this Contract is held to be invalid, illegal, or unenforceable for any reason, the validity, legality, and enforceability of the remaining provisions of this Contract will not be adversely affected.

ARTICLE 24 – ASSIGNABILITY

The covenants herein contained shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

ARTICLE 25 – NOTICES

- (1) All official notices and communications under this Contract shall be in writing and shall be deemed to have been duly given (i) on the date on the date of delivery if delivered personally to the party to whom notice is given, or (ii) at the date of actual receipt if mailed by U.S. Postal Service, postage prepaid, return receipt requested.
- (2) Notices and other communications shall be directed to the parties at the addresses listed below:

Notice to CONTRACTOR:

[Insert Name of Contractor]

[Insert Mailing Address of Contractor]

[Insert City, State and Zip Code of Contractor]

ATTN: [Insert Name of Contractor Employee]

Notice to RFTA:

Roaring Fork Transportation Authority

1340 Main Street

Carbondale, CO 81635

ATTN: Mike Hermes, Director of Facilities

Copy to: Procurement Manager

- (3) Telephonic and electronic mail communications and facsimile transmittals may be used to expedite communications, but neither shall be considered official communications under this Contract unless and until confirmed in writing in accordance with this Article 25, paragraph (1) above.

ARTICLE 26 – OWNERSHIP OF DOCUMENTS

The CONTRACTOR agrees that all reports, drawings, computer disks, specifications, survey notes, estimates, maps, computations, and other data prepared by or for it under the terms of this Contract shall be delivered to, become, and remain the property of RFTA upon termination or completion of the work. RFTA shall have the right, at its sole risk, to use the same without restriction or limitation and without compensation to the CONTRACTOR other than that provided for in this Contract. The CONTRACTOR shall not have the right to use same for sale or other benefit without express written permission from RFTA.

ARTICLE 27 – PATENT AND RIGHTS IN DATA

If patentable discoveries or inventions should result from work described herein, all rights accruing from such discoveries or inventions will be the sole property of RFTA. However, RFTA agrees to and does hereby grant to the CONTRACTOR an irrevocable, non-exclusive, non-transferable, and royalty-free license to practice each invention in the manufacture, use, and disposition according to law of any article or material and in use of any method that may be developed as a part of the work under this Contract.

ARTICLE 28 – COPYRIGHTING

The CONTRACTOR and RFTA agree that any papers, interim reports, forms, and any other material which are part of the Work under this Contract are to be deemed a “work for hire,” as such term is defined in the Copyright Laws of the United States. As a “work made for hire”, all copyright interests in said works will vest in RFTA upon creation of the copyrightable work. If any papers, interim reports, forms, or other material which are a part of work under this Contract are deemed by law not to be a “work for hire”, any copyright interests of the CONTRACTOR are hereby assigned completely and solely to RFTA. Publication rights to any works produced under this Contract are reserved by RFTA.

ARTICLE 29 – PUBLICATION AND PUBLICITY

Articles, papers, bulletins, data, studies, statistics, interim or final reports, oral transmittals, or any other materials reporting the plans, progress, analyses, results, or findings of work conducted under this Contract shall not be presented publicly or published without prior written approval by RFTA.

All releases of information, findings, and recommendations shall include a disclaimer provision and all published reports shall include that disclaimer on the cover and title page in the following form:

"The contents of this publication reflect the views of the author(s), who is (are) responsible for the facts and accuracy of the data presented herein. The opinions, findings, and conclusions in this publication are those of the author(s) and do not necessarily reflect the official views or policies of those of the Roaring Fork Transportation Authority or the Federal Transit Administration. This publication does not constitute a standard, specification, or regulation."

If any information concerning the Work, their conduct, results, or data gathered or processed should be released by the CONTRACTOR without prior approval from RFTA, the release of same shall constitute grounds for termination of this Contract without indemnity to the CONTRACTOR. In addition, the CONTRACTOR shall indemnify and hold harmless RFTA, its officers, employees, and agents from any liability arising from such unauthorized release of data.

Any request for information directed to the CONTRACTOR, pursuant to the Colorado Open Records Act, by the public shall be immediately redirected to RFTA for handling. RFTA shall be responsible for providing the response to requests under the Colorado Open Records Act. The CONTRACTOR acknowledges and agrees that all records of the Services and the work, including records of the CONTRACTOR and its subcontractors are subject to the Colorado Open Records Act, C.R.S. 24-72-201 through 24-72-309 et seq.

ARTICLE 30 – COVENANT AGAINST CONTINGENT FEES

The CONTRACTOR shall comply with all relevant requirements of all Federal, State, and local laws. The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, RFTA shall have the right to annul this Contract without liability, or in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 31 – CONFLICTS OF INTEREST

RFTA employees and directors are bound by the RFTA Code of Ethics and Standards of Conduct, which were adopted by the RFTA Board of Directors on April 13, 2006. The RFTA Code of Ethics and Standards of Conduct prohibits RFTA employees and directors engaged in the award and administration of contracts, or any person acting on their behalf, from accepting, directly or indirectly, any gift with a value of more than a nominal amount, including meals or tickets to sporting events, from any person with whom the employee interacts on official RFTA business. Therefore, CONTRACTOR, or its subcontractors or suppliers, may not make gifts or favors to any RFTA employee or director. It is a violation of the RFTA Code of Ethics and Standards of Conduct for any RFTA employee to accept any such gift or favor.

ARTICLE 32 – WARRANTIES

The CONTRACTOR warrants that it shall use the highest professional principles and practice in the performance of its obligations under this Contract and that its performance shall reflect the highest professional knowledge, skill, and judgment. CONTRACTOR further warrants and agrees that it, and any persons assigned by CONTRACTOR, shall perform this Contract in compliance with all federal, state, and local laws, statutes, acts, ordinances, rules, regulations, codes, or standards. Project work shall be warranted for one (1) year after the completion of the project unless otherwise noted in specific materials and equipment submitted on the project.

ARTICLE 33 – NONWAIVER

No failure or waiver or successive failures or waivers on the part of either party, its successors or permitted assigns, in the enforcement of any condition, covenants, or article of this Contract shall operate as a discharge of any such condition, covenant, or article nor render the same invalid, nor impair the right of either party hereto, their successors or permitted assigns, to enforce the same in the event of any subsequent breaches by the other party hereto, its successors or permitted assigns.

ARTICLE 34 – MERGER

This Contract constitutes the entire agreement of the parties, all prior discussions, representations, and agreements being merged herein. The Contract may not be changed, modified, extended, or amended, nor any provision thereof waived, except by a written amendment executed by duly authorized representatives of the respective parties. The captions in this Contract are for convenience only and shall not affect the substantive meaning of any provision herein.

ARTICLE 35 – NO THIRD PARTY RIGHTS

Except as expressly set forth herein, the representations, warranties, terms, and provisions of this Contract are for the exclusive benefit of the parties hereto and no other person or entity shall have any right or claim against either party by reason of any of these terms and provisions or be entitled to enforce any of these terms and provisions against either party.

ARTICLE 36 – ATTACHMENTS

Any attachment or exhibit to this Contract will be incorporated into and made a part of this Contract. In the event of a conflict between the provisions contained in the body of this Contract and any attachment or exhibit, the terms in the body of this Contract will control.

ARTICLE 37 – SEPARATE COUNTERPARTS

This Contract may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

ARTICLE 38 – IMMIGRATION COMPLIANCE

To the extent this Contract constitutes a public contract pursuant to C.R.S. 8-17.5-101 et seq., the following provisions shall apply:

- (1) CONTRACTOR certifies that, prior to executing this Contract, it has confirmed 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 administered by the United States Department of Homeland Security and the Social Security Administration (the “E-verify Program”), or the employment verification program administered by the Colorado Department of Labor and Employment (the “Colorado Verification Program”).
- (2) CONTRACTOR shall comply with all reasonable requests by the Colorado Department of Labor and Employment made in the course of an investigation undertaken pursuant to the authority established in C.R.S. 8-17.5-102(5).
- (3) To the extent required by C.R.S. 8-17.5-102(1), by submitting a proposal or bid, the CONTRACTOR certifies that at the time of proposal or bid submission it did not knowingly employ or contract with an illegal alien who will perform work under this Contract, and that the CONTRACTOR will participate in the E-verify Program or the Colorado Verification Program in order to verify the employment eligibility of all employees who are newly hired for employment to perform work under this Contract.

ARTICLE 39 – REGULATORY COMPLIANCE

[RESERVED]

ARTICLE 40 – NO GOVERNMENT OBLIGATION TO THIRD PARTIES

[RESERVED]

ARTICLE 41 – PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- (1) The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Contract. Upon execution of the underlying Contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.
- (2) The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.
- (3) The CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

ARTICLE 42 – ACCESS TO RECORDS

[RESERVED]

ARTICLE 43 – FEDERAL CHANGES

[RESERVED]

ARTICLE 44 – CIVIL RIGHTS

The following requirements apply to the underlying Contract:

- (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

- (2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Contract:
- (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity", as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity", 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Contract. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
 - (b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
 - (c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act", 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
- (3) The CONTRACTOR also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

ARTICLE 45 – DISADVANTAGED BUSINESS ENTERPRISES (DBE)

[RESERVED]

ARTICLE 46 – INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

[RESERVED]

ARTICLE 47 – ENERGY CONSERVATION

[RESERVED]

ARTICLE 48 - DEBARMENT AND SUSPENSION

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the CONTRACTOR is required to verify that neither the CONTRACTOR, its principals as defined at 49 CFR 29.995, or affiliates as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The CONTRACTOR is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its proposal, CONTRACTOR certifies as follows:

The certification in this clause is a material representation of fact relied upon by Roaring Fork Transportation Authority. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to Roaring Fork Transportation Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The CONTRACTOR agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the Term of Contract. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.

ARTICLE 49 – FLY AMERICA REQUIREMENTS

[RESERVED]

ARTICLE 50 – TITLE VI

During the performance of this Contract, the CONTRACTOR, for itself, its assignees and successors in interest agrees as follows:

- (1) Compliance with Regulations: The CONTRACTOR shall comply with the regulations relative to non-discrimination in federally assisted programs of the United States Department of Transportation (“DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (the “Regulations”), which are herein incorporated by reference and made a part of this Contract.
- (2) Non-discrimination: The CONTRACTOR, with regard to the Work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontracts, including procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONTRACTOR for Work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR’s obligations under this Contract and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
- (4) Information and Reports: The CONTRACTOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by RFTA or the Federal Transit Administration (“FTA”) to be pertinent to

ascertain compliance with such Regulations, orders and instructions. Where any information required of the CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information the CONTRACTOR shall so certify to RFTA, or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.

- (5) Sanctions for Noncompliance: In the event of the CONTRACTOR's non-compliance with non-discrimination provision of this Contract, RFTA shall impose contract sanctions as it or the FTA may determine to be appropriate, including but not limited to:
- a) Withholding of payments to the CONTRACTOR under the Contract until the CONTRACTOR complies; and/or
 - b) Cancellation, termination, or suspension of the Contract, in whole or in part.
- (6) Incorporation of Provisions: The CONTRACTOR shall include the provisions of paragraphs (1) through (6) of this Article in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONTRACTOR shall take such action with respect to any subcontract or procurement as RFTA or the FTA may direct as a means of enforcing such provisions including sanctions for non-compliance provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONTRACTOR may request RFTA enter into such litigation to protect the interests of RFTA, and, in addition, the CONTRACTOR may request the United States federal government to enter into such litigation to protect the interest of the United States.

ARTICLE 51 – AUTHORIZATION

The person or persons signing and executing this Contract on behalf of each Party do hereby warrant and guarantee that he/she or they have been fully authorized to execute this Contract and to validly and legally bind such Party to all the terms, performances and provisions herein set forth.

ARTICLE 52 – CONFIDENTIAL INFORMATION

- (1) Access to government records is governed by the Colorado Open Records Act, C.R.S. 24-72-201 through 24-72-309 et seq. Except as otherwise required by the Colorado Open Records Act, RFTA will exempt from disclosure proprietary information, trade secrets and confidential commercial and financial information submitted or disclosed during the term of the Contract. Any such proprietary information, trade secrets or confidential commercial and financial information that the CONTRACTOR believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not ensure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such. Notwithstanding the CONTRACTOR's claim of or designation of information as proprietary, confidential or a trade secret, the determination whether it is or not will be determined by RFTA under Colorado state law.
- (2) Any request for information directed to the CONTRACTOR, pursuant to the Colorado Open Records Act, by the public shall be immediately redirected to RFTA for handling. RFTA shall be responsible for providing the response to requests under the Colorado

Open Records Act. The CONTRACTOR acknowledges and agrees that all records of the Services and the work, including records of the CONTRACTOR and its sub-contractors are subject to the Colorado Open Records Act, C.R.S. 24-72-201 through 24-72-309 et seq.

This Confidentiality section shall survive the termination or expiration of the Contract.

ARTICLE 53 – CONTRACT SUBJECT TO APPROPRIATION

RFTA's financial obligation under the Contract shall be contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of RFTA for any payment may arise until funds are made available for the Contract by RFTA's Board of Directors.

IN WITNESS WHEREOF, said parties have hereunto set their hand and affixed their seals the day and year above first written.

XYZ CONTRACTOR

**ROARING FORK
TRANSPORTATION AUTHORITY**

By: _____

By: _____

Jane Oliver-Doe

Dan Blankenship

Owner

RFTA Chief Executive Officer

Contractor Address:

Address:

000 Main Street

2307 Wulfsohn Road

Anywhere, USA 00000

Glenwood Springs, Colorado 81601

**APPROVED AS TO FORM AND
LEGALITY**

By: _____

Paul Taddune

RFTA General Counsel

EXHIBIT A
SCOPE OF WORK
[To Be Inserted in Final Contract]

EXHIBIT B

REQUEST FOR QUOTES

RFTA Solicitation No. 18-029 Request for Quotes for the AMF Shower Repair Package is attached and incorporated herein comprising the TBD unnumbered pages following immediately hereafter.

EXHIBIT C

QUOTATION SUBMITTED BY CONTRACTOR IN RESPONSE TO RFQ

CONTRACTOR'S Quotation including bid schedule is attached and incorporated herein comprising the TBD unnumbered pages following immediately hereafter.