WELD COUNTY

CONTRACT BID DOCUMENTS

AND

SPECIFICATIONS

FOR THE

2019 MATERIAL CRUSHING CONTRACT

February 15, 2019

for
Weld County Public Works
Road & Bridge Division
1111 H Street
P.O. Box 758
Greeley, Colorado 80632
970-304-6496
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The following checked forms and provisions take precedence over plan drawings and supplement the 2017 edition of the Colorado Department of Transportation “Standard Specifications for Road and Bridge Construction” (Standard Specifications) which is to be used to administer the construction of this project.

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REQUEST FOR BID
WELD COUNTY, COLORADO
1150 O STREET
GREELEY, CO 80631

DATE: February 15, 2019
BID NUMBER: #B1900037
DESCRIPTION: 2019 Material Crushing Contract
DEPARTMENT: Public Works
MANDATORY PRE-BID CONFERENCE DATE: February 25, 2019
BID OPENING DATE: March 11, 2019

1. NOTICE TO BIDDERS:

The Board of County Commissioners of Weld County, Colorado, by and through its Controller/Purchasing Director (collectively referred to herein as, “Weld County”), wishes to purchase the following:

Material Crushing Contract

The project in general consists of crushing and blending approximately 200,000 tons of pit run material that has been stockpiled by Weld County into a specified gravel product for use on County roads.

A mandatory pre-bid conference will be held at 9:00 a.m., on February 25, 2019, at the Weld County Public Works conference room. The Public Works Building is located at 1111"H" Street in Greeley. Bidders must participate and record their presence at the pre-bid conference to be allowed to submit bids.

Bids will be received at the Office of the Weld County Purchasing Department in the Weld County Administrative Building, 1150 O Street Room #107 Greeley CO 80631 until: 10:00 AM on March 11, 2019 (Weld County Purchasing Time Clock).

PAGES 1 – 13 OF THIS REQUEST FOR BIDS CONTAIN GENERAL INFORMATION FOR THE REQUEST NUMBER REFERRED TO ABOVE, NOT ALL OF THE INFORMATION CONTAINED IN PAGES 1 – 13 MAY BE APPLICABLE FOR EVERY PURCHASE. BID SPECIFICS FOLLOW PAGE 8.

2. INVITATION TO BID:

Weld County requests bids for the above-listed merchandise, equipment, and/or services. Said merchandise and/or equipment shall be delivered to the location(s) specified herein

Bids shall include any and all charges for freight, delivery, containers, packaging, less all taxes and discounts, and shall, in every way, be the total net price which the bidder will expect the Weld County to pay if awarded the bid.

You can find information concerning this request at two locations: On the Weld County Purchasing website at http://www.co.weld.co.us/Departments/Purchasing/index.html located under “Current Requests”. And, on the Bidnet Direct website at www.bidnetdirect.com. Weld County Government is a member of BidNet Direct. BidNet Direct is an on-line notification system which is being utilized by multiple non-profit and governmental entities. Participating entities post their bids, quotes, proposals, addendums, and awards on this one centralized system.
Bid Delivery to Weld County – 2 methods:

1. Email. Emailed bids are preferred. Bids may be emailed to: bids@weldgov.com. Emailed bids must include the following statement on the email: “I hereby waive my right to a sealed bid”. An email confirmation will be sent when we receive your bid/proposal. If more than one copy of the bid is requested, you must submit/mail hard copies of the bid proposal.

2. Mail or Hand Delivery. Mailed (or hand delivered) bids should be sent in a sealed envelope with the bid title and bid number on it. Please address to: Weld County Purchasing Department, 1150 O Street, Room #107 Greeley, CO 80631. Please call Purchasing at 970-400-4222 or 4223 if you have any questions.

3. INSTRUCTIONS TO BIDDERS: INTRODUCTORY INFORMATION:

Bids shall be typewritten or written in ink on forms prepared by the Weld County Purchasing Department. Each bid must give the full business address of bidder and be signed by him with his usual signature. Bids by partnerships must furnish the full names of all partners and must be signed with the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and title of the person signing. Bids by corporations must be signed with the legal name of the corporation, followed by the name of the state of the incorporation and by the signature and title of the president, secretary, or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A bid by a person who affixes to his signature the word “president,” “secretary,” “agent,” or other title without disclosing his principal, may be held to the bid of the individual signing. When requested by the Weld County Controller/Purchasing Director, satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished. All corrections or erasures shall be initialed by the person signing the bid. All bidders shall agree to comply with all of the conditions, requirements, specifications, and/or instructions of this bid as stated or implied herein. All designations and prices shall be fully and clearly set forth. All blank spaces in the bid forms shall be suitably filled in.

Bids may be withdrawn upon written request to and approval of the Weld County Controller/Purchasing Director; said request being received from the withdrawing bidder prior to the time fixed for award. Negligence on the part of a bidder in preparing the bid confers no right for the withdrawal of the bid after it has been awarded.

Late or unsigned bids shall not be accepted or considered. It is the responsibility of the bidder to ensure that the bid arrives in the Weld County Purchasing Department on or prior to the time indicated in Section 1., entitled, “Notice to Bidders.” Bids received prior to the time of opening will be kept unopened in a secure place. No responsibility will attach to the Weld County Controller/Purchasing Director for the premature opening of a bid not properly addressed and identified.

In accordance with Section 14-9(3) of the Weld County Home Rule Charter, Weld County will give preference to resident Weld County bidders in all cases where said bids are competitive in price and quality. Weld County reserves the right to reject any and all bids, to waive any informality in the bids, to award the bid to multiple vendors, and to accept the bid that, in the opinion of the Board of County Commissioners, is to the best interests of Weld County. The bid(s) may be awarded to more than one vendor.

Terms Defined: Terms used in these instructions to Bidders and elsewhere throughout the Contract Documents are defined in the General Provisions, CDOT, Standard Specification for Road and Bridge Construction, Section 101.

Familiarization with the Work: Before submitting his Bid, each prospective Bidder shall familiarize himself with the Work, the site where the Work is to be performed, local labor conditions and all local, state and...
federal laws, ordinances, rules, regulations and other factors affecting performance of the Work. He shall carefully correlate his observations with requirements of the Contract Documents and Drawings and otherwise satisfy himself of the expense and difficulties attending performance of the Work. The submission of a Bid will constitute an incontrovertible representation by the Bidder that he has complied with every requirement of this paragraph.

Interpretation of Contract Documents to Prospective Bidders: Any prospective Bidder who discovers ambiguities or is in doubt as to the true meaning of any part of the Contract Documents or Drawings shall make a request to the Engineer for an interpretation thereof. Interpretations will be made only by Addenda, duly issued, and copies of each Addendum will be mailed or delivered to each Contract Document holder of record. Unless approved by the Controller/Purchasing Director, no interpretation Addenda will be issued within the last seven (7) days before the date set for opening of Bids. The Bidder shall be solely responsible for any interpretation of the Contract Documents or Drawings other than by duly issued Addenda.

Preparation of the Bid: Bidders are required to use the Proposal Forms which are included in this package and on the basis indicated in the Bid Forms. The Bid Proposal must be filled out completely, in detail, and signed by the Bidder. Bids by partnerships must be executed in the partnership name and signed by a partner. His title must appear under his signature and the official address of the partnership must be shown below the signature. Bids by corporations must be executed in the corporate name by the president or a vice president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature. Names of all persons signing must be printed below their signatures. A power of attorney must accompany the signature of anyone not otherwise authorized to bind the Bidder.

Modification or Withdrawal of Bid: Bids may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted at any time prior to the final time set for receiving Bids. Bidders may modify or withdraw Bids by electronic communication at any time prior to the time set for receiving Bids provided the instruction is positively identified. Any electronic modification should not reveal the amended Bid price, but should provide only the addition, subtraction or modification. A duly executed document confirming the electronic modification shall be submitted within three days after Bids are opened. The Controller/Purchasing Director may at her sole discretion, release any Bid at any time.

4. AWARD AND EXECUTION OF CONTRACT

Basis of Award: Only firm Bids will be considered. The award of the Contract, if it is awarded, will be to the lowest responsible bidder whose Bid compares favorably upon evaluation with other Bids. Weld County intends to award the Contract to the lowest responsible Bidder within the limits of funds available and to best serve its interests. The County reserves the right to waive informalities and/or irregularities and to reject any or all bids.

Evaluation of Bids: The evaluation of Bids will include consideration of Subcontractors and suppliers. All Bidders shall submit a list of all Subcontractors he expects to use in the Work with the Bid. The experience statement with pertinent information on similar Projects shall be furnished with the name of each Subcontractor proposed to perform work on the project. The use of Subcontractors listed by the Bidder and accepted by County prior to the Notice of Award will be required in the performance of the Work. All Bidders shall submit with their Bid a list of the suppliers as indicated in the Bid Forms.

Contract Execution: The successful Bidder shall be required to execute the Contract and to furnish the Performance, Bid, and Labor & Materials Payment Bonds and Certificate of Insurance within ten (10) calendar days of receipt of the Notice of Award. The Certificate of Insurance shall name Weld County.
as additional insured. Failure to execute the contract and furnish the required paperwork within the time frame mentioned above shall be just cause for the annulment of the Award and, in the event of such annulment, the Award may then be made to another Bidder, or the County may reject all Bids or call for other Bids. The County, within ten (10) days of receipt of acceptable Performance Bid, Labor & Materials Payment Bond, and signed Contract from the successful Bidder will issue the Notice to Proceed.

In submitting the bid, the bidder agrees that the signed bid submitted, all of the documents of the Request for Proposal contained herein (including, but not limited to, product specifications and scope of services), the successful bidder’s response, and the formal acceptance of the bid by Weld County, together constitutes a contract, with the contract date being the date of formal acceptance of the bid by Weld County. The County may require a separate contract, which if required, has been made a part of this RFB.

5. PERFORMANCE, LABOR, MATERIAL AND PAYMENT BOND

The successful Bidder shall be required to execute the Performance Bond and Labor & Materials Payment Bond in the amount of 100% of the Contract plus the value of the force account items, covering the faithful performance of the Contract and the payment of all obligations arising there-under. The Bonds shall be executed on the forms included with the Contract Documents by a surety company authorized to do business in the State of Colorado and acceptable as surety to Weld County. The Bidder shall deliver the Bonds to the Owner not later than the date of execution of the Contract.

6. INDIRECT COSTS

Governmental Fees: The cost of all construction licenses, building and other permits, and governmental inspections required by public authorities for performing the Work, which are applicable at the time Bids are opened and which are not specified to be obtained by the County, shall be included in the Bid price.

Royalties: The cost of all royalties and license fees on equipment and materials to be furnished and incorporated in the Work shall be included in the Bid price.

Utilities: Unless otherwise specified, the Bidder shall include in his Bid the cost of all electrical, water, sanitary, gas, telephone, and similar facilities and services required by him in performing the Work.

Cash Allowances: The Bidder shall include in his Bid such sums as he deems proper for overhead costs and profits on account of cash allowances named in the Bid Documents.

7. SITE CONDITIONS

Familiarization with the Site: The prospective Bidder shall by careful examination, satisfy himself of the following:

Nature and location of the site where the Work is to be performed.

Character, quality, and quantity of surface and subsurface materials, water, structures and utilities to be encountered.

Character of construction equipment and facilities needed for performance of the Work.

General local conditions.

Availability of lands as set forth in the General Conditions.
Access to the Site: The Bidder shall carefully review the Drawings and the Project Special Conditions for provisions concerning access to the site during performance of the Work. The Bidder shall carefully review the locations of the site where the work is to be performed. The Bidder shall make all arrangements, as deemed necessary, for access to property outside of County Right of Way, prior to beginning the work.

8. SUCCESSFUL BIDDER HIRING PRACTICES – ILLEGAL ALIENS:

Successful bidder certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract. Successful bidder will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify program or the State of Colorado program established pursuant to C.R.S. §8-17.5-102(5)(c). Successful bidder shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify with Successful bidder that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Successful bidder shall not use E-Verify Program or State of Colorado program procedures to undertake pre-employment screening or job applicants while this Agreement is being performed. If Successful bidder obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien Successful bidder shall notify the subcontractor and County within three (3) days that Successful bidder has actual knowledge that a subcontractor is employing or contracting with an illegal alien and shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving notice. Successful bidder shall not terminate the contract if within three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. Successful bidder shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Successful bidder participates in the State of Colorado program, Successful bidder shall, within twenty days after hiring a new employee to perform work under the contract, affirm that Successful bidder has examined the legal work status of such employee, retained file copies of the documents, and not altered or falsified the identification documents for such employees. Successful bidder shall deliver to County, a written notarized affirmation that it has examined the legal work status of such employee and shall comply with all of the other requirements of the State of Colorado program. If Successful bidder fails to comply with any requirement of this provision or of C.R.S. §8-17.5-101 et seq., County, may terminate this Agreement for breach, and if so terminated, Successful bidder shall be liable for actual and consequential damages.

Except where exempted by federal law and except as provided in C.R.S. § 24-76.5-103(3), if Successful bidder receives federal or state funds under the contract, Successful bidder must confirm that any individual natural person eighteen (18) years of age or older is lawfully present in the United States pursuant to C.R.S. § 24-76.5-103(4), if such individual applies for public benefits provided under the contract. If Successful bidder operates as a sole proprietor, it hereby swears or affirms under penalty of perjury that it: (a) is a citizen of the United States or is otherwise lawfully present in the United States pursuant to federal law, (b) shall produce one of the forms of identification required by C.R.S. § 24-76.5-101, et seq., and (c) shall produce one of the forms of identification required by C.R.S. § 24-76.5-103 prior to the effective date of the contract.

9. GENERAL PROVISIONS:

A. Fund Availability: Financial obligations of Weld County payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. By acceptance of the bid, Weld County does not warrant that funds will be available to fund the contract beyond the current fiscal year.

B. Trade Secrets and other Confidential Information: Weld County discourages bidders from submitting confidential information, including trade secrets, that cannot be disclosed to the public. If necessary,
confidential information of the bidder shall be transmitted separately from the main bid submittal, clearly denoting in red on the information at the top the word, “CONFIDENTIAL.” However, the successful bidder is advised that as a public entity, Weld County must comply with the provisions of C.R.S. 24-72-201, et seq., the Colorado Open Records Act (CORA), with regard to public records, and cannot guarantee the confidentiality of all documents. The bidder is responsible for ensuring that all information contained within the confidential portion of the submittal is exempt from disclosure pursuant to C.R.S. 24-72-204(3)(a)(IV) (Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data). If Weld County receives a CORA request for bid information marked “CONFIDENTIAL,” staff will review the confidential materials to determine whether any of them may be withheld from disclosure pursuant to CORA and disclose those portions staff determines are not protected from disclosure. Weld County staff will not be responsible for redacting or identifying Confidential information which is included within the body of the bid and not separately identified. Any document which is incorporated as an exhibit into any contract executed by the County shall be a public document regardless of whether it is marked as confidential.

C. **Governmental Immunity:** No term or condition of the contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act §§24-10-101 et seq., as applicable now or hereafter amended.

D. **Independent Contractor:** The successful bidder shall perform its duties hereunder as an independent contractor and not as an employee. He or she shall be solely responsible for its acts and those of its agents and employees for all acts performed pursuant to the contract. Neither the successful bidder nor any agent or employee thereof shall be deemed to be an agent or employee of Weld County. The successful bidder and its employees and agents are not entitled to unemployment insurance or workers’ compensation benefits through Weld County and Weld County shall not pay for or otherwise provide such coverage for the successful bidder or any of its agents or employees. Unemployment insurance benefits will be available to the successful bidder and its employees and agents only if such coverage is made available by the successful bidder or a third party. The successful bidder shall pay when due all applicable employment taxes and income taxes and local head taxes (if applicable) incurred pursuant to the contract. The successful bidder shall not have authorization, express or implied, to bind Weld County to any agreement, liability or understanding, except as expressly set forth in the contract. The successful bidder shall have the following responsibilities with regard to workers’ compensation and unemployment compensation insurance matters: (a) provide and keep in force workers’ compensation and unemployment compensation insurance in the amounts required by law, and (b) provide proof thereof when requested to do so by Weld County.

E. **Compliance with Law:** The successful bidder shall strictly comply with all applicable federal and state laws, rules and regulations in effect or hereafter established, including without limitation, laws applicable to discrimination and unfair employment practices.

F. **Choice of Law:** Colorado law, and rules and regulations established pursuant thereto, shall be applied in the interpretation, execution, and enforcement of the contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules and/or regulations shall be null and void.

G. **No Third-Party Beneficiary Enforcement:** It is expressly understood and agreed that the enforcement of the terms and conditions of the contract, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in the contract shall give or allow any claim or right of action whatsoever by any other person not included in the contract. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under the contract shall be an incidental beneficiary only.
H. **Attorney’s Fees/Legal Costs:** In the event of a dispute between Weld County and the successful bidder, concerning the contract, the parties agree that Weld County shall not be liable to or responsible for the payment of attorney fees and/or legal costs incurred by or on behalf of the successful bidder.

I. **Disadvantaged Business Enterprises:** Weld County assures that disadvantaged business enterprises will be afforded full opportunity to submit bids in response to all invitations and will not be discriminated against on the grounds of race, color, national origin, sex, age, or disability in consideration for an award.

J. **Procurement and Performance:** The successful bidder agrees to procure the materials, equipment and/or products necessary for the project and agrees to diligently provide all services, labor, personnel and materials necessary to perform and complete the project. The successful bidder shall further be responsible for the timely completion and acknowledges that a failure to comply with the standards and requirements outlined in the Bid within the time limits prescribed by County may result in County’s decision to withhold payment or to terminate this Agreement.

K. **Term:** The term of this Agreement begins upon the date of the execution of this Agreement by County and shall continue through and until successful bidder’s completion of the responsibilities described in the Bid.

L. **Termination:** County has the right to terminate this Agreement, with or without cause on thirty (30) days written notice. Furthermore, this Agreement may be terminated at any time without notice upon a material breach of the terms of the Agreement.

M. **Extension or Modification:** Any amendments or modifications to this agreement shall be in writing signed by both parties. No additional services or work performed by the successful bidder shall be the basis for additional compensation unless and until the successful bidder has obtained written authorization and acknowledgement by County for such additional services. Accordingly, no claim that the County has been unjustly enriched by any additional services, whether or not there is in fact any such unjust enrichment, shall be the basis of any increase in the compensation payable hereunder.

N. **Subcontractors:** The successful bidder acknowledges that County has entered into this Agreement in reliance upon the particular reputation and expertise of the successful bidder. The successful bidder shall not enter into any subcontractor agreements for the completion of this Project without County’s prior written consent, which may be withheld in County’s sole discretion. County shall have the right in its reasonable discretion to approve all personnel assigned to the subject Project during the performance of this Agreement and no personnel to whom County has an objection, in its reasonable discretion, shall be assigned to the Project. The successful bidder shall require each subcontractor, as approved by County and to the extent of the Services to be performed by the subcontractor, to be bound to the successful bidder by the terms of this Agreement, and to assume toward the successful bidder all the obligations and responsibilities which the successful bidder, by this Agreement, assumes toward County. County shall have the right (but not the obligation) to enforce the provisions of this Agreement against any subcontractor hired by the successful bidder and the successful bidder shall cooperate in such process. The successful bidder shall be responsible for the acts and omissions of its agents, employees and subcontractors.

O. **Warranty:** The successful bidder warrants that services performed under this Agreement will be performed in a manner consistent with the standards governing such services and the provisions of this Agreement. The successful bidder further represents and warrants that all services shall be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards, and that all services will conform to applicable specifications.

The bidder warrants that the goods to be supplied shall be merchantable, of good quality, and free from defects, whether patent or latent. The goods shall be sufficient for the purpose intended and conform to the minimum...
specifications herein. The successful bidder shall warrant that he has title to the goods supplied and that the goods are free and clear of all liens, encumbrances, and security interests.

Service Calls in the First One Year Period: The successful bidder shall bear all costs for mileage, travel time, and service trucks used in the servicing (including repairs) of any of the goods to be purchased by Weld County, Colorado, pursuant to this bid for as many service calls as are necessary for the first one (1) year period after said goods are first supplied to Weld County.

Bidder shall submit with their bids the following information pertaining to the equipment upon which the bids are submitted:

1. Detailed equipment specifications to include the warranty.
2. Descriptive literature.

P. **Non-Assignment:** The successful bidder may not assign or transfer this Agreement or any interest therein or claim thereunder, without the prior written approval of County. Any attempts by the successful bidder to assign or transfer its rights hereunder without such prior approval by County shall, at the option of County, automatically terminate this Agreement and all rights of the successful bidder hereunder. Such consent may be granted or denied at the sole and absolute discretion of County.

Q. **Interruptions:** Neither party to this Agreement shall be liable to the other for delays in delivery or failure to deliver or otherwise to perform any obligation under this Agreement, where such failure is due to any cause beyond its reasonable control, including but not limited to Acts of God, fires, strikes, war, flood, earthquakes or Governmental actions.

R. **Non-Exclusive Agreement:** This Agreement is non-exclusive, and County may engage or use other contractors or persons to perform services of the same or similar nature.

S. **Employee Financial Interest/Conflict of Interest – C.R.S. §§24-18-201 et seq. and §24-50-507.** The signatories to this Agreement agree that to their knowledge, no employee of Weld County has any personal or beneficial interest whatsoever in the service or property which is the subject matter of this Agreement. County has no interest and shall not acquire any interest direct or indirect, that would in any manner or degree interfere with the performance of the successful bidder’s services and the successful bidder shall not employ any person having such known interests. During the term of this Agreement, the successful bidder shall not engage in any in any business or personal activities or practices or maintain any relationships which actually conflicts with or in any way appear to conflict with the full performance of its obligations under this Agreement. Failure by the successful bidder to ensure compliance with this provision may result, in County’s sole discretion, in immediate termination of this Agreement. No employee of the successful bidder nor any member of the successful bidder’s family shall serve on a County Board, committee or hold any such position which either by rule, practice or action nominates, recommends, supervises the successful bidder’s operations, or authorizes funding to the successful bidder.

T. **Severability:** If any term or condition of this Agreement shall be held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, this Agreement shall be construed and enforced without such provision, to the extent that this Agreement is then capable of execution within the original intent of the parties.

U. **Binding Arbitration Prohibited:** Weld County does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in the contract or incorporated herein by reference shall be null and void.

V. **Board of County Commissioners of Weld County Approval:** This Agreement shall not be valid until it has been approved by the Board of County Commissioners of Weld County, Colorado or its designee.
W. **Compensation Amount:** Upon the successful bidder’s successful completion of the construction of the Project, and County’s acceptance of the same, County agrees to pay an amount no greater than the amount of the accepted bid. The successful bidder acknowledges no payment in excess of that amount will be made by County unless a “change order” authorizing such additional payment has been specifically approved by the Director of Weld County Public Works, or by formal resolution of the Weld County Board of County Commissioners, as required pursuant to the Weld County Code. County will not withhold any taxes from monies paid to the successful bidder hereunder and the successful bidder agrees to be solely responsible for the accurate reporting and payment of any taxes related to payments made pursuant to the terms of this Agreement.

X. **Taxes:** County Board of County Commissioners, as required pursuant to the Weld County Code. County will not withhold any taxes from monies paid to the successful bidder hereunder and the successful bidder agrees to be solely responsible for the accurate reporting and payment of any taxes related to payments made pursuant to the terms of this Agreement. Contractor shall not be entitled to bill at overtime and/or double time rates for work done outside of normal business hours unless specifically authorized in writing by County.

10. **INSURANCE REQUIREMENTS**

**General Requirements:** Successful bidders/Contract Professionals must secure, at or before the time of execution of any agreement or commencement of any work, the following insurance covering all operations, goods or services provided pursuant to this request. Successful bidders/Contract Professionals shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as “A” VIII or better. Each policy shall contain a valid provision or endorsement stating “Should any of the above-described policies by canceled or should any coverage be reduced before the expiration date thereof, the issuing company shall send written notice to the Weld County Controller/Purchasing Director by certified mail, return receipt requested. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If any policy is in excess of a deductible or self-insured retention, County must be notified by the Successful bidder/Contract Professional. Successful bidder/Contract Professional shall be responsible for the payment of any deductible or self-insured retention. County reserves the right to require Successful bidder/Contract Professional to provide a bond, at no cost to County, in the amount of the deductible or self-insured retention to guarantee payment of claims.

The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not decrease or limit the liability of Successful bidder/Contract Professional. The County in no way warrants that the minimum limits contained herein are sufficient to protect the Successful bidder from liabilities that might arise out of the performance of the work under this Contract by the Successful bidder, its agents, representatives, employees, or subcontractors. The successful bidder shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverages. The successful bidder is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The successful bidder/Contract Professional shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement. Any modification to these requirements must be made in writing by Weld County.

The successful bidder stipulates that it has met the insurance requirements identified herein. The successful bidder shall be responsible for the professional quality, technical accuracy, and quantity of all construction services provided, the timely delivery of said services, and the coordination of all services rendered by the successful bidder and shall, without additional compensation, promptly remedy and correct any errors, omissions, or other deficiencies.
INDEMNITY: The successful bidder shall defend, indemnify and hold harmless County, its officers, agents, and employees, from and against injury, loss damage, liability, suits, actions, or claims of any type or character arising out of the work done in fulfillment of the terms of this Contract or on account of any act, claim or amount arising or recovered under workers' compensation law or arising out of the failure of the successful bidder to conform to any statutes, ordinances, regulation, law or court decree. The successful bidder shall be fully responsible and liable for any and all injuries or damage received or sustained by any person, persons, or property on account of its performance under this Agreement or its failure to comply with the provisions of the Agreement, or on account of or in consequence of neglect of The successful bidder in its construction methods or procedures; or in its provisions of the materials required herein, or from any claims or amounts arising or recovered under the Worker’s Compensation Act, or other law, ordinance, order, or decree. This paragraph shall survive expiration or termination hereof. It is agreed that the successful bidder will be responsible for primary loss investigation, defense and judgment costs where this contract of indemnity applies. In consideration of the award of this contract, the successful bidder agrees to waive all rights of subrogation against the County its associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers for losses arising from the work performed by the successful bidder for the County. A failure to comply with this provision shall result in County’s right to immediately terminate this Agreement.

Types of Insurance: The successful bidder/Contract Professional shall obtain, and maintain at all times during the term of any Agreement, insurance in the following kinds and amounts:

Workers’ Compensation Insurance as required by state statute, and Employer’s Liability Insurance covering all of the successful bidder’s Contract Professional’s employees acting within the course and scope of their employment. Policy shall contain a waiver of subrogation against the County. This requirement shall not apply when a successful bidder or subcontractor is exempt under Colorado Workers’ Compensation Act., AND when such successful bidder or subcontractor executes the appropriate sole proprietor waiver form.

Minimum Limits:

- Coverage A (Workers’ Compensation) Statutory
  - $500,000

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, explosions, collapse and underground hazard, personal advertising injury, fire damage, independent Contractors, products and completed operations, blanket contractual liability, personal injury, liability assumed under an insured contract (including defense costs assumed under contract, designated construction projects(s) general aggregate limit, ISO CG 2503 or equivalent additional insured—owners, lessees or successful bidders endorsement, ISO Form 2010 or equivalent, additional insured—owners, lessees or successful bidders endorsement, ISO CG 2037 or equivalent, the policy shall be endorsed to include the following additional insured language on the additional insured endorsements specified above: “Weld County, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers named as an additional insured with respect to liability and defense of suits arising out of the activities performed by, or on behalf of the Successful bidder, including completed operations” and the minimum limits must be as follows:

- $1,000,000 each occurrence;
- $2,000,000 general aggregate;
- $2,000,000 products and completed operations aggregate;
- $1,000,000 Personal Advertising injury
- $50,000 any one fire; and
- $500,000 errors and omissions.
$5,000 Medical payments one person

**Automobile Liability:** Successful bidder/Contract Professional shall maintain limits of $1,000,000 for bodily injury per person, $1,000,000 for bodily injury for each accident, and $1,000,000 for property damage applicable to all vehicles operating both on County property and elsewhere, for vehicles owned, hired, and non-owned vehicles used in the performance of this Contract.

For all general liability, excess/umbrella liability, liquor liability, pollution liability and professional liability policies, if the policy is a claims-made policy, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to County, whichever is earlier.

Successful bidders/Contract Professionals shall secure and deliver to the County at or before the time of execution of this Agreement, and shall keep in force at all times during the term of the Agreement as the same may be extended as herein provided, a commercial general liability insurance policy, including public liability and property damage, in form and company acceptable to and approved by said Administrator, covering all operations hereunder set forth in the related Bid or Request for Proposal.

**Proof of Insurance:** County reserves the right to require the successful bidder/Contract Professional to provide a certificate of insurance, a policy, or other proof of insurance as required by the County’s Risk Administrator in his sole discretion.

**Additional Insureds:** For general liability, excess/umbrella liability, pollution legal liability, liquor liability, and inland marine, Successful bidder/Contract Professional’s insurer shall name County as an additional insured.

**Waiver of Subrogation:** For all coverages, Successful bidder/Contract Professional’s insurer shall waive subrogation rights against County.

**Subcontractors:** All subcontractors, subcontracts, independent contractors, sub-vendors, suppliers or other entities providing goods or services required by this Agreement shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Successful bidder/Contract Professional. Successful bidder/Contract Professional shall include all such subcontractors, independent contractors, sub-vendors, suppliers or other entities as insureds under its policies or shall ensure that all subcontractors maintain the required coverages. Successful bidder/Contract Professional agrees to provide proof of insurance for all such subcontractors, independent contractors, sub-vendors, suppliers or other entities upon request by the County.

The terms of this Agreement are contained in the terms recited in this Request for Bid and in the Response to the Bid each of which forms an integral part of this Agreement. Those documents are specifically incorporated herein by this reference.
SPECIFICATIONS AND/OR SCOPE OF WORK AND PROPOSED PRICING:

SPECIFICATIONS AND/OR SCOPE OF WORK:

Purpose: Weld County is soliciting bids for surface gravel crushing. The project, in general consists of crushing and stockpiling approximately 200,000 tons of aggregate material for graveling of roads within Weld County.

GENERAL CONDITIONS AND SCOPE:

1. Weld County has stockpiled 100,000 pit run material at the Peters 313 Pit, WCR 136.5, east of WCR 71, approximately ¾ miles on south side of the road and 100,000 pit run material at the Hokestra Pit, WCR 24.5 between WCR 9.75 and Frontage Road, on the north side of the road, which to be used for this project. (See attached map).

2. The Contractor shall utilize only the stockpiled material at each site. Exploratory digging shall not be allowed.

3. The contractor will follow all rules, regulations, and conditions stipulated in the DRMS mining permit, CDPHE stormwater permit, APEN permit, and any other permits covering the site.

4. Project time will be from March 15, 2019 through December 31, 2019.

5. The successful bidder shall provide a Performance Bond and a Labor and Materials Bond to the County.

6. The successful bidder shall provide a certificate of insurance to the County in which Weld County is named as an insured party.

7. The Contractor shall supply material that meets the Weld County Surface Gravel Specification.

### Target Value Ranges for Surface Course Gradation

<table>
<thead>
<tr>
<th>Standard (mm)</th>
<th>Mesh (in)</th>
<th>Mass Percent Passing the Square Mesh Sieves</th>
</tr>
</thead>
<tbody>
<tr>
<td>150.00</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>100.00</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>75.00</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>63.00</td>
<td>2.5</td>
<td></td>
</tr>
<tr>
<td>50.00</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>37.50</td>
<td>1.5</td>
<td>100</td>
</tr>
<tr>
<td>25.40</td>
<td>1</td>
<td>90-100</td>
</tr>
<tr>
<td>19.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.5</td>
<td>0.5</td>
<td>55-80</td>
</tr>
<tr>
<td>4.76</td>
<td>No. 4</td>
<td>45-65</td>
</tr>
<tr>
<td>2.38</td>
<td></td>
<td>33-53</td>
</tr>
<tr>
<td>0.42</td>
<td>No. 40</td>
<td>15-35</td>
</tr>
<tr>
<td>0.07</td>
<td>No. 200</td>
<td>4-15</td>
</tr>
</tbody>
</table>
8. Payment shall be made according to the unit price listed in the contract. The Contractor’s conveyor belt stacker shall be equipped with a certified scale, so an accurate tonnage can be obtained. The County, at its discretion, can survey the stockpile of processed material to determine that the Contractor’s scales is accurate.

9. The County, in its sole discretion, may apply a price reduction in the event the surface gravel product does not meet the gradation specification outlined above. The price reduction shall be based on the price reduction formula outlined in Section 105.03 of the Specifications and the multiplier for aggregate base course.

10. The Contractor shall provide the County with a copy of the scale certification. If the survey of the stockpile shows a discrepancy in the tonnage shown by the scales, the Contractor shall recertify the stacker scale.

11. The Contractor shall follow all OSHA and MSHA regulations. The Contractor is also required to provide all permitting associated with the contracted equipment and labor:
   - MSHA ID # (for crusher unit)
   - APCD (State Health and Environment Department)
   - Air Pollution Permit (for crusher unit)

12. Weld County will select the bidder based on the lowest cost to the County in accordance with the Weld County Code.

13. The specification for material supply shall be in accordance with the Colorado Department of Transportation, Standard Specification for Road and Bridge Construction 2017 and as modified by Weld County, unless otherwise stipulated in this document. References to the division shall mean Weld County and all documentation required will be handled through the Weld County Public Work Department.

14. Weld County reserves the right to terminate this contract at any time if, in the opinion of the Public Works Director, the successful contractor(s) are not performing according to provisions outlined in this contract or according to Colorado Department of Transportation Standard Specifications for Road and Bridge Construction.

Schedule:
Bids due to Purchasing: 10:00 AM March 11, 2019
Bids accepted by BOCC: March 27, 2019

Weld County Contacts:
Question related to the project and procedures should be directed to:
Jeff York — Mining and Trucking Supervisor
Weld County Public Works
(970) 400-3722
jyork@weldgov.com
Curtis Hall — Operations Manager
Weld County Public Works
(970) 400-3721
chall@weldgov.com

TERMS AND CONDITIONS:
This one-year contract is renewable for up to (2) additional years. Material cost adjustments will be considered at the end of each calendar year that this contract represents. Any price adjustments must be verified by justification of base bid cost increase of materials, labor or other associated items included in the original cost of the material supply. Cost increase must be consistent with regional trends. Weld County will use the ENR Cost Index. The base price per ton may increase from one year to the next by no more than the increase reflected in the Engineering News Record for the cost index for the Base Course Item out of Denver as a
measure of reasonableness for justified increase. Price adjustments will not be implemented without final approval from Weld County. Weld County reserves the right to cancel this contract and re-bid the surface gravel supply contract if, in the opinion of the Public Works Director, the cost increase is not justified or consistent with regional trends.
### Bid Schedule for Material Crushing Contract

<table>
<thead>
<tr>
<th>ITEM #</th>
<th>ITEM</th>
<th>PIT LOCATION</th>
<th>QUANTITY</th>
<th>UNIT</th>
<th>UNIT PRICE</th>
<th>CONTRACT PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>304-09002</td>
<td>Surface Gravel</td>
<td>Peters 313 Pit</td>
<td>100,000</td>
<td>TON</td>
<td></td>
<td></td>
</tr>
<tr>
<td>626-00000</td>
<td>Mobilization</td>
<td>Peters 313 Pit</td>
<td>1</td>
<td>LS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>304-09002</td>
<td>Surface Gravel</td>
<td>Hokestra Pit</td>
<td>100,000</td>
<td>TON</td>
<td></td>
<td></td>
</tr>
<tr>
<td>626-00000</td>
<td>Mobilization</td>
<td>Hokestra Pit</td>
<td>1</td>
<td>LS</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total**

Prices will include all labor and equipment costs necessary to crush and stockpile. Transportation of all the aggregates will be by Weld County personnel. The successful vendor is required to sign a separate contract (a sample contract is included as a separate attachment.)
RECEIPT OF ADDENDA

The undersigned acknowledges receipt of the following Addenda to the Invitation for Bids, Drawings, Specifications and other Contract Documents.

<table>
<thead>
<tr>
<th>Addendum No.</th>
<th>Date</th>
<th>By:</th>
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<tbody>
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</tbody>
</table>

Bidder agrees to perform all Work described in the Contract Documents for the unit prices as shown in the Bid Schedule. Payment will be based on the Lump Sum price or the actual quantities furnished, installed or constructed.

The undersigned, by his or her signature, hereby acknowledges and represents that:

1. The bid proposed herein meets all the conditions, specifications and special provisions set forth in the request for proposal for Request No. #B1900037
2. The quotations set forth herein are exclusive of any federal excise taxes and all other state and local taxes.
3. He or she is authorized to bind the below-named bidder for the amount shown on the accompanying proposal sheets.
4. The signed bid submitted, all of the documents of the Request for Proposal contained herein (including, but not limited to, product specifications and scope of services), and the formal acceptance of the bid by Weld County, together constitutes a contract, with the contract date being the date of formal acceptance of the bid by Weld County.
5. Weld County reserves the right to reject any and all bids, to waive any informality in the bids, and to accept the bid that, in the opinion of the Board of County Commissioners, is to the best interests of Weld County. The bid may be awarded to more than one vendor.

FIRM ___________________________________________ BY __________________________________
(Please print)

BUSINESS ADDRESS ___________________________________________ DATE ____________________

CITY, STATE, ZIP CODE __________________________________________

TELEPHONE NO ___________________ FAX ______________________ TAX ID # _________________

SIGNATURE ________________________________ E-MAIL __________________________________

**ALL BIDDERS SHALL PROVIDE A W-9 WITH THE SUBMISSION OF THEIR BID**  WELD COUNTY IS
EXEMPT FROM COLORADO SALES TAXES. THE CERTIFICATE OF EXEMPTION NUMBER IS #98-
03551-0000.  YOU DO NOT NEED TO SEND BACK PAGES 1 – 13.
ACKNOWLEDGEMENT OF BID DOCUMENTS

Bid Opening Checklist: All of the following pages must be submitted with every bid submittal. Failure to submit any of these documents will disqualify your bid.

□ Receipt of addenda(s), if any, should be signed.

□ W-9

□ Statement of Qualification (must be signed and notarized)

□ Anti-Collusion Affidavit

□ Bid Schedule

I have initialed each of the above items and have fully executed the corresponding documents. I hereby acknowledge and understand the above required bid documents.

______________________________
(Contractor)

Dated this _____ day of ____________________________, 2019.

By:______________________________  Title:______________________________
BID BOND

PROJECT: 2019 Material Crushing Contract

KNOW ALL MEN BY THESE PRESENTS, that ____________________________ as Principal, and
as Surety, are hereby held and firmly bound unto Weld County, Colorado (hereinafter called the “Owner”) in
the penal sum of ________________________________ Dollars ($__________________), lawful money of
the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our
heirs, executors, administrators, successors and assigns, jointly and severally, firmly to these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the
accompanying Bid dated ________________________________, 2019 for the 2019
Material Crushing Contract as set out in the accompanying Bid.

WHEREAS, the Owner has required as a condition for receiving said Bid that the principal deposit with the
Owner either a certified check equivalent to not less than five percent (5%) of the amount of said Bid or in lieu
thereof furnish a Bid Bond for said amount conditioned such that in the event of failure to execute the proposed
Contract for such construction if the Contract is to be awarded to him, that said sum be paid immediately to the
Owner as liquidated damages and not as a penalty for the principal’s failure to perform.

NOW THEREFORE, if the principal shall, within the period specified therefore:

A. On the attached prescribed forms presented to him for signature, enter into a written Contract with the
Owner in accordance with his Bid as accepted, and give a Performance Bond with good and sufficient
sureties, as may be required upon the forms prescribed by the Owner for the faithful performance and
the proper fulfillment of said Contract, or

B. Withdraw said Bid within the time specified, or

C. Pay to the Owner the sum determined upon herein as liquidated damages, and not as a penalty, then
this obligation shall be void and of no effect, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals this _____
______ day of ________________________________, 2019 the name and corporate seal of each
corporate party being hereto affixed, and these presents duly signed by its undersigned representative
pursuant to authority of its governing board.

Principal_______________________________________

Address________________________________________

ATTEST:
By:_____________________________________________

By:_____________________________________________

ATTEST:
Surety__________________________________________

Address________________________________________

By:_____________________________________________
INSTRUCTIONS

The full firm name and residence of each individual party to the bond must be inserted in the first paragraph.

If the principal is a partnership, the full name of all partners must be inserted in the first paragraph which must recite that they are partners composing the partnership (to be named), and all partners must execute the bond as individuals.

The state of incorporation of each corporate party to the bond must be inserted in the first paragraph and the bond must be executed under the corporate seal of said party attested by its secretary or other authorized officer.

Power of Attorney must accompany this bond when signed by other than an officer of either the principal or surety.

A standard printed bond form may be used in lieu of the foregoing form provided that the security stipulations protecting the Owner are not in any way reduced by use of such standard printed bond form.
Form W-9
Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Part I  Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 3.

Note: If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

<table>
<thead>
<tr>
<th>Social security number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Employer identification number</th>
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</thead>
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</tr>
</tbody>
</table>

Part II  Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and

2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and

3. I am a U.S. citizen or other U.S. person (defined below), and

4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification Instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here  Date

Signature of U.S. person ▪ ▪

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. The IRS has created a page on IRS.gov for information about Form W-9 at www.irs.gov. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of a payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisitions or dispositions of property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),

2. Certify that you are not subject to backup withholding, and

3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting is correct.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

Cat. No. 10531X

Form W-9 (Rev. 8-2013)
COLORADO DEPARTMENT OF TRANSPORTATION
ANTI-COLLUSION AFFIDAVIT

I hereby attest that I am the person responsible within my firm for the final decision as to the price(s) and amount of this bid or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on behalf of my firm.

I further attest that:
1. The price(s) and amount of this bid have been arrived at independently, without consultation, communication or agreement for the purpose or with the effect of restricting competition with any other firm or person who is a bidder or potential prime bidder.
2A. Neither the price(s) nor the amount of this bid have been disclosed to any other firm or person who is a bidder or potential prime bidder on this project, and will not be so disclosed prior to bid opening.
2B. Neither the prices nor the amount of the bid of any other firm or person who is a bidder or potential prime bidder on this project have been disclosed to me or my firm.
3A. No attempt has been made to solicit, cause or induce any firm or person who is a bidder or potential prime bidder to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid or other form of complementary bid.
3B. No agreement has been promised or solicited for any other firm or person who is a bidder or potential prime bidder on this project to submit an intentionally high, noncompetitive or other form of complementary bid on this project.
4. The bid of my firm is made in good faith and not pursuant to any consultation, communication, agreement or discussion with, or inducement or solicitation by or from any firm or person to submit any intentionally high, non-competitive or other form of complementary bid.
5. My firm has not offered or entered into a subcontract or agreement regarding the purchase or sale of materials or services from any firm or person, or offered, promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by any firm or person to refrain from bidding or to submit any intentionally high, noncompetitive or other form of complementary bid or agreeing to do so on this project.
6. My firm has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any other project, for consideration for my firm's submitting any intentionally high, non-competitive or other form of complementary bid, or agreeing to do so, on this project.
7. I have made a diligent inquiry of all members, officers, employees, and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's bid on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, or other conduct inconsistent with any of the statements and representations made in this affidavit.
8. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as a fraudulent concealment from the Colorado Department of Transportation, of the true facts relating to submission of bids for this contract.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Contractor's firm or company name

By

Date

Title

2nd contractor's firm or company name (if joint venture)

By

Date

Title

Sworn to before me this day of, 20

Notary Public

My commission expires

NOTE: This document must be signed in ink.
STATEMENT OF QUALIFICATIONS AND SUBCONTRACTORS

DATE OF THIS STATEMENT: ________________________________

All questions herein must be answered by all bidders and the information given must be legible, clear in meaning and comprehensive. The bidder will not be given the opportunity to further explain or defend any answers beyond the time that this statement is submitted with the bid. This statement must be notarized. Questions may be answered on separate attached sheets if necessary. The Bidder may attach and submit any additional information which is believed to be pertinent to this bid. Failure to complete this form pursuant to the directions herein may be cause for rejection of the bid. All bidders are reminded that a contract for the work described in the Contract Documents will be awarded to the lowest reliable, responsible and qualified bidder as determined by the County. The County reserves the right to waive informalities and/or irregularities and to reject any or all bids.

1. Name of Bidder (Company or Firm): ________________________________
   - Permanent main office address: ________________________________
   - Phone Number: ________________________________
   - Fax Number: ________________________________

2. Year Company was organized: ________________________________

3. Number of years this Company has been engaged in similar projects as outlined in this bid: ____

4. Under what firm, company or trade names has this company been engaged in this type of business, how long under each name, and how long has each company been bonding work?
   - ________________________________
   - ________________________________
   - ________________________________

5. List all projects that the Company has under contract at the present time. Show the contract amount and the anticipated date of completion for each:
   - ________________________________ $ ________________________________ __________
   - ________________________________ $ ________________________________ __________
   - ________________________________ $ ________________________________ __________

6. List all contracts within the last 3 years for which liquidated damages were assessed or may be assessed.
   - ________________________________
   - ________________________________
   - ________________________________
8. List all contracts within the last 3 years during which or after which the Company filed a protest with the owner.

______________________________________________________________________________

______________________________________________________________________________

9. List all contracts within the last 3 years during which or after which any of the Company’s subcontractors or suppliers filed a verified statement of claim with the owner or failed to provide the Company with a lien waiver upon request.

______________________________________________________________________________

______________________________________________________________________________

10. Has any owner, as party to any of the Company’s contracts within the last 3 years, contacted the Company’s bonding company concerning late completion of the project, poor performance on the project, etc., or attempted to have the performance bond invoked? If yes, explain in detail.

______________________________________________________________________________

______________________________________________________________________________

11. Describe all contracts that the Company failed to complete.

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

12. Describe all contracts on which the Company defaulted or from which the Company was terminated.

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

13. List all or a maximum of three (3) of the most recent projects, similar to the project described in these Contract Documents, which the Company has successfully completed within the last 5 years or are under construction at the present time. List the project name, location, project superintendent, owner’s representative and phone number, date completed and contract amount for each project.

Project Name:________________________________________________________

Location: __________________________________________________________ Supt: __________

Owner’s Representative: ____________________________________________ Phone: __________

Completion Date: ____________________________ Contract Amount: ___________
Project Name: ____________________________________________________________

Location: ______________________________________________________________ Supt:__________

Owner's Representative: _________________________________ Phone:__________

Completion Date: ____________________________ Contract Amount:__________

Project Name: __________________________________________________________

Location: ______________________________________________________________ Supt:__________

Owner's Representative: _________________________________ Phone:__________

Completion Date: ____________________________ Contract Amount:__________

14. List all of the subcontractors the Company intends to use under this contract, the work that each subcontractor will do and the percentage of the Company's bid that each contractor's work comprises. **IF REQUESTED, THOSE CONTRACTORS BEING FURTHER CONSIDERED FOR AWARD SHALL FURNISH, WITHIN 24 HOURS AFTER THE BID OPENING, A SEPARATE STATEMENT OF QUALIFICATIONS COMPLETED BY EACH SUBCONTRACTOR WHO WILL PERFORM 15% OR MORE OF THE WORK.**

<table>
<thead>
<tr>
<th>SUBCONTRACTOR</th>
<th>WORK DESCRIPTION</th>
<th>% OF WORK</th>
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</table>

15. List the principal members of the company who will be involved with this project, including the superintendent, foreman, project manager, etc.

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<thead>
<tr>
<th>NAME</th>
<th>TITLE</th>
<th>YRS. PERTINENT EXPERIENCE</th>
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</table>

16. List all lawsuits previously filed against or currently pending against you, the Company or any officers of the Company.

________________________________________________________________________
The undersigned hereby swears and affirms that the information contained herein is complete and true and further, hereby authorizes and requests any person, company, firm or corporation to furnish any information requested by the County of Weld in verification of the recitals comprising this Statement of Qualifications and Subcontractors.

Dated this ______________________ day of ________________________, 2019.

Bidder: __________________________

Company

By: __________________________

Signature

Name: __________________________

(Please Type)

Title: __________________________

NOTARY

County of ________________________

) ss.

State of ________________________

______________________________ being duly sworn, deposes and says that he is ____________________________ of, ____________________________ and that the answers to the foregoing questions and all statements therein contained are true and correct. Subscribed and sworn before me this ______________________ day of ________________________, 2019.

(SEAL)

Commission Expires ____________________________

Notary Public
NOTICE OF AWARD

PROJECT: 2019 Material Crushing Contract

To: ______________________________
________________________________

Project Description:

The project consists generally of:

- crushing and stockpiling approximately 200,000 tons of aggregate material for graveling of roads within the areas of Weld County.

This project is not subject to Federal or State contract requirements.

The Owner has considered the Bid submitted by you for the above described Work in response to its Invitation for Bids and Instructions to Bidders. You are hereby notified that your Bid has been accepted in the amount of $________________ or as shown in the Bid Schedule.

You are required by the Instructions to Bidders to execute the Agreement and furnish the required Performance Bond, Payment Bond and Certificates of Insurance within ten (10) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said Bonds within ten (10) days from the date of this Notice, said Owner will be entitled to consider all your rights arising out of the Owner’s acceptance of your bid as abandoned. The Owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the Owner.

Dated this _________ day of __________________________, 2019

Weld County, Colorado, Owner

By: ________________________________

Jeff York, Trucking & Mining Supervisor

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged by ________________________________

(Contractor)

Dated this ________________ day of __________________________, 2019

By: ________________________________ Title: ________________________________
WELD COUNTY AGREEMENT FOR CONSTRUCTION SERVICES
BETWEEN WELD COUNTY &

2019 Material Crushing Contract

THIS AGREEMENT is made and entered into this __ day of ____________, 2019, by and between the County of Weld, a body corporate and politic of the State of Colorado, by and through its Board of County Commissioners, whose address is 1150 “O” Street, Greeley, Colorado 80631 hereinafter referred to as “County,” and _______________________, [an individual], [a limited liability partnership] [a limited liability company] [a corporation], who whose address is ________________________________, hereinafter referred to as “Contractor”.

WHEREAS, Weld County Public Works is in need of a material crushing contract, (hereinafter referred to as the “Project”), and

WHEREAS, in the interests of public health, safety and welfare, it is necessary to undertake the erosion control and/or revegetation of the identified project sites, and

WHEREAS, County requires an independent contract construction professional to perform the construction services required by County and set forth in Exhibit A;

WHEREAS, Contractor is willing to perform and has the specific ability to perform the required Construction Services at or below the cost set forth in Exhibit B;

WHEREAS, Contractor is authorized to do business in the State of Colorado and has the time, skill, expertise, and experience necessary to provide the equipment, materials and services as set forth below;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. Introduction. The terms of this Agreement are contained in the terms recited in this document and in Exhibits A and B, each of which forms an integral part of this Agreement. Exhibits A and B are specifically incorporated herein by this reference. County and Contractor acknowledge and agree that this Agreement, including specifically Exhibits A and B, define the performance obligations of Contractor and Contractor’s willingness and ability to meet those requirements.

Exhibit A consists of County’s Request for Bid (RFB) as set forth in “Bid Package No. B1900037”. The RFP contains all of the specific requirements of County.

Exhibit B consists of Contractor’s Response to County’s Request for Bid. The Response confirms Contractor’s obligations under this Agreement.

Service or Work. Contractor agrees to procure the materials, equipment and/or products necessary for the Project and agrees to diligently provide all services, labor, personnel and materials necessary to perform and complete the Project described in Exhibit A which is attached hereto and incorporated herein by reference. Contractor shall coordinate with, the Weld County Director of Public Works or other designated supervisory personnel, (the “Manager”), to perform the services described on attached Exhibit A. Contractor shall faithfully perform the work in accordance with the standards of professional care, skill, training, diligence and judgment provided by highly competent Contractors performing construction services of a similar nature to those described in this Agreement. Contractor shall further be responsible for the timely completion and acknowledges that a failure to comply with the standards and requirements of Exhibit A within the time limits prescribed by County may result in County’s decision to withhold payment or
to terminate this Agreement. In its sole discretion, the County, by the Director of the Department of Public Works or his/her designee may extend the time for the Contractor to complete the service of work, by not more than thirty (30) days. Such extension shall not increase the compensation to be paid to the Contractor nor change any other term herein.

2. **Term.** The term of this Agreement begins upon the date of the execution of this Agreement by County, and shall continue through and until Contractor’s completion of the responsibilities described in Exhibit A. Both of the parties to this Agreement understand and agree that the laws of the State of Colorado prohibit County from entering into Agreements which bind County for periods longer than one year. Therefore, within the thirty (30) days preceding the anniversary date of this Agreement, County shall notify Contractor if it wishes to renew this Contract.

If the County opts to renew the Contract, the Contractor will have an opportunity to provide a revised fee schedule, if any, for the upcoming Contract term. The increased costs shall be based upon the Denver-Boulder-Greeley Consumer Price Index and the market price for straw.

3. **Termination.** County has the right to terminate this Agreement, with or without cause on thirty (30) days written notice. Furthermore, this Agreement may be terminated at any time without notice upon a material breach of the terms of the Agreement. However, nothing herein shall be construed as giving Contractor the right to provide materials (or services) under this Agreement beyond the time when such materials (or services) become unsatisfactory to the County.

If this Agreement is terminated by County, Contractor shall be compensated for, and such compensation shall be limited to, (1) the sum of the amounts contained in invoices which it has submitted and which have been approved by the County; (2) the reasonable value to County of the materials which Contractor provided prior to the date of the termination notice, but which had not yet been approved for payment; and (3) the cost of any work which the County approves in writing which it determines is needed to accomplish an orderly termination of the work. County shall be entitled to the use of all material generated pursuant to this Agreement upon termination.

Upon termination, County shall take possession of all materials, equipment, tools and facilities owned by County which Contractor is using, by whatever method it deems expedient; and, Contractor shall deliver to County all drawings, drafts or other documents it has completed or partially completed under this Agreement, together with all other items, materials and documents which have been paid for by County, and these items, materials and documents shall be the property of County. Copies of work product incomplete at the time of termination shall be marked “DRAFT-INCOMPLETE.”

Upon termination of this Agreement by County, Contractor shall have no claim of any kind whatsoever against the County by reason of such termination or by reason of any act incidental thereto, except for compensation for work satisfactorily performed and/or materials described herein properly delivered.

4. **Extension or Modification.** Any amendments or modifications to this agreement shall be in writing signed by both parties. No additional services or work performed by Contractor shall be the basis for additional compensation unless and until Contractor has obtained written authorization and acknowledgement by County for such additional services. Accordingly, no claim that the County has been unjustly enriched by any additional services, whether or not there is in fact any such unjust enrichment, shall be the basis of any increase in the compensation payable hereunder. In the event that written authorization and acknowledgment by the County for such additional services is not timely executed and issued in strict accordance with this Agreement, Contractor’s rights with respect to such additional services shall be deemed waived and such failure shall result in non-payment for such additional services or work performed.
5. **Compensation/Contract Amount.** Upon Contractor’s successful completion of the construction of the Project, and County’s acceptance of the same, County agrees to pay an amount no greater than $_____, which is the bid set forth in Exhibit B. Contractor acknowledges no payment in excess of that amount will be made by County unless a “change order” authorizing such additional payment has been specifically approved by the Director of Weld County Public Works, or by formal resolution of the Weld County Board of County Commissioners, as required pursuant to the Weld County Code. Any other provision of this Agreement notwithstanding, in no event shall County be liable for payment for services rendered and expenses incurred by Contractor under the terms of this Agreement for any amount in excess of the sum of the bid amount set forth in Exhibit B. Contractor acknowledges that any work it performs beyond that specifically authorized by County is performed at Contractor’s risk and without authorization under this Agreement. County shall not be liable for the payment of taxes, late charges or penalties of any nature other than the compensation stated herein.

If, at any time during the term or after termination or expiration of this Agreement, County reasonably determines that any payment made by County to Contractor was improper because the material/service/equipment for which payment was made did not perform as set forth in this Agreement, then upon written notice of such determination and request for reimbursement from County, Contractor shall forthwith return such payment(s) to County. Upon termination or expiration of this Agreement, unexpended funds advanced by County, if any, shall forthwith be returned to County.

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

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

6. **Independent Contractor.** Contractor agrees that it is an independent Contractor and that Contractor’s officers, agents or employees will not become employees of County, nor entitled to any employee benefits from County as a result of the execution of this Agreement. Contractor shall perform its duties hereunder as an independent Contractor. Contractor shall be solely responsible for its acts and those of its agents and employees for all acts performed pursuant to this Agreement. Contractor, its employees and agents are not entitled to unemployment insurance or workers’ compensation benefits through County and County shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes (if applicable) incurred pursuant to this Agreement. Contractor shall not have authorization, express or implied, to bind County to any agreement, liability or understanding, except as expressly set forth in this Agreement. Contractor shall have the following responsibilities with regard to workers’ compensation and unemployment compensation insurance matters: (a) provide and keep in force workers’ compensation and unemployment compensation insurance in the amounts required by law (and as set forth in Exhibit A), and (b) provide proof thereof when requested to do so by County.

7. **Subcontractors.** Contractor acknowledges that County has entered into this Agreement in reliance upon the particular reputation and expertise of Contractor. Contractor shall not enter into any subcontractor agreements for the completion of this Project without County’s prior written consent, which may be withheld in County’s sole discretion. County shall have the right in its reasonable discretion to approve all personnel
assigned to the subject Project during the performance of this Agreement and no personnel to whom County has an objection, in its reasonable discretion, shall be assigned to the Project. Contractor shall require each subcontractor, as approved by County and to the extent of the Services to be performed by the subcontractor, to be bound to Contractor by the terms of this Agreement, and to assume toward Contractor all the obligations and responsibilities which Contractor, by this Agreement, assumes toward County. County shall have the right (but not the obligation) to enforce the provisions of this Agreement against any subcontractor hired by Contractor and Contractor shall cooperate in such process. The Contractor shall be responsible for the acts and omissions of its agents, employees and subcontractors.

8. **Ownership.** All work and information obtained by Contractor under this Agreement or individual work order shall become or remain (as applicable), the property of County. In addition, all reports, data, plans, drawings, records and computer files generated by Contractor in relation to this Agreement and all reports, test results and all other tangible materials obtained and/or produced in connection with the performance of this Agreement, whether or not such materials are in completed form, shall at all times be considered the property of the County. Contractor shall not make use of such material for purposes other than in connection with this Agreement without prior written approval of County.

9. **Confidentiality.** Confidential financial information of Contractor should be transmitted separately from the main bid submittal, clearly denoting in red on the financial information at the top the word, “CONFIDENTIAL.” However, Contractor is advised that as a public entity, Weld County must comply with the provisions of C.R.S. 24-72-201, et seq., with regard to public records, and cannot guarantee the confidentiality of all documents. Contractor agrees to keep confidential all of County’s confidential information. Contractor agrees not to sell, assign, distribute, or disclose any such confidential information to any other person or entity without seeking written permission from the County. Contractor agrees to advise its employees, agents, and consultants, of the confidential and proprietary nature of this confidential information and of the restrictions imposed by this agreement.

10. **Warranty.** Contractor warrants that construction services performed under this Agreement will be performed in a manner consistent with the professional construction standards governing such services and the provisions of this Agreement. Contractor further represents and warrants that all construction services shall be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards, and that all construction services will conform to applicable specifications. In addition to the foregoing warranties, Contractor is aware that all work performed on this Project pursuant to this Agreement is subject to a one-year warranty period during which Contractor must correct any failures or deficiencies caused by contractor’s workmanship or performance. This warranty shall commence on the date of County’s final inspection and acceptance of the Project.

11. **Acceptance of Services Not a Waiver.** Upon completion of the work, Contractor shall submit to County originals of all test results, reports, etc., generated during completion of this work. Acceptance by County of reports, incidental material(s), and structures furnished under this Agreement shall not in any way relieve Contractor of responsibility for the quality and accuracy of the construction of the project. In no event shall any action by County hereunder constitute or be construed to be a waiver by County of any breach of this Agreement or default which may then exist on the part of Contractor, and County’s action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to County with respect to such breach or default. No assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach. Acceptance by the County of, or payment for, the construction completed under this Agreement shall not be construed as a waiver of any of the County’s rights under this Agreement or under the law generally.

12. **Insurance and Indemnification.**

   **General Requirements:** Contractors/Contract Professionals must secure, at or before the time of execution of any agreement or commencement of any work, the following insurance covering all operations, goods or
services provided pursuant to this request. Contractors/Contract Professionals shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as “A” VIII or better. Each policy shall contain a valid provision or endorsement stating “Should any of the above-described policies by canceled or should any coverage be reduced before the expiration date thereof, the issuing company shall send written notice to the Weld County Director of General Services by certified mail, return receipt requested. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If any policy is in excess of a deductible or self-insured retention, County must be notified by the Contractor/Contract Professional. Contractor/Contract Professional shall be responsible for the payment of any deductible or self-insured retention. County reserves the right to require Contractor/Contract Professional to provide a bond, at no cost to County, in the amount of the deductible or self-insured retention to guarantee payment of claims.

The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not decrease or limit the liability of Contractor/Contract Professional. The County 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, its agents, representatives, employees, or subcontractors. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. Any modification to these requirements must be made in writing by Weld County.

The Contractor stipulates that it has met the insurance requirements identified herein. The Contractor shall be responsible for the professional quality, technical accuracy, and quantity of all construction services provided, the timely delivery of said services, and the coordination of all services rendered by the Contractor and shall, without additional compensation, promptly remedy and correct any errors, omissions, or other deficiencies.

Indemnity: The Contractor shall defend, indemnify and hold harmless County, its officers, agents, and employees, from and against injury, loss damage, liability, suits, actions, or claims of any type or character arising out of the work done in fulfillment of the terms of this Contract or on account of any act, claim or amount arising or recovered under workers' compensation law or arising out of the failure of the Contractor to conform to any statutes, ordinances, regulation, law or court decree. The Contractor shall be fully responsible and liable for any and all injuries or damage received or sustained by any person, persons, or property on account of its performance under this Agreement or its failure to comply with the provisions of the Agreement, or on account of or in consequence of neglect of The Contractor in its construction methods or procedures; or in its provisions of the materials required herein, or from any claims or amounts arising or recovered under the Worker’s Compensation Act, or other law, ordinance, order, or decree. This paragraph shall survive expiration or termination hereof. It is agreed that the Contractor will be responsible for primary loss investigation, defense and judgment costs where this contract of indemnity applies. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the County its associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers for losses arising from the work performed by the Contractor for the County. A failure to comply with this provision shall result in County’s right to immediately terminate this Agreement.

Types of Insurance: The Contractor/Contract Professional shall obtain, and maintain at all times during the term of any Agreement, insurance in the following kinds and amounts:

Workers’ Compensation Insurance as required by state statute, and Employer’s Liability Insurance covering all of the Contractor’s Contract Professional’s employees acting within the course and scope of their employment. Policy shall contain a waiver of subrogation against the County. This requirement shall not
apply when a Contractor or subcontractor is exempt under Colorado Workers’ Compensation Act., AND when such Contractor or subcontractor executes the appropriate sole proprietor waiver form.

**Minimum Limits:**

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<thead>
<tr>
<th>Coverage A (Workers’ Compensation)</th>
<th>Statutory</th>
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<tr>
<td>Coverage B (Employers Liability)</td>
<td>$500,000</td>
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Commercial General Liability Insurance written on ISO occurrence form CG 00 01 equivalent, covering premises operations, explosions, collapse and underground hazard, personal advertising injury, fire damage, independent Contractors, products and completed operations, blanket contractual liability, personal injury, and liability assumed under an insured contract. The policy shall be endorsed to include 1) the Additional Insured Endorsements CG 2010 (or equivalent), 2) CG 2037 Additional Insured for products/completed operations, and 3) the Designated Construction Projects General Aggregate Endorsement CG 2503. The policy shall be endorsed to include the following additional insured language on the additional insured endorsements specified above: “Weld County, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers named as an additional insured with respect to liability and defense of suits arising out of the activities performed by, or on behalf of the Contractor, including completed operations” and the minimum limits must be as follows:

- $1,000,000 each occurrence;
- $2,000,000 general aggregate;
- $2,000,000 products and completed operations aggregate;
- $1,000,000 Personal Advertising injury
- $50,000 any one fire; and
- $5,000 Medical payment one person

Automobile Liability: Contractor/Contract Professional shall maintain limits of $1,000,000 for bodily injury per person, $1,000,000 for bodily injury for each accident, and $1,000,000 for property damage applicable to all vehicles operating both on County property and elsewhere, for vehicles owned, hired, and non-owned vehicles used in the performance of this Contract.

**Additional provisions:**

Policies for all general liability, excess/umbrella liability, liquor liability and pollution liability must provide the following:

i. If any aggregate limit is reduced by twenty-five percent (25%) or more by paid or reserved claims, Contractor shall notify County within ten (10) days and reinstate the aggregates required;

ii. Unlimited defense costs in excess of policy limits;

iii. Contractual liability covering the indemnification provisions of this Agreement;

iv. A severability of interest’s provision;

v. Waiver of exclusion for lawsuits by one insured against another;

vi. A provision that coverage is primary; and

vii. A provision that coverage is non-contributory with other coverage or self-insurance provided by County.

For all general liability, excess/umbrella liability, liquor liability, pollution liability and professional liability policies, if the policy is a claims-made policy, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to County, whichever is earlier.

Contractors/Contract Professionals shall secure and deliver to the County at or before the time of execution of this Agreement, and shall keep in force at all times during the term of the Agreement as the same may be extended as herein provided, a commercial general liability insurance policy, including public liability and
property damage, in form and company acceptable to and approved by said Administrator, covering all operations hereunder set forth in the related Bid or Request for Proposal.

**Proof of Insurance**: County reserves the right to require the Contractor/Contract Professional to provide a certificate of insurance, a policy, or other proof of insurance as required by the County’s Risk Administrator in his sole discretion.

**Additional Insureds**: For general liability, excess/umbrella liability, pollution legal liability, liquor liability, and inland marine, Contractor/Contract Professional’s insurer shall name County as an additional insured.

**Waiver of Subrogation**: For all coverages, Contractor/Contract Professional’s insurer shall waive subrogation rights against County.

**Subcontractors**: All subcontractors, sub-contractors, independent Contractors, sub-vendors, suppliers or other entities providing goods or services required by this Agreement shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Contractor/Contract Professional. Contractor/Contract Professional shall include all such subcontractors, independent Contractors, sub-vendors suppliers or other entities as insureds under its policies or shall ensure that all subcontractors maintain the required coverages. Contractor/Contract Professional agrees to provide proof of insurance for all such subcontractors, independent Contractors, sub-vendors suppliers or other entities upon request by the County.

13. **Non-Assignment**. Contractor may not assign or transfer this Agreement or any interest therein or claim thereunder, without the prior written approval of County. Any attempts by Contractor to assign or transfer its rights hereunder without such prior approval by County shall, at the option of County, automatically terminate this Agreement and all rights of Contractor hereunder. Such consent may be granted or denied at the sole and absolute discretion of County.

14. **Examination of Records**. To the extent required by law, the Contractor agrees that any duly authorized representative of County, including the County Auditor, shall have access to and the right to examine and audit any books, documents, papers and records of Contractor, involving all matters and/or transactions related to this Agreement. The Contractor agrees to maintain these documents for three years from the date of the last payment received.

15. **Interruptions**. Neither party to this Agreement shall be liable to the other for delays in delivery or failure to deliver or otherwise to perform any obligation under this Agreement, where such failure is due to any cause beyond its reasonable control, including but not limited to Acts of God, fires, strikes, war, flood, earthquakes or Governmental actions.

16. **Notices**. County may designate, prior to commencement of work, its project representative (“County Representative”) who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the project. All requests for contract interpretations, change orders, and other clarification or instruction shall be directed to County Representative. The County Representative for purposes of this Agreement is hereby identified as, Director of Weld County Department of Public Works, or his/her designee. All notices or other communications (including annual maintenance made by one party to the other concerning the terms and conditions of this contract shall be deemed delivered under the following circumstances:

   a) personal service by a reputable courier service requiring signature for receipt; or

   b) five (5) days following delivery to the United States Postal Service, postage prepaid addressed to a party at the address set forth in this contract; or
c) electronic transmission via email at the address set forth below, where a receipt or acknowledgment is 
required by the sending party; or

d) transmission via facsimile, at the number set forth below, where a receipt or acknowledgment is 
required by the sending party.

Either party may change its notice address(es) by written notice to the other.

Notification Information:

Contractor:
Attn.:
Address:
Address:
E-mail:
Phone:
Facsimile:

County:
Name: Jeff York
Position: Trucking and Mining Supervisor
Address: P.O. Box 758
Address: 1111 H St, Greeley, CO 80632
E-mail: jyork@weldgov.com
Phone: 970-400-3722
Facsimile: 970-304-6497

17. Compliance with Law. Contractor shall strictly comply with all applicable federal and State laws, rules and 
regulations in effect or hereafter established, including without limitation, laws applicable to discrimination 
and unfair employment practices.

18. Non-Exclusive Agreement. This Agreement is nonexclusive, and County may engage or use other 
Contractors or persons to perform services of the same or similar nature.

19. Entire Agreement/Modifications. This Agreement including the Exhibits attached hereto and incorporated 
herein, contains the entire agreement between the parties with respect to the subject matter contained in this 
Agreement. This instrument supersedes all prior negotiations, representations, and understandings or 
agreements with respect to the subject matter contained in this Agreement. This Agreement may be changed 
or supplemented only by a written instrument signed by both parties.

20. Fund Availability. Financial obligations of the County payable after the current fiscal year are contingent 
upon funds for that purpose being appropriated, budgeted and otherwise made available. Execution of this 
Agreement by County does not create an obligation on the part of County to expend funds not otherwise 
appropriated in each succeeding year.

signatories to this Agreement agree that to their knowledge, no employee of Weld County has any personal 
or beneficial interest whatsoever in the service or property which is the subject matter of this Agreement. 
County has no interest and shall not acquire any interest direct or indirect, that would in any manner or 
degree interfere with the performance of Contractor’s services and Contractor shall not employ any person 
having such known interests. During the term of this Agreement, Contractor shall not engage in any in any
business or personal activities or practices or maintain any relationships which actually conflicts with or in any way appear to conflict with the full performance of its obligations under this Agreement. Failure by Contractor to ensure compliance with this provision may result, in County’s sole discretion, in immediate termination of this Agreement. No employee of Contractor nor any member of Contractor’s family shall serve on a County Board, committee or hold any such position which either by rule, practice or action nominates, recommends, supervises Contractor’s operations, or authorizes funding to Contractor.

22. **Severability.** If any term or condition of this Agreement shall be held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, this Agreement shall be construed and enforced without such provision, to the extent that this Agreement is then capable of execution within the original intent of the parties.

23. **Governmental Immunity.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act §§24-10-101 et seq., as applicable now or hereafter amended.

24. **No Third-Party Beneficiary.** It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this Agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Agreement shall be an incidental beneficiary only.

25. **Board of County Commissioners of Weld County Approval.** This Agreement shall not be valid until it has been approved by the Board of County Commissioners of Weld County, Colorado or its designee.

26. **Choice of Law/Jurisdiction.** Colorado law, and rules and regulations established pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules and/or regulations shall be null and void. In the event of a legal dispute between the parties, Contractor agrees that the Weld County District Court shall have exclusive jurisdiction to resolve said dispute.

27. **Public Contracts for Services C.R.S. §8-17.5-101.** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract. Contractor will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify program of the State of Colorado program established pursuant to C.R.S. §8-17.5-102(5)(c). Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify with Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Contractor shall not use E-Verify Program or State of Colorado program procedures to undertake pre-employment screening or job applicants while this Agreement is being performed. If Contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien Contractor shall notify the subcontractor and County within three (3) days that Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien and shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving notice. Contractor shall not terminate the contract if within three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. Contractor shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the State of Colorado program, Contractor shall, within twenty days after hiring a new employee to perform work under the contract, affirm that Contractor has examined the legal work status of such employee, retained file copies of the documents, and not altered or falsified the identification documents for such employees. Contractor
shall deliver to County, a written notarized affirmation that it has examined the legal work status of such employee and shall comply with all of the other requirements of the State of Colorado program. If Contractor fails to comply with any requirement of this provision or of C.R.S. §8-17.5-101 et seq., County, may terminate this Agreement for breach, and if so terminated, Contractor shall be liable for actual and consequential damages.

Except where exempted by federal law and except as provided in C.R.S. § 24-76.5-103(3), if Contractor receives federal or state funds under the contract, Contractor must confirm that any individual natural person eighteen (18) years of age or older is lawfully present in the United States pursuant to C.R.S. § 24-76.5-103(4), if such individual applies for public benefits provided under the contract. If Contractor operates as a sole proprietor, it hereby swears or affirms under penalty of perjury that it: (a) is a citizen of the United States or is otherwise lawfully present in the United States pursuant to federal law, (b) shall produce one of the forms of identification required by C.R.S. § 24-76.5-101, et seq., and (c) shall produce one of the forms of identification required by C.R.S. § 24-76.5-103 prior to the effective date of the contract.

28. Official Engineering Publications. Contractor acknowledges and agrees that the Colorado Department of Transportation "Standard Specifications for Road and Bridge Construction" and the Colorado Department of Transportation Standard Plans "M & S Standards" establish the requirements for all work performed by Contractor under this Agreement, and Contractor agrees to meet or exceed all standards set by these publications. Contractor further acknowledges and agrees that a failure to meet the standards set by these publications may result in withholding by County of some or all of the Contract Amount.

29. Compliance with Davis-Bacon Wage Rates. Contractor understands and agrees that, if required by the provisions of Exhibit A, the work shall be in compliance with the Davis-Bacon Wage Rates. (If compliance with this statute is required by County under this Agreement, a copy of the information is contained in Exhibit A, County’s Request for Bid, and is a part this Agreement.)

30. Attorney’s Fees/Legal Costs. In the event of a dispute between County and Contractor, concerning this Agreement, the parties agree that each party shall be responsible for the payment of attorney fees and/or legal costs incurred by or on its own behalf.

31. Binding Arbitration Prohibited: Weld County does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement or incorporated herein by reference shall be null and void.

32. Acknowledgment. County and Contractor acknowledge that each has read this Agreement, understands it and agrees to be bound by its terms. Both parties further agree that this Agreement, with the attached Exhibits A and B, is the complete and exclusive statement of agreement between the parties and supersedes all proposals or prior agreements, oral or written, and any other communications between the parties relating to the subject matter of this Agreement.
IN WITNESS WHEREOF, the parties hereto have signed this Agreement this _____ day of ______________, ________________, 2019.

CONTRACTOR:

_________________________________________________
Company Name

By: _________________________________ Date _________________________________

Name: _________________________________

Title: _________________________________

________________________________________________________________________

WELD COUNTY:
ATTEST:

Weld County Clerk to the Board

BY: _________________________________ Barbara Kirkmeyer, Chair

Deputy Clerk to the Board

BOARD OF COUNTY COMMISSIONERS
WELD COUNTY, COLORADO
PERFORMANCE BOND
PROJECT: 2019 Material Crushing Contract

KNOW ALL MEN BY THE PRESENTS; that

__________________________________________
(Name of Contractor)

__________________________________________
(Address of Contractor)

__________________________________________
called Contractor, and a (Corporation, Partnership, or Individual)

__________________________________________
(Name of Surety)

__________________________________________
(Address of Surety)

hereinafter called surety, are held and firmly bound unto Weld County, Colorado, P.O. Box 758, 1111 H Street, Greeley, Colorado 80632, hereinafter called Owner, in the penal sum of ___________________________ Dollars, ($______________________________), in lawful money of the United States of America, 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 CONDITION OF THIS OBLIGATION is such that whereas, the Contractor entered into a certain Contract with the Owner, dated the ______ day of ________________________, 2019, a copy of which is hereto attached and made a part hereof for the construction of:

PROJECT: 2019 Material Crushing Contract Bid No. B1900037

NOW THEREFORE, if the Contractor shall well, truly and faithfully perform its duties, all of 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 Owner, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in 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 of 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 Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.
PERFORMANCE BOND
PROJECT: 2019 Material Crushing Contract

IN WITNESS WHEREOF, this instrument is executed in two (2) counterparts, each one of which shall be deemed an original, this ___________________________ day of ___________________________, 2019.

__________________________________________
Contractor

__________________________________________
(Contractor) Secretary

(SEAL)

__________________________________________
(Witness as to Contractor) (Address)

__________________________________________
(Address)

ATTEST:

__________________________________________
(Surety) Secretary

(SEAL)

__________________________________________
Witness as to Surety (Address)

By__________________________
Attorney-in-Fact

__________________________________________
(Address)

__________________________________________

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute Bond.

IMPORTANT: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.
LABOR & MATERIALS PAYMENT BOND
PROJECT: 2019 Material Crushing Contract

KNOW ALL MEN BY THE PRESENTS; that

___________________________________________
(Name of Contractor)

___________________________________________
(Address of Contractor)

hereinafter called Contractor, and a (Corporation, Partnership, or Individual)

___________________________________________
(Name of Surety)

___________________________________________
(Address of Surety)

hereinafter called surety, are held and firmly bound unto Weld County, Colorado, P.O. Box 758, 1111 H Street, Greeley, Colorado 80632, hereinafter called Owner, in the penal sum of ____________________________ Dollars ($_____________), in lawful money of the United States of America, 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 CONDITION OF THIS OBLIGATION is such that whereas, the Contractor entered into a certain Contract with the Owner, dated the _____ day of ____________________________, 2019, a copy of which is hereto attached and made a part hereof for the construction of:


NOW, THEREFORE, if the Contractor shall promptly 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, oil, gasoline, repairs on machinery, equipment and tools, consumed 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 of 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 Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.
LABOR & MATERIALS PAYMENT BOND

IN WITNESS WHEREOF, this instrument is executed in two (2) counterparts, each one of which shall be deemed an original,

this __________________________ day of __________________________, 2019.

________________________________________
Contractor

________________________________________
(Contractor) Secretary

(SEAL)

________________________________________
Witness as to Contractor

________________________________________
(Address)

________________________________________
(Address)

ATTEST:

________________________________________
(Surety) Secretary

(SEAL)

________________________________________
Witness as to Surety

________________________________________
(Address)

________________________________________
(Address)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute Bond.

IMPORTANT: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.
NOTICE TO PROCEED
PROJECT: MATERIAL CRUSHING FOR 2019

To:__________________________________________ Date:_____________
____________________________________________
____________________________________________


You are hereby notified to commence Work in accordance with the Agreement dated the ______ day of _____________________, 2019. The date of completion of all Work is therefore ________________.

Weld County, Colorado, Owner

By__________________________________________
Jeff York, Trucking & Mining Supervisor

ACCEPTANCE OF NOTICE

Receipt of the above Notice to Proceed is hereby acknowledged by:

(Contractor)

Dated this _______ day of _____________________, 2019.

By__________________________________________

Title________________________________________
CHANGE ORDER NO. (EXAMPLE)

Date: _____________

Project: 2019 Material Crushing Contract described in the Bid No. B1900037

Owner: ________________ Weld County, Colorado ____________________________

Contractor: ____________________________________________________________

The following change is hereby made to the Contract Documents:

CHANGE TO CONTRACT PRICE:

Original Contract Price: ________________

Current Contract Price adjusted by previous Change Order: ________________

The Contract Price due to this Change Order will be increased by: ________________

The new Contract Price, including this Change Order, will be: ________________

CHANGE TO CONTRACT TIME:

The Contract Time will be increased by ________________ calendar days.

The date for completion of all Work will be ________________________________.

RECOMMENDED:

Owner Representative: ________________________________ Date: _____________

Engineer: ________________________________ Date: _____________

APPROVALS:

Contractor: ________________________________ Date: _____________

Owner: ________________________________ Date: _____________
CONTRACT EXTENSION / RENEWAL
2019 Material Crushing Contract

Date: _________________________________

Project: 2019 Material Crushing Contract, Bid No. B1900037

Owner: Weld County Public Works Department, PO Box 758, Greeley, Colorado 80632

Consultant: ________________________________

The following change is hereby made to the Contract Documents:

Contract Time Extension:

Change to Original Rate Schedule:

CHANGE TO CONTRACT PRICE:

CHANGE TO CONTRACT TIME:

The Contract time will be increased by ______ calendar days.

RECOMMENDED:

Owner Representative: ___________________________ Date: __________

, (Chair)

Supervisor: _________________________________ Date: __________

Director: _________________________________ Date: __________

APPROVALS:

Contractor: _________________________________

By: _________________________________ Date: __________

Title: _________________________________
The Colorado Department of Transportation 2017 Standard Specifications for Road and Bridge Construction (as amended), the latest edition of the CDOT Field Materials Manual (as amended), and the latest edition of the CDOT Construction Manual (as amended) provide the standards and specifications for the construction of this project. The latest revisions to formerly issued Standard Special Provisions (SSP) that modify the CDOT 2017 Standard Specifications for Road and Bridge Construction are hereby incorporated by reference. The following special provisions supplement or modify the Standard Specifications and take precedence over the Standard Specifications and plans.

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<th>Pages</th>
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<td>Commencement and Completion of Work</td>
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<td>Revision of Section 101 – Definition of Terms</td>
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NOTICE TO BIDDERS

The proposal guaranty shall be a certified check, cashier's check, or bid bond in the amount of 5 percent of the Contractor's total bid.

Pursuant to subsections 102.04 and 102.05, it is recommended that bidders on this project review the work site and plan details with an authorized Department representative. Prospective bidders shall contact one of the following listed authorized Department representatives at least 12 hours in advance of the time they wish to go over the project.

Information regarding the project may be obtained from the following authorized representatives.

<table>
<thead>
<tr>
<th>Jeff York, Trucking and Mining Supervisor</th>
<th>Kevin Hettinger, Trucking and Mining Foreman</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weld County Public Works Department</td>
<td>Weld County Public Works Department</td>
</tr>
<tr>
<td>1111 H Street</td>
<td>111 H Street</td>
</tr>
<tr>
<td>Greeley, CO 80632</td>
<td>Greeley, CO 80632</td>
</tr>
<tr>
<td>Office Phone: 970-400-3722</td>
<td>Office Phone: 970-400-3723</td>
</tr>
<tr>
<td><a href="mailto:jyork@weldgov.com">jyork@weldgov.com</a></td>
<td><a href="mailto:khettinger@weldgov.com">khettinger@weldgov.com</a></td>
</tr>
</tbody>
</table>

The above referenced individuals are the only representatives with authority to provide any information, clarification, or interpretation regarding the plans, specifications, and any other contract documents or requirements.

A mandatory pre-bid conference will be held. Bids will be accepted only from pre-qualified bidders who attend the mandatory pre-bid conference.

Questions received from bidders along with Weld County responses will be posted on the Weld County web site listed below as they become available.

http://www.co.weld.co.us/Departments/Purchasing/index.html located under Current Request for Bids

If the bidder has a question or requests clarification that involves the bidder's innovative or proprietary means and methods, phasing, scheduling, or other aspects of construction of the project, the Project Engineer will address the question or clarification. The Engineer will keep the bidder's innovation confidential and will not share this information with other bidders.

The Engineer will determine whether questions are innovative or proprietary in nature. If the Engineer determines that a question does not warrant confidentiality, the bidder may withdraw the question. If the bidder withdraws the question, the Engineer will not answer the question and the question will not be documented on the web site. If the bidder does not withdraw the question, the question will be answered, and both the question and answer will be posted on the web site. If the Engineer agrees that a question warrants confidentiality, the Engineer will answer the question, and keep both question and answer confidential. Weld County will keep a record of both question and answer in their confidential file.

All questions shall be directed to the contacts listed above no later than 7:00 A.M. Monday of the week of bid opening. Final questions and answers will be posted no later than Tuesday morning of bid opening week.

END OF SECTION
COMMENCEMENT AND COMPLETION OF WORK

The Contractor shall commence work under the Contract as required in the "Notice to Proceed" letter and will complete all work by December 31, 2019 unless the period for completion is extended otherwise by the County.

END OF SECTION
1

REVISION OF SECTION 101
DEFINITION OF TERMS

Technical Specifications related to construction materials and methods for the work required under this contract shall consist of the “Colorado Department of Transportation, Standard Specifications for Road and Bridge Construction” dated 2017. Where the Project Special Provisions and the CDOT Specifications contradict one another, the more stringent specification shall apply.

Certain terms utilized in the Specifications referred to in the paragraph above shall be interpreted to have different meanings within the scope of this Contract. A summary of redefinitions follows:

Subsection 101.10 “CDOT Resident Engineer” shall mean an employee designated as such by the Weld County Public Works Department.

Subsection 101.28: “Department” shall mean the Weld County Public Works Department.

Subsection 101.29: “Chief Engineer” shall mean the Weld County Public Works Director or designated representative.

Subsection 101.36: Holidays recognized by Weld County are:

- New Year’s Day
- Washington/Lincoln Day
- Memorial Day
- Independence Day
- Labor Day
- Veterans Day
- Thanksgiving
- Christmas

Subsection 101.37: “Inspector” shall mean an employee designated as such by the Weld County Public Works Department.

Subsection 101.48: “CDOT project personnel” shall mean personnel designated as such by the Weld County Public Works Department.

Subsection 101.51 “Project Engineer” shall mean an employee designated as such by the Weld County Public Works Department.

Subsection 101.58: “Region Transportation Director” shall mean Weld County Public Works Director or designated representative.

Subsection 101.65: Roadway prism defined as toe of slope to toe of slope.

Subsection 101.76: “State” shall mean Weld County.

END OF SECTION
REVISION OF SECTION 102
BIDDING REQUIREMENTS AND CONDITIONS

Section 102 of the Standard Specifications is hereby revised for this project as follows:

Subsection 102.02 shall be revised as follows:

In the first paragraph, delete “The Department will publish bidding opportunities to prospective bidders on the CDOT Business Center website.” and replace with “The Department will publish bidding opportunities to prospective bidders on the Weld County Purchasing website at http://www.co.weld.co.us/Departments/Purchasing/index.html located under Current Request for Bids.

Delete the second paragraph and replace with:

“All bidders on the projects shall submit bids by the following method:

Bid Delivery to Weld County:

1. Email. Emailed bids are preferred. Bids may be emailed to: bids@weldgov.com. Emailed bids must include the following statement on the email: “I hereby waive my right to a sealed bid”. An email confirmation will be sent when we receive your bid/proposal. If more than one copy of the bid is requested, you must submit/mail hard copies of the bid proposal.

2. Mail or Hand Delivery. Mailed (or hand delivered) bids should be sent in a sealed envelope with the bid title and bid number on it. Please address to: Weld County Purchasing Department, 1150 O Street, Room #107 Greeley, CO 80631. Please call Purchasing at 970-400-4222 or 4223 if you have any questions.

Subsection 102.05 shall include the following:

After the proposals have been opened, the low responsible bidder may obtain electronic sets of plans and special provisions at no cost from Weld County. Subcontractors and suppliers may obtain plans from the successful bidder.

END SECTION
1

REVISION OF SECTION 103
CONSIDERATION OF PROPOSALS

Section 103 of the Standard Specifications is hereby revised for this project as follows:

Delete subsection 103.01 and replace with the following:

103.01 Consideration of Proposals. After the proposals (bids) are opened and read, they will be evaluated, and the Contract awarded or rejected in accordance with the “Rules” referenced in subsection 102.01

END OF SECTION
REVISION OF SECTION 104
SCOPE OF WORK

Section 104 of the Standard Specifications is hereby revised for this project as follows:

Delete Subsection 104.02(a) and replace as follows:

It is the County’s expectation to complete this project with no change orders resulting in additional cost unless such change orders are initiated by the County. Change orders for differing site conditions will be entertained by the County in the event of extraordinary circumstances. However, the County is under no obligation to approve said change orders. No cost change orders, reduction in cost change orders, and County initiated change orders may occur.

The Contractor shall not be entitled to a change order for Differing Site Conditions. By way of example, Differing Site Conditions included but are not limited to:

1. Encountering groundwater.
2. Discovery of debris (buried or unburied within the ROW).
3. Existing asphalt thicknesses that are different than expected.
4. Lack of on-site appropriate strength materials.
5. Increased costs due to relocations of utilities and/or oil and gas facilities.
6. Increased costs due to ROW or easement acquisitions.
7. Discovery of septic systems, leach fields, or other ancillary wastewater infrastructure.
8. Discovery of unknown irrigation facilities, landscape irrigation systems, or water wells.
10. Unsuitable materials excavation.
11. High water levels in the river for extended periods of time.

During the progress of work, if extraordinary conditions are the party discovering such conditions shall promptly notify the other party in writing of the specific conditions before the site is disturbed and the affected work is performed. The Contractor shall bear the burden of proving that a Differing Site Condition is an extraordinary circumstance, and that it could not reasonably worked around the condition so as to avoid additional costs. Each request for a change order relating to a differing site condition shall be accompanied by a statement signed by a qualified professions setting forth all relevant assumptions made by the Contractor with respect to the condition of the Site, justifying the basis for such assumptions, explaining exactly how the existing conditions are eligible for a change order under the terms of the Contract, and stating the efforts undertaken by the Contractor to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs.

Upon written notifications, the Engineer will investigate the conditions, and determine if an extraordinary condition exists that will cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment, excluding anticipated profits will be made and the Contract modified in writing accordingly. The Engineer will notify the Contractor of the determination whether or not an adjustment of the Contract is warranted. No Contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

Subsection 104.02(c) shall be revised as follows:

(1) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction.
REVISION OF SECTION 104
SCOPE OF WORK

And

(2) When a major item of work is increased in excess of 150 percent or decreased below 50 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 150 percent of original contract item quantity, or in case of a decrease below 50 percent, to the actual amount of work performed. A major item is defined to be any item having an original contract value in excess of 10 percent of the original contract amount.

Subsection 104.05 the provisions regarding rights in and use of Materials found on the Work are replaced with the following:

The Contractor shall not excavate or remove any Material from within the roadway, which is not within the grading limits, as indicated by the slope and grade lines, without authorization from the Inspector.

Subsection 104.06 shall be revised to include the following:

Any excess soil materials generated from excavation shall become the property of the Contractor and shall be hauled to a disposal site approved by the Weld County Inspector. Backfill areas shall be graded such that the final grades are similar to the final grades as described in the Contract Drawings, unless otherwise directed by the Engineer.

The Contractor shall be responsible for removing all construction debris and trash from the jobsite on a daily basis. Any construction debris and trash which may be washed away shall be located, removed, and disposed of away from the site at a certified landfill location.

Any petroleum products accidentally spilled or leaked shall be cleaned up and disposed of immediately. The Contractor shall be held liable for any damages resulting from the spillage or leakage of any hazardous materials channel.

Subsection 104.07 paragraph 4, starting with “Net cost savings…” shall be revised as follows:

Net cost savings on VECPs shall be split equally between the Contractor and Weld County as determined in the Basis of Payment section of this specification. VECPs shall be submitted prior to the start of construction activities relating to the VECP.

Subsection 104.07(d)(2) shall be deleted and replaced as follows:

2. For all VECPs, the incentive payment shall be calculated as follows:

\[
(gross \ cost \ of \ deleted \ work) - (gross \ cost \ of \ added \ work) = (gross \ savings) \\
(gross \ savings) - (Contractor's \ engineering \ costs) - (Weld \ County's \ engineering \ costs) = (net \ savings) \\
Contractor's \ total \ incentive = (net \ savings)/2
\]

Lost opportunity shall not be considered part of the calculations. The Contractor's engineering costs will be reimbursable only for outside consultant costs that are verified by certified billings. Weld County's
3

REVISION OF SECTION 104
SCOPE OF WORK

engineering costs shall be actual consultant costs billed to Weld County and extraordinary in-house personnel labor costs. These labor costs will be calculated at the fixed amount of $100.00 per hour per employee. Project personnel assigned to the field office or who work on the project on a regular basis shall not be included in Weld County’s portion of the costs.

END OF SECTION
1

REVISION OF SECTION 105
CONTROL OF WORK

Section 105 of the Standard Specifications is hereby revised for the project as follows:

Subsection 105.01 the provisions regarding Authority of the Engineer shall include the following:

Weld County has the authority by written order to suspend the Work wholly or in part for the reasons delineated in the Contract Documents.

All employees shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them. If the County determines in its sole discretion that any Person employed by the Contractor or by any Subcontractor is not performing the Work properly and skillfully, then, at the written request of the County, the Contractor or such Subcontractor shall remove such Person and such Person shall not be re-employed on the Project without the prior written approval of the County. If the Contractor or the Subcontractor fails to remove such Person(s) or fails to furnish skilled and experienced personnel for the proper performance of the Work, then the County may, in its sole discretion, suspend the affected portion of the Work by delivery of written notice of such suspension to the Contractor. Such suspension shall in no way relieve the Contractor of any obligation contained in the Contract Documents or entitle the Contractor to a Change Order.

Weld County in its sole discretion may require the Contractor to replace project management staff (Project Manager, Superintendent, Project Engineer, etc.) for any reason. This will also apply to all of the Contractor’s subcontractors. At the written request of the County, the Contractor or such Subcontractor shall remove such Person and such Person shall not be re-employed on the Project without the prior written approval of the County. If the Contractor or the Subcontractor fails to remove such Person(s), then the County may, in its sole discretion, suspend the affected portion of the Work by delivery of written notice of such suspension to the Contractor. Such suspension shall in no way relieve the Contractor of any obligation contained in the Contract Documents or entitle the Contractor to a Change Order.

Subsection 105.02 the provisions regarding Plans, Shop Drawings, Working Drawings, other Submittals and Construction Drawings shall include the following:

Provisions regarding plans, shop drawings, working drawings and construction documents are set forth in the Contract Documents.

Subsection 105.03 the provisions regarding conformity to the Contract are revised as follows:

When the Engineer or Weld County finds the Materials furnished, Work performed, or the finished product are not in conformity with the Contract Documents, and Weld County determines, in its sole discretion, that it has resulted in an inferior or unsatisfactory product, the Work or Materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.

Subsection 105.09 shall be revised as follows: Delete subsections 105.09 and replace with the following:

These specifications, the supplemental specifications, the plans, special provisions, and all supplementary documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work.

In the event of a discrepancy, the order of precedence is as follows:
3
REVISION OF SECTION 105
CONTROL OF WORK

(a) Contract Documents including Exhibits, Addenda, and Appendices

(b) Special Provisions
   i. Weld County Project Special Provisions
   ii. Weld County Standard Special Provisions
   iii. CDOT Project Special Provisions
   iv. CDOT Standard Special Provisions

(c) CDOT Standard Specifications

(d) Plans
   i. Detailed Plans
   ii. Standard Plans
   iii. Calculated dimensions will govern over scaled dimensions

Notwithstanding the foregoing, in the event of conflicting requirements involving any requirement within the Contract Documents, the County shall have the right to determine, in its sole discretion, which requirement(s) apply. The Contractor shall request the County’s determination respecting the order of precedence among conflicting provisions promptly upon becoming aware of any such conflict.

The Contractor shall not take advantage of any apparent error or omission in the Contract. Should it appear that the work to be done or any matter relative thereto is not sufficiently detailed or explained in the Contract Documents, the Contractor shall immediately notify the Project Manager in writing for further written explanations as may be necessary and shall conform to the explanation provided. The Contractor shall promptly notify the Project Manager of all error which it may discover in the Contract Documents and shall obtain specific instructions in writing regarding any such error before proceeding with the work affected thereby. The Project Manager will make corrections and interpretations as necessary to fulfill the intent of the Contract.

The fact that the Contract Documents omit or mis-describe any details of any work which is necessary to carry out the intent of the Contract Documents, that are customarily performed under similar circumstances, shall not relieve the Contractor from performing such omitted work or mis-described details of the work, and they shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a change order except as specifically allowed.

Subsection 105.22 shall be revised as follows:
The Colorado Department of Transportation (CDOT) will not participate in the resolution process for any claims filed by the Contractor. Weld County will be the responsible party to such claims.

Subsection 105.24 is amended as follows:
Delete all references to CDOT and replace with Weld County.

Delete: The venue for all unresolved disputes with an aggregate value $15,000 or less shall be the County Court for the City and County of Denver.

Replace with: The venue for all unresolved disputes with an aggregate value $25,000 or less shall be the County Court for Weld County.
Subsection 105.24(c) is amended as follows:

Delete: Division of Audit, 4201 E. Arkansas Ave, Denver, Co. 80222

Replace with: Weld County Board of Commissioners, 1150 O Street, Greeley, Co. 80632

Subsection 105.24(f) is amended as follows:

In the third paragraph delete “the City and County of Denver”

Replace with: “Weld County”

In the fourth paragraph delete “Denver District Court”

Replace with: “Weld County District Court”

END OF SECTION
Section 107 of the Standard Specifications is hereby revised for the project as follows:

**Subsection 107.01 shall include the following after the first paragraph:**

Failure to comply with all contractual obligations may lead to the suspension, debarment or both of the Contractor as stipulated in the “Rules”.

**Subsection 107.06 shall be revised to include the following:**

The Contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (Rules and Regulations of the Federal Occupational Safety and Health Act of 1970 (OSHA) and as amended).

All facilities and work conditions shall comply with the Colorado and Local Health Department Regulations and with OSHA requirements.

**Subsection 107.15 shall be revised to include the following:**

For this project, the insurance certificates shall name Weld County as an additionally insured party.

**Subsection 107.17 – Delete the third paragraph beginning with “Loss, injury, or damage to the work…” and replace with the following:**

Loss, injury, or damage to the work due to unforeseeable causes beyond the control of and without fault or negligence of the Contractor, including but not restricted to acts of God, such as flood, earthquake, tornado, or other cataclysmic phenomenon or nature shall be restored by the Contractor at no cost to the County.

**Subsection 107.19 shall be revised to include the following:**

The Contractor shall be required to obtain permission to conduct any work, store materials or stockpiles, or park any construction equipment or vehicles on private property. The Contractor shall conduct their work within the right-of-way and easement boundaries shown on the Contract Drawings. If working in the County right-of-way, the Contractor shall obtain a right-of-way permit from the Public Works Right-of-Way Permitting Technician, 970-304-6496.

END OF SECTION
Section 108 of the Standard Specifications is hereby revised for this project as follows:

Subsection 108.01 shall include the following:

Failure to comply with all contractual obligations may lead to the suspension, debarment, or both of the subcontractor, and if necessary, the Contractor as stipulated in the “Rules”.

Delete the second paragraph starting with “The Contractor shall not carry on construction...” in subsection 108.08 and replace with the following:

The Contractor shall not carry on construction operations on Saturdays, Sundays, or holidays unless previously arranged and approved by the Project Manager and Inspector Supervisor. The Contractor shall not perform construction operations on any three or four-day holiday weekend without prior written approval. Requests for weekend construction operations shall be presented in writing to the Project Manager and Inspector Supervisor no later than Wednesday at 5 p.m. prior to the weekend in which the work will be performed. Written requests received after the deadline will be reviewed on a case by case basis. The Project Manager and Inspector Supervisor are not required to provide written approval for weekend inspectable construction operations requests.

In the event, the weekend construction operations involve inspectable work (operations requiring a construction inspector), the Contractor shall provide a credit on the next pay application to the County. The amount credited shall be $200.00 for the first 4 hours and $50.00 per hour per day thereafter for each Inspector required to perform inspections on the inspectable work.

Construction operations shall stop at 5 p.m. the day before the start of the holiday weekend. Construction operations may resume after the holiday weekend has passed. The Contractor shall only make emergency repairs and provide proper protection of the work and the traveling public on the holiday weekend days.

Delete subsection 108.08(a)(2), and replace with the following:

Calendar Day Contract. When the work is on a calendar day basis, one calendar day of contract time will be assessed for each calendar day from the date that Contract time starts. Calendar Day Contracts have been adjusted prior to bid advertisement to account for no work on Saturdays, Sundays, and holidays by increasing the calendar days by the appropriate number of days. As stated in subsection 108.08, no inspectable construction operations shall occur on Saturdays, Sundays, and holidays unless prior approval has been granted. No weather days or less than full time charges days will be granted in this contract.

Delete subsection 108.08(b), and replace with the following:

When the Contract specifies a completion date, all work under the Contract shall be completed on or before the date specified. As stated in subsection 108.08, no inspectable construction operations shall occur on Saturdays, Sundays, and holidays unless prior approval has been granted. No extension of the completion date will be allowed for inclement weather, foreseeable causes, or conditions under the control of the Contractor. If all work under the Contract is not completed on or before the specified completion date, contract time will be assessed for each additional calendar day in accordance with subsection 108.8(a)(2).
Completion Date Contracts have been adjusted prior to bid advertisement to account for Saturdays, Sundays, and holidays by adjusting the completion date by the appropriate number of days. No weather days shall be given.

In subsection 108.09 delete the schedule of liquidated damages and replace with the following:

<table>
<thead>
<tr>
<th>Original Contract Amount ($)</th>
<th>Liquidated Damages per Calendar Day ($)</th>
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END OF SECTION
Section 109 of the Standard Specifications is hereby revised for the project as follows:

**Subsection 109.06(a)** – Delete the second sentence beginning with “The amount retained……”, and replace with the following:

No retainage shall be held on this contract.

**In Subsection 109.07** – Delete and replace with the following:

Partial monthly payments to the Contractor for completed work will include payment only for materials actually incorporated in the work unless otherwise approved by the Engineer.

**END OF SECTION**
Section 626 of the Standard Specifications is hereby revised for this project as follows:

**Subsection 626.01 shall be revised to include the following:**

Construction of a temporary access road into the work areas, and removal of the access road after construction is completed, shall be included in the Mobilization bid item.

**CONSTRUCTION STAGING AND TEMPORARY CONSTRUCTION EASEMENTS:** The Contractor shall take responsibility to find adequate staging area(s) for the project. Any agreements made for staging on private property shall be made in writing and copies of the written agreements shall be provided to the County prior to Construction. All staging areas shall be secured with temporary fencing and restored to original conditions after construction. The Contractor shall provide erosion and sediment control for all staging areas and shall modify the Erosion and Sediment Control Plans to include staging areas.

If the Contractor needs to perform work on private property outside of the Right-of-Way, then the Contractor shall obtain additional TCEs. All agreements made between the Contractor and the private property owners for additional TCEs shall be made in writing and a copy of all written agreements shall be furnished to the County prior to any disturbance. The Contractor shall provide erosion and sediment control for all areas encompassed within the additional TCEs obtained by the Contractor and shall modify the Erosion and Sediment Control Plans to include TCEs.

The Contractor shall inform the property owners and the tenants at the properties prior to construction. The Contractor shall limit construction activities to those areas within the limits of disturbance as shown on the plans to the maximum extent practical. All costs whatsoever the nature required for staging and additional temporary construction easements including temporary fencing and erosion and sediment control shall be considered incidental to the project.

Any disturbance beyond the limits presented on the drawings shall be restored to the original condition at Contractor’s expense. Construction activities, in addition to normal construction procedures, shall include parking of vehicles or equipment, consolidation of construction debris or materials, and disposing of litter and any other action which alters existing conditions. All disturbances outside the Project Limits shall be pre-approved by the County and secured by the Contractor, at Contractor’s expense.

In addition, the Contractor will be required to secure Right of Entry for property owners access that extend beyond the Right of Way Line. No separate payment will be made. Contractor to review the access plans and determine the extent of the right of entry required. Weld County shall be notified of the right of entry prior to entry.

**END OF SECTION**
COLORADO DEPARTMENT OF TRANSPORTATION
PROJECT STANDARD SPECIAL PROVISIONS

<table>
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<tr>
<th>Revision of Section 105 – Disputes and Claims for Contract Adjustments</th>
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<td>(December 7, 2017)</td>
<td>65-97</td>
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</table>
Section 105 of the Standard Specifications is hereby revised for this project as follows:

Delete subsections 105.22, 105.23 and 105.24 and replace with the following:

105.22 Dispute Resolution. Subsections 105.22, 105.23, and 105.24 detail the process through which the parties (CDOT and the Contractor) agree to resolve any issue that may result in a dispute. The intent of the process is to resolve issues early, efficiently, and as close to the project level as possible. Figure 105-1 in the standard special provisions outlines the process. Specified time frames may be extended by mutual agreement of the Engineer and the Contractor. In these subsections, when a time frame ends on a Saturday, Sunday or holiday, the time frame shall be extended to the next scheduled work day.

An issue is a disagreement concerning contract price, time, interpretation of the Contract, or all three between the parties at the project level regarding or relating to the Contract. Issues include, but are not limited to, any disagreement resulting from a delay, a change order, another written order, or an oral order from the Project Engineer, including any direction, instruction, interpretation, or determination by the Project Engineer, interpretations of the Contract provisions, plans, or specifications or the existence of alleged differing site conditions.

The Contractor shall be barred from any administrative, equitable, or legal remedy for any issue which meets either of the following criteria;

1. The Contractor did not to bring the issue to the Project Engineer’s attention in writing within 20 days of the Contractor being aware of the issue.
2. The Contractor fails to continually (weekly or otherwise approved by both parties) work with CDOT towards a resolution.

A dispute is an issue in which the Contractor and CDOT have not been able to resolve and of which the Contractor submits a written formal notice of dispute per section (b) below.

A claim is a dispute not resolved at the Resident Engineer level or resolved after a DRB recommendation.

The term "merit" refers to the right of a party to recover on a claim or dispute, irrespective of quantum, based on the substance, elements, and grounds of that claim or dispute. The term "quantum" refers to the quantity or amount of compensation or time deserved when a claim or dispute is found to have merit.

Disputes from subcontractors, material suppliers, or any other entity not party to the Contract shall be submitted through the Contractor. Review of a pass-through dispute does not create privity of Contract between CDOT and the subcontractor.

An audit may be performed by the Department for any dispute. Refer to subsection 105.24 for audit requirements.

If CDOT does not respond within the specified timelines, the Contractor may advance the dispute to the next level specified herein as made by the Project Engineer shall be made by the Resident Engineer.
The dispute resolution process set forth in this subsection shall be exhausted in its entirety prior to initiation of litigation or arbitration. Failure to comply with the requirements set forth in this subsection shall bar either party from any further administrative, equitable, or legal remedy. If a deadline is missed that does not prejudice either party, further relief shall be allowed.

When the Project Engineer is a Consultant Project Engineer, actions, decisions, and determinations shall be final; see subsection 105.21(b).

When a project has a landscape maintenance period, the Project Engineer will grant partial acceptance in accordance with subsection 105.21(a). This partial acceptance will be project acceptance of all the construction work performed prior to this partial acceptance.

All disputes and claims related to the work in which this partial acceptance is granted shall be submitted within 30 days of the Project Engineer’s partial acceptance.

Should the Contractor’s dispute use the Total Cost approach for calculating damages, damages will be determined by subtracting the contract amount from the total cost of performance. Should the Contractor’s dispute use the Modified Total Cost approach for calculating damages, if the Contractor’s bid was unrealistic in part, and/or some of its costs were unreasonable and/or some of its damages were caused by its own errors, those costs and damages will be deducted from the total cost of performance to arrive at the Modified Total Cost. The Total Cost or Modified Total Cost basis for calculating damages shall not be available for any disputes or claims seeking damages where the Contractor could have kept separate cost records at the time the dispute arose as described in subsection 105.22(a).

(a) Document Retention. The Contractor shall keep full and complete records of the costs and additional time incurred for each dispute for a period of at least three years after the date of final payment or until dispute is resolved, whichever is more. The Contractor, subcontractors, and lower tier subcontractors shall provide adequate facilities, acceptable to the Engineer, for an audit during normal business hours. The Contractor shall permit the Engineer or Department auditor to examine and copy those records and all other records required by the Engineer to determine the facts or contentions involved in the dispute. The Contractor shall identify and segregate any documents or information that the Contractor considers particularly sensitive, such as confidential or proprietary information.

Throughout the dispute, the Contractor and the Project Engineer shall keep complete daily records of extra costs and time incurred, in accordance with the following procedures:

1. Daily records shall identify each operation affected, the specific locations where work is affected, and the potential effect to the project’s schedule. Such records shall also reflect all labor, material, and equipment applicable to the affected operations.
2. On the first work day of each week following the date of the written notice of dispute, the Contractor shall provide the Project Engineer with the daily records for the preceding week.

If the Contractor’s records indicate costs greater than those kept by the Department, the Project Engineer will meet with the Contractor and present his records to the Contractor at the meeting.
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REVISED SECTION 105
DISPUTES AND CLAIMS FOR CONTRACT ADJUSTMENTS

The Contractor shall notify the Engineer in writing within three work days of any inaccuracies noted in, or disagreements with, the Department’s records.

(b) Initial Dispute Resolution Process. To initiate the dispute resolution process the Contractor shall provide a written notice of dispute to the Project Engineer upon the failure of the Parties to resolve the issue through negotiation. Disputes will not be considered unless the Contractor has first complied with specified issue resolution processes such as those specified in subsections 104.02, 106.05, 108.08(a), and 108.08(d).

The Contractor shall supplement the written notice of dispute within 15 days with a written Request for Equitable Adjustment (REA) providing the following:

1. The date of the dispute.
2. The nature of the circumstances which caused the dispute.
3. A detailed explanation of the dispute citing specific provisions of the Contract and any basis, legal or factual, which support the dispute.
4. If any, the estimated quantum, calculated in accordance with methods set forth in subsection 105.24(b)12., with supporting documentation.
5. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption. This analysis shall meet the requirements of subsection 108.08(d).

The Contractor shall submit as much information on the quantum and impacts to the Contract time as is reasonably available with the REA and then supplement the REA as additional information becomes available. If the dispute escalates to the DRB process, neither party shall provide or present to the DRB any issue or any information that was not contained in the Request for Equitable Adjustment and fully submitted in writing to the Project Engineer and Resident Engineer during the 105.22 process.

(c) Project Engineer Review. Within 15 days after receipt of the REA, the Project Engineer will meet with the Contractor to discuss the merits of the dispute. Within seven days after this meeting, the Project Engineer will issue a written decision on the merits of the dispute.

The Project Engineer will either deny the merits of the dispute or notify the Contractor that the dispute has merit. This determination will include a summary of the relevant facts, Contract provisions supporting the determination, and an evaluation of all scheduling issues that may be involved.

If the dispute is determined to have merit, the Contractor and the Project Engineer will determine the adjustment in payment, schedule, or both within 30 days. When a satisfactory adjustment is determined, it shall be implemented in accordance with subsections 106.05, 108.08, 109.04, 109.05 or 109.10 and the dispute is resolved.

If the Contractor accepts the Project Engineer’s denial of the merits of the dispute, the dispute is resolved and no further action will be taken. If the Contractor does not respond in seven days, it will be assumed he has accepted the denial. If the Contractor rejects the Project Engineer’s denial of the merits of the dispute or a satisfactory adjustment of payment or schedule cannot be agreed upon within
REVISION OF SECTION 105  
DISPUTES AND CLAIMS FOR CONTRACT ADJUSTMENTS

30 days, the Contractor may further pursue resolution of the dispute by providing written notice to the Resident Engineer within seven days, according to subsection 105.22(d).

(d) **Resident Engineer Review.** Within seven days after receipt of the Contractor’s written notice to the Resident Engineer of unsatisfactory resolution of the dispute, the Project Engineer and Resident Engineer will meet with the Contractor to discuss the dispute. Meetings shall continue weekly for a period of up to 30 days and shall include a Contractor’s representative with decision authority above the project level.

If these meetings result in resolution of the dispute, the resolution will be implemented in accordance with subsections 108.08, 109.04, 109.05, or 109.10 and the dispute is resolved.

If these meetings do not result in a resolution or the participants mutually agree that they have reached an impasse, the dispute shall be presented to the Dispute Review Board in accordance with subsection 105.23.

105.23 **Dispute Review Board.** A Dispute Review Board (DRB) is an independent third party that will provide specialized expertise in technical areas and administration of construction contracts. The DRB will assist in and facilitate the timely and equitable resolution of disputes between CDOT and the Contractor in an effort to avoid animosity and construction delays, and to resolve disputes as close to the project level as possible. The DRB shall be established and operate as provided herein and shall serve as an independent and impartial board. A DRB member shall not be called as witness for future litigation.

There are two types of DRBs: the "On Demand DRB" and the "Standing DRB". The DRB shall be an "On Demand DRB" unless a "Standing DRB" is specified in the Contract. An On Demand DRB shall be established only when the Project Engineer initiates a DRB review in accordance with subsection 105.23(a). A Standing DRB, when specified in the Contract, shall be established at the beginning of the project.

(a) **Initiation of Dispute Review Board Review.** When a dispute has not been resolved in accordance with subsection 105.22, the Project Engineer will initiate the DRB review process within 5 days after the period described in subsection 105.22(d).

(b) **Formation of Dispute Review Board.** DRBs will be established in accordance with the following procedures:

1. CDOT, in conjunction with the Colorado Contractors Association, will maintain a statewide list of pre-approved DRB candidates experienced in construction processes and the interpretation of contract documents and the resolution of construction disputes. Only individuals who have completed training (currently titled DRB Administration & Practice Training) through the Dispute Resolution Board Foundation or otherwise approved by CDOT can be a DRB member. DRB nominees shall be selected from the list of Pre-Approved candidates. When a DRB is formed, the parties shall execute the agreement set forth in subsection 105.23(l).

2. If the dispute has a value of $250,000 or less, the On Demand DRB shall have one member. The Contractor and CDOT shall select the DRB member and execute the Three-Party Agreement within 30 days of initiating the DRB process. If the parties do not agree on the DRB member, each shall select five candidates. Each party shall numerically rank their list using a scale of one to five with one being their first choice and five being their last choice. If common candidates are listed, but the
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If the parties cannot agree, that common candidate with the lowest combined numerical ranking shall be selected. If there is no common candidate, the lists shall be combined, and each party shall eliminate three candidates from the list. Each party shall then numerically rank the remaining candidates, with No. 1 being the first choice. The candidate with the lowest combined numerical ranking shall be the DRB member. The CDOT Project Engineer will be responsible for having all parties execute the agreement.

3. If the dispute has a value over $250,000, the On Demand DRB shall have three members. The Contractor and CDOT shall each select a member and those two members shall select a third. Once the third member is approved the three members will nominate one of them to be the Chair and execute the Three-Party Agreement within 45 days of initiating the DRB process.

4. The Standing DRB shall always have three members. The Contractor and CDOT shall each select a member and those two members shall select a third member. Once the third member is approved the three members will nominate one of them to be the Chair. The Contractor and CDOT shall submit their proposed Standing DRB members within 5 days of execution of the Contract. The third member shall be approved before the Pre-Construction Conference. The third member shall be selected within 15 days of execution of the Contract. Prior to construction starting the parties shall execute the Three-Party Agreement. The CDOT Project Engineer will be responsible for having all parties execute the agreement. The Project Engineer will invite the Standing DRB members to the Preconstruction and any Partnering conferences.

5. DRB members shall not have been involved in the administration of the project under consideration. CDOT and the Contractor shall inform its selected DRB member who the major firms/people are on the project and request its selected DRB member to review the CDOT disclosure requirements and Canon of Ethics and then submit a disclosure statement which shall also be submitted to the other party. DRB candidates shall complete the DRB Disclosure Requirements & DRB Nominee Disclosure Form and disclose to the parties the following relationships:
   a. Prior employment with either party
   b. Prior or current financial interests or ties to either party
   c. Prior or current professional relationships with either party
   d. Anything else that might bring into question the impartiality or independence of the DRB member
   e. Prior to agreeing to serve on a DRB, members shall notify all parties of any other CDOT DRB’s they are serving or that they will be participating in another DRB.

If either party objects to the selection of the chair or other DRB members based on the disclosures, or based on information not disclosed, which might bring into question the impartiality, independence, or performance of the potential member, that potential member shall not be placed on the Board.

6. There shall be no ex parte communications with the DRB at any time.
   a. The service of a Board member may be terminated only by written agreement of both parties. If a Board member resigns, is unable to serve, or is terminated, a new Board member shall be selected within four weeks in the same manner as the Board member who was removed was originally selected.
b. **Additional Responsibilities of the Standing Disputes Review Board**

33. General. No later than 10 days after the Three-Party Agreement has been signed by the Chief Engineer, the DRB will coordinate with the parties on the date and location of the initial DRB meeting.
   a. Obtain copies of the Contract documents and Contractor’s schedules for each of the Board members.
   b. Agree on the location of future meetings, which shall be reasonably close to the project site.
   c. Establish an address and telephone number for each Board member for the purposes of Board business.

34. Regular meetings. Regular meetings of the Board shall be held approximately every 120 to 180 days throughout the life of the Contract, except that this schedule may be modified to suit developments on the job as the work progresses. Regular meetings shall be attended by representatives of the Contractor and the Department.

35. The Board shall establish an agenda for each meeting which will cover all items that the Board considers necessary to keep it abreast of the project such as construction status, schedule, potential problems and solutions, status of past claims and disputes, and potential claims and disputes. Copies of each agenda shall be submitted to the Contractor and the Department at least seven days before the meeting date. Oral or written presentations or both shall be made by the Contractor and the Department as necessary to give the Board all the data the Board requires to perform its functions. The Board will prepare minutes of each meeting, circulate them to all participants for comments and approval, and issue revised minutes before the next meeting. As a part of each regular meeting, a field inspection trip of all active segments of the work at the project site may be made by the Board, the Contractor, and the Department.

4. **Advisory Opinions**
   a) Advisory opinions are typically used soon after the parties find they have a potential dispute and have conducted preliminary negotiations but before expenditure of additional resources and hardening their positions. Advisory opinions provide quick insight into the DRB’s likely assessment of the dispute. This process is quick and may be entirely oral and does not prejudice the opportunity for a DRB hearing.
   b) Both parties must agree to seek an advisory opinion and so notify the chairperson. The procedure for requesting and issuing advisory opinions should be discussed with the DRB at the first meeting with the parties.
   c) The DRB shall issue a one-page written opinion within 5 days of the hearing.
   d) The opinion is only advisory and does not require an acceptance or rejection by either party. If the dispute is not resolved and a hearing is held, the oral presentations and advisory opinion are completely disregarded and the DRB hearing procedure is followed. Advisory opinions should be limited to merit issues only.

   c. **Arranging a Dispute Review Board Hearing.** When the Project Engineer initiates the DRB review process, the Project Engineer will:

   1. Contact the Contractor and the DRB to coordinate an acceptable hearing date and time. The hearing shall be held at the Resident Engineer’s office unless an alternative location is agreed to by both parties. Unless otherwise agreed to by both parties an On Demand DRB hearing will be held within 30 days after the Three-Party Agreement is signed by the CDOT
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DISPUTES AND CLAIMS FOR CONTRACT ADJUSTMENTS

December 7, 2017

Chief Engineer. Unless otherwise agreed to by both parties, a Standing DRB hearing will be held within 30 days after the DRB has been requested per subsection 105.23(a).

2. Ensure DRB members have copies of all documents previously prepared by the Contractor and CDOT pertaining to the dispute, the DRB request, the Contract documents, and the special provisions at least two weeks before the hearing.

Pre-Hearing Submittal: All Pre-Hearing Submittals shall include only arguments, supporting documentation, quantum, and other information as previously submitted in writing and as previously disputed in the formal dispute process covered in subsection 105.22 (b), (c), and (d). All Pre-Hearing Submittals planned to be used at the hearing, shall be submitted to the other party 35 days prior to the hearing for review for compliance with this requirement. If either party contends there are new arguments, supporting documents, new quantum, or any new information in a pre-Hearing Submittal, and the other party objects to this information being presented to the DRB, the objecting party shall submit its objections in writing to the other party within 10 days. The parties shall meet within 5 days to reconcile the objection before the submittal is submitted to the DRB. If the parties cannot reconcile the objection, but the new argument, supporting documentation, new quantum, or new information does not change either party’s position on merit or quantum, the information shall be allowed in the Pre-Hearing submittal and presented to the DRB. If the parties cannot reconcile the objections within the 5 days allowed, each party shall submit a one-page brief on their objections, but not the actual information objected to, to the DRB for a decision on the use of the documents. The DRB shall not approve any information simply because it is relevant to the dispute or referenced during the dispute. Neither party shall attempt to present anything to the DRB which they did not present to the other party during the dispute process. The dispute process shall be delayed while this determination is being made and a new hearing date set, if necessary. Pre-Hearing Submittals to the DRB are as follows:

1. Joint Statement: At least 20 days prior to the hearing the Joint Statement(s) shall be submitted to the DRB. The parties shall make every attempt to agree upon a Joint Statement of the dispute. If the parties cannot agree on the Joint Statement, each party’s independent statement shall be submitted to the DRB. The Joint Statement shall summarize, in a few sentences, the nature of the dispute(s) and the scope of the desired decision.

2. Position Paper: At least 15 days prior to the hearing, CDOT and the Contractor shall submit by email to the DRB Chairperson their party’s Position Paper. The DRB Chairperson shall simultaneously distribute by email the Position Papers to all parties and other DRB members, if any. The position paper shall contain the following:
   a) The basis and justification for the party’s position, with reference to specific contract language and the supporting documents of each element of the disputes.
   b) A list of proposed attendees for the hearing. In the event of any objection by a party, the DRB shall make a final determination as to who attends the hearing.
   c) When the scope of the hearing includes quantum, full cost details, calculated in accordance with methods set forth in subsection 105.24(b)12. The Scope of the hearing will not include quantum if CDOT has ordered an audit and that audit has not been completed.

3. Supporting Documents; At least 15 days prior to the hearing, each party shall submit a copy of all its supporting documents to the DRB and the other party. Supporting documents include any presentations, visuals, or handouts planned to be used at the hearing. To
minimize duplication and repetitiveness, the parties are encouraged to identify a common set of documents that will be referred to by both parties and submit them in a separate package to the DRB at least 20 days prior to the hearing. Common documents are communications between parties, speed memos, change orders, schedules, request for equitable adjustment, and correspondence, and any document used in the Subsection 105.22 process. CDOT shall submit the common set of documents to the Board and Contractor.

4. If relevant to the dispute and requested by the Board, the Engineer shall provide to the DRB either website links, electronic pdf’s, or hard copies of pertinent contract documents such as plans, specifications, and M&S Standards.

d. **Pre-Hearing Phone Conference**: A pre-hearing phone conference with all Board members and the parties shall be conducted as soon as a hearing date is established, but no later than 10 days prior to the hearing. The DRB Chairperson shall explain the specifics of how the hearing will be conducted including how the two parties will present their information. (Ex. Each party makes a full presentation of their positions or presentations will be made on a “point by point” basis with each party making a presentation only on the individual dispute issue before moving onto the next issue.)

If the pre-hearing position papers and documents have been received by the DRB prior to the conference call, the Chairperson shall discuss the estimated hours of review and activities for the disputes (such as time spent evaluating and preparing recommendation on specific issues presented to the DRB). If the pre-hearing position papers and documents have not been received by the Board prior to the conference call, another conference call will be scheduled during the initial conference call to discuss the estimated hours of review. The Engineer shall coordinate the conference call.

e. **Dispute Review Board Hearing**. The DRB shall preside over a hearing. The chairperson shall control the hearing and conduct it as follows:

1. An employee of CDOT presents a brief description of the project and the status of construction on the project.
2. The party that requested the DRB presents the dispute in detail as supported by previously submitted information and documentation in the pre-hearing position paper. No new information or disputes will be heard or addressed by the DRB. Rebuttals of the other party’s arguments shall not be presented at this time.
3. The other party presents its position in detail as supported by previously submitted information and documentation.
4. The party that requested the DRB presents their rebuttals followed by the other party’s rebuttals.
5. Upon completion of their presentations and rebuttals, both parties and the DRB will be provided the opportunity to exchange questions and answers. Questions from the parties shall be directed to the Chairperson. Attendees may respond only when board members request a response.
6. Employees of each party are responsible for leading presentations at the DRB hearing.
7. Attorneys shall not participate in the hearing unless the DRB specifically addresses an issue to them or unless agreed to by both parties. Should the parties disagree on attorney participation, the DRB shall decide on what, if any, participation will be permitted. Attorneys representing the parties are permitted to attend the hearing, provided their presence has been noted in the pre-hearing submittal.
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8. Either party may use experts only if the expert has previously presented to the other party before the DRB process. A party intending to offer an outside expert's analysis at the hearing shall disclose such intention in the pre-hearing position paper. The expert's name and a general statement of the area of the dispute that will be covered by his presentation shall be included in the disclosure. The other party may present an outside expert to address or respond to those issues that may be raised by the disclosing party's outside expert.

9. If both parties approve, the DRB may retain an outside expert. The DRB chairperson shall include the cost of the outside expert in the DRB's regular invoice. CDOT and the Contractor shall equally bear the cost of the services of the outside expert employed by the DRB.

10. If either party attempts to present an argument, documentation, quantum, or new information which the other party feels was not in the Pre-Hearing submittals, the chairperson shall require the party to demonstrate where in the Pre-Hearing submittal the information in question resides.

11. If either party fails to timely deliver a position paper, the DRB may reschedule the hearing one time. On the final date and time established for the hearing, the DRB shall proceed with the hearing using the information that has been submitted.

12. If a party fails to appear at the hearing, the DRB shall proceed as if all parties were in attendance.

f. Dispute Review Board Recommendation. The DRB shall issue a Recommendation in accordance with the following procedures:

1. The DRB shall not make a recommendation on the dispute at the meeting. Prior to the closure of the hearing, the DRB members and the Contractor and CDOT together will discuss the time needed for analysis and review of the dispute and the issuance of the DRB's recommendation. The maximum time shall be 30 days unless otherwise agreed to by both parties. At a minimum, the recommendation shall contain all the elements listed in Rule 35, Form of Award, of the Arbitration Regular Track Provisions listed at the end of subsection 105.24.

2. After the meeting has been closed, the DRB shall prepare a written Recommendation signed by each member of the DRB. In the case of a three-member DRB, where one-member dissents that member shall prepare a written dissent and sign it.

3. The chairperson shall transmit the signed Recommendation and any supporting documents to both parties.

g. Clarification and Reconsideration of Recommendation. Either party may request in writing a clarification or reconsideration of a decision within ten days following receipt of the Recommendation. Within ten days after receiving the request, the DRB shall provide written clarification or reconsideration to both parties.

Requests for clarification or reconsideration shall be submitted in writing simultaneously to the DRB and to the other party.

The Board shall not accept requests for reconsideration that amount to a renewal of a prior argument or additional argument based on facts available at the time of the hearing. The Board shall not consider any documents or arguments which have not been made a part of the pre-hearing submittal other than clarification and data supporting previously submitted documentation.

Only one request for clarification or reconsideration per dispute from each party will be allowed.

h. Acceptance or Rejection of Recommendation. CDOT and the Contractor shall submit their written acceptance or rejection of the Recommendation, in whole or in part, concurrently to the other party and
to the DRB within 14 days after receipt of the Recommendation or following receipt of responses to requests for clarification or reconsideration. If the parties accept the Recommendation or a discreet part thereof, it will be implemented in accordance with subsections 108.08, 109.04, 109.05, or 109.10 and the dispute is resolved. If either party rejects the Recommendation in whole or in part, it shall give written explanation to the other party and the DRB within 14 days after receiving the Recommendation. When the Recommendation is rejected in whole or in part by either party, the other party may either abandon the dispute or pursue a formal claim in accordance with subsection 105.24. If either party fails to submit its written acceptance or rejection of the Dispute Board’s recommendation, according to these specifications, such failure shall constitute that party’s acceptance of the Board’s recommendation.

i. Admissibility of Recommendation. Recommendations of a DRB issued in accordance with subsection 105.23 are admissible in subsequent proceedings but shall be prefaced with the following paragraph: This Recommendation may be taken under consideration with the understanding that:
1. The DRB Recommendation was a proceeding based on presentations by the parties.
2. No fact or expert witnesses presented sworn testimony or were subject to cross-examination.
3. The parties to the DRB were not provided with the right to any discovery, such as production of documents or depositions.
4. There is no record of the DRB hearing other than the Recommendation.

j. Cost and Payments.
1. General Administrative Costs. The Contractor and the Department shall equally share the entire cost of the following to support the Board’s operation:
   a) Copies of Contract and other relevant documentation
   b) Meeting space and facilities
   c) Secretarial Services
   d) Telephone
   e) Mail
   f) Reproduction
   g) Filing

The Department and the Contractor shall bear the costs and expenses of the DRB equally. Each DRB board member shall be compensated at an agreed rate of $1,200 per day if time spent on-site per meeting is greater than four hours. Each DRB board member shall be compensated at an agreed rate of $800 per day if time spent on-site per meeting is less than or equal to four hours. The time spent traveling to and from each meeting shall be reimbursed at $50 per hour if the travel distance is more than 50 miles. The agreed daily and travel time rates shall be considered full compensation for on-site time, travel expenses, transportation, lodging, time for travel of more than 50 miles and incidentals for each day, or portion thereof that the DRB member is at an authorized DRB meeting. No additional compensation will be made for time spent by DRB members in review and research activities outside the official DRB meetings unless that time, (such as time spent evaluating and preparing recommendations on specific issues presented to the DRB), has been specifically agreed to in advance by the Department and Contractor. Time away from the project that has been specifically agreed to in advance by the parties will be compensated at an agreed rate of $125 per hour. The agreed amount of $125 per hour shall include all incidentals. Members serving on more than one DRB, regardless of the number of meetings per day, shall not be paid more than the all-inclusive rate per day or rate per hour for an individual project.
2. Payments to Board Members and General Administrative Costs. Each Board member shall submit an invoice to the Contractor for fees and applicable expenses incurred each month following a month in which the Board members participated in Board functions. Such invoices shall be in the format established by the Contractor and the Department. The Contractor shall submit to the Department copies of all invoices. No markups by the Contractor will be allowed on any DRB costs. The Department will split the cost by authorizing 50 percent payment on the next progress payment. The Contractor shall make all payments in full to Board members within seven calendar days after receiving payment from the Department for this work.

  k. Dispute Review Board Three Party Agreement

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<th>DISPUTE REVIEW BOARD</th>
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THIS THREE-PARTY AGREEMENT, made as of the date signed by the Chief Engineer below, by and between: the Colorado Department of Transportation, hereinafter called the “Department”; and ________________________, hereinafter called the “Contractor”; and ________________________, hereinafter called the “Dispute Review Board” or “Board”.

WHEREAS, the Department is now engaged in the construction of the ________________________, [Project Name] and

WHEREAS, the Contract provides for the establishment of a Board in accordance with subsections 105.22 and 105.23 of the specifications.

NOW, THEREFORE, it is hereby agreed:

ARTICLE I
DESCRIPTION OF WORK AND SERVICES
The Department and the Contractor shall form a Board in accordance with this agreement and the provisions of subsection 105.23.

ARTICLE II
COMMITMENT ON PART OF THE PARTIES HERETO
The parties hereto shall faithfully fulfill the requirements of subsection 105.23 and the requirements of this agreement.

ARTICLE III
COMPENSATION
The parties shall share equally in the cost of the Board, including general administrative costs (meeting space and facilities, secretarial services, telephone, mail, reproduction, filing) and the member’s individual fees. Reimbursement of the Contractor’s share of the Board expenses for any reason is prohibited.
DISPUTE REVIEW BOARD
THREE PARTY AGREEMENT PAGE 2
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The Contractor shall make all payments in full to Board members. The Contractor will submit to the Department an itemized statement for all such payments, and the Department will split the cost by including 50 percent payment on the next progress payment. The Contractor and the Department will agree to accept invoiced costs prior to payment by the Contractor.

Board members shall keep all fee records pertaining to this agreement available for inspection by representatives of the Department and the Contractor for a period of three years after the termination of the Board members’ services.

Payment to each Board member shall be at the fee rates established in subsection 105.23 and agreed to by each Board member, the Contractor, and the Department. In addition, reimbursement will be made for applicable expenses.

Each Board member shall submit an invoice to the Contractor for fees incurred each month following a month in which the members participated in Board functions. Such invoices shall be in the format established by the Contractor and the Department.

Payments shall be made to each Board member within 60 days after the Contractor and Department have received all the applicable billing data and verified the data submitted by that member. The Contractor shall make payment to the Board member within seven calendar days of receipt of payment from the Department.

ARTICLE IV
ASSIGNMENT

Board members shall not assign any of the work to be performed by them under this agreement. Board members shall disclose any conflicts of interest including but not limited to any dealings with the either party in the previous five years other than serving as a Board member under other contracts.

ARTICLE V
COMMENCEMENT AND TERMINATION OF SERVICES

The commencement of the services of the Board shall be in accordance with subsection 105.23 of the specifications and shall continue until all assigned disputes under the Contract which may require the Board’s services have been heard and a Recommendation has been issued by the Board as specified in subsection 105.23. If a Board member is unable to fulfill his responsibilities for reasons specified in subsection 105.23(b)7, he shall be replaced as provided therein, and the Board shall fulfill its responsibilities as though there had been no change.

ARTICLE VI
LEGAL RELATIONS

The parties hereto mutually agree that each Board member in performance of his duties on the Board is acting as an independent contractor and not as an employee of either the Department or the Contractor. Board members will guard their independence and avoid any communication about the substance of the dispute without both parties being present.
The Board members are absolved of any personal liability arising from the Recommendations of the Board. The parties agree that members of the dispute review board panel are acting as mediators for purposes of C.R.S. § 13-22-302(4) and, as such, the liability of any dispute review board member shall be limited to willful and wanton misconduct as provided for in C.R.S. § 13-22-305(6).

DRB members shall not be called as witness for future litigation.

105.24 Claims for Unresolved Disputes. The Contractor may file a claim only if the disputes resolution process described in subsections 105.22 and 105.23 has been exhausted without resolution of the dispute. Other methods of nonbinding dispute resolution, exclusive of arbitration and litigation, can be used if agreed to by both parties.

This subsection applies to any unresolved dispute or set of disputes between CDOT and the Contractor with an aggregate value of more than $15,000. Unresolved disputes with an aggregate value of more than $15,000 from subcontractors, materials suppliers or any other entity not a party to the Contract shall be submitted through the Contractor in accordance with this subsection as a pass-through claim. Review of a pass-through claim does not create privity of Contract between CDOT and any other entity.
Subsections 105.22, 105.23 and 105.24 provide both contractual alternative dispute resolution processes and constitute remedy-granting provisions pursuant to Colorado Revised Statutes which must be exhausted in their entirety.

Merit-binding arbitration or litigation proceedings must commence within 180-calendar days of the Chief Engineer's decision, absent written agreement otherwise by both parties.

The venue for all unresolved disputes with an aggregate value $15,000 or less shall be the County Court for the City and County of Denver.

Non-binding Forms of alternative dispute resolution such as Mediation are available upon mutual agreement of the parties for all claims submitted in accordance with this subsection.

The cost of the non-binding ADR process shall be shared equally by both parties with each party bearing its own preparation costs. The type of nonbinding ADR process shall be agreed upon by the parties and shall be conducted within the State of Colorado at a mutually acceptable location. Participation in a nonbinding ADR process does not in any way waive the requirement that merit-binding arbitration or litigation proceedings must commence within 180-calendar days of the Chief Engineer's decision, absent written agreement otherwise by both parties.

(a) Notice of Intent to File a Claim.
Within 30 days after rejection of the Dispute Resolution Board’s Recommendation issued in accordance with subsection 105.23, the Contractor shall provide the Region Transportation Director with a written notice of intent to file a claim. The Contractor shall also send a copy of this notice to the Resident Engineer. For the purpose of this subsection Region Transportation Director shall mean the Region Transportation Director or the Region Transportation Director’s designated representative. CDOT will acknowledge in writing receipt of Notice of Intent within 7 days.

(b) Claim Package Submission. Within 60 days after submitting the notice of intent to file a claim, the Contractor shall submit five copies of a complete claim package representing the final position the Contractor wishes to have considered. All claims shall be in writing and in sufficient detail to enable the RTD to ascertain the basis and amount of claim. The claim package shall include all documents supporting the claim, regardless of whether such documents were provided previously to CDOT.

If requested by the Contractor the 60-day period may be extended by the RTD in writing prior to final acceptance. As a minimum, the following information shall accompany each claim:
1. A claim certification containing the following language, as appropriate:
   a. For a direct claim by the Contractor:
CONTRACTOR’S CLAIM CERTIFICATION
Under penalty of law for perjury or falsification, the undersigned, __________ (name) , _______ (title) __________, of __________ (company) __________, hereby certifies that the claim of $________________ for extra compensation and ___ Days additional time, made herein for work on this contract is true to the best of my knowledge and belief and supported under the Contract between the parties. This claim package contains all available documents that support the claims made herein and I understand that no additional information, other than for clarification and data supporting previously submitted documentation, may be presented by me.

Dated ________________________ /s/ __________________________________________
Subscribed and sworn before me this _____ day of ________________________________
________________________________________

NOTARY PUBLIC
My Commission Expires: _______________________

b. For a pass-through claim:

PASS-THROUGH CLAIM CERTIFICATION
Under penalty of law for perjury or falsification, the undersigned, __________ (name) , _______ (title) __________, of __________ (company) __________, hereby certifies that the claim of $________________ for extra compensation and ___ Days additional time, made herein for work on this Project is true to the best of my knowledge and belief and supported under the contract between the parties. This claim package contains all available documents that support the claims made herein and I understand that no additional information, other than for clarification and data supporting previously submitted documentation, may be presented by me.

Dated ________________________ /s/ __________________________________________
Subscribed and sworn before me this _____ day of ________________________________
________________________________________

NOTARY PUBLIC
My Commission Expires: _______________________

Dated ________________________ /s/ __________________________________________
The Contractor certifies that the claim being passed through to CDOT is passed through in good faith and is accurate and complete to the best of my knowledge and belief.

Dated ________________________ /s/ __________________________________________
Subscribed and sworn before me this _____ day of ________________________________
________.

________________________________________
NOTARY PUBLIC
My Commission Expires: _______________________
3. The date on which facts were discovered which gave rise to the claim.
4. The name, title, and activity of all known CDOT, Consultant, and other individuals who may be knowledgeable about facts giving rise to such claim.
5. The name, title, and activity of all known Contractor, subcontractor, supplier and other individuals who may be knowledgeable about facts giving rise to such claim.
6. The specific provisions of the Contract, which support the claim and a statement of the reasons why such provisions support the claim.
7. If the claim relates to a decision of the Project Engineer, which the Contract leaves to the Project Engineer’s discretion, the Contractor shall set out in detail all facts supporting its position relating to the decision of the Project Engineer.
8. The identification of any documents and the substance of all oral communications that support the claim.
9. Copies of all known documents that support the claim.
10. The Dispute Review Board Recommendation.
11. If an extension of contract time is sought, the documents required by subsection 108.08(d).
12. If additional compensation is sought, the exact amount sought and a breakdown of that amount into the following categories:
   a. These categories represent the only costs that, if applicable, are recoverable by the Contractor. All other costs or categories of costs are not recoverable:
      (1) Actual wages and benefits, including FICA, paid for additional labor
      (2) Costs for additional bond, insurance and tax
      (3) Increased costs for materials
      (4) Equipment costs calculated in accordance with subsection 109.04(c) for Contractor owned equipment and based on certified invoice costs for rented equipment
      (5) Costs of extended job site overhead (only applies if the dispute also includes a time extension)
      (6) Salaried employees assigned to the project (only applies if the dispute includes a time extension or if the dispute required salaried employee(s) to be added to the Project.)
      (7) Claims from subcontractors and suppliers at any level (the same level of detail as specified herein is required for all such claims)
      (8) An additional 16 percent will be added to the total of items (1) through (7) as compensation for items for which no specific allowance is provided, including profit and home office overhead.
      (9) Interest shall be paid in accordance with CRS 5-12-102 beginning from the date of the Notice of Intent to File Claim
   b. In adjustment for the costs as allowed above, the Department will have no liability for the following items of damages or expense:
      (1) Profit in excess of that provided in 12.a.(8) above
      (2) Loss of Profit
      (3) Additional cost of labor inefficiencies in excess of that provided in A. above
      (4) Home office overhead in excess of that provided in A. above
      (5) Consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities, and insolvency
      (6) Indirect costs or expenses of any nature in excess of that provided in A. above
   c. Attorney’s fees, claim preparation fees, and expert fees Audit. An audit may be performed by the Department for any dispute or claim, and is mandatory for all disputes and claims with amounts greater than $250,000. All audits will be complete within 60 days of receipt of the complete claim package, provided the Contractor allows the auditors
reasonable and timely access to the Contractor’s books and records. For all claims with amounts greater than $250,000 the Contractor shall submit a copy of certified claim package directly to the CDOT Audit Unit at the following address:

Division of Audit
4201 E. Arkansas Ave
Denver, Co. 80222

d. Region Transportation Director Decision. When the Contractor properly files a claim, the RTD will review the claim and render a written decision to the Contractor to either affirm or deny the claim, in whole or in part, in accordance with the following procedure.

The RTD may consolidate all related claims on a project and issue one decision, provided that consolidation does not extend the time period within which the RTD is to render a decision. Consolidation of unrelated claims will not be made.

The RTD will render a written decision to the Contractor within 60 days after the receipt of the claim package or receipt of the audit whichever is later. In rendering the decision, the RTD: (1) will review the information in the Contractor's claim; (2) will conduct a hearing if requested by either party; and (3) may consider any other information available in rendering a decision.

The RTD will assemble and maintain a claim record comprised of all information physically submitted by the Contractor in support of the claim and all other discoverable information considered by the RTD in reaching a decision. Once the RTD assembles the claim record, the submission and consideration of additional information, other than for clarification and data supporting previously submitted documentation, at any subsequent level of review by anyone, will not be permitted.

The RTD will provide a copy of the claim record and the written decision to the Contractor describing the information considered by the RTD in reaching a decision and the basis for that decision. If the RTD fails to render a written decision within the 60 day period, or within any extended time period as agreed to by both parties, the Contractor shall either: (1) accept this as a denial of the claim, or (2) appeal the claim to the Chief Engineer, as described in this subsection.

If the Contractor accepts the RTD decision, the provisions of the decision shall be implemented in accordance with subsections 108.08, 109.04, 109.05, or 109.10 and the claim is resolved.
If the Contractor disagrees with the RTD decision, the Contractor shall either: (1) accept the RTD decision as final, or (2) file a written appeal to the Chief Engineer within 30 days from the receipt of the RTD decision. The Contractor hereby agrees that if a written appeal is not properly filed, the RTD decision is final.

e. Chief Engineer Decision. When a claim is appealed, the RTD will provide the claim record to the Chief Engineer. Within 15 days of the appeal either party may submit a written request for a hearing with the Chief Engineer or duly authorized Headquarters delegates. The Chief Engineer or a duly authorized Headquarters delegate will review the claim and render a decision to affirm, overrule, or modify the RTD decision in accordance with the following.

The Contractor’s written appeal to the Chief Engineer will be made a part of the claim record.
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The Chief Engineer will render a written decision within 60 days after receiving the written appeal. The Chief Engineer will not consider any information that was not previously made a part of the claim record, other than clarification and data supporting previously submitted documentation.

The Contractor shall have 30 days to accept or reject the Chief Engineer's decision. The Contractor shall notify the Chief Engineer of its acceptance or rejection in writing.

If the Contractor accepts the Chief Engineer's decision, the provisions of the decision will be implemented in accordance with subsections 108.08, 109.04, 109.05, or 109.10 and the claim is resolved.

If the Contractor disagrees with the Chief Engineer's decision, the Contractor shall either (1) pursue an alternative dispute resolution process in accordance with this specification or (2) initiate litigation or merit binding arbitration in accordance with subsection 105.24(f).

If the Chief Engineer does not issue a decision as required, the Contractor may immediately initiate either litigation or merit binding arbitration in accordance with subsection 105.24(f).

For the convenience of the parties to the Contract it is mutually agreed by the parties that any merit binding arbitration or De Novo litigation shall be brought within 180-calendar days from the date of the Chief Engineer's decision. The parties understand and agree that the Contractor's failure to bring suit within the time period provided, shall be a complete bar to any such claims or causes of action.

f. De Novo Litigation or Merit Binding Arbitration. If the Contractor disagrees with the Chief Engineer's decision, the Contractor may initiate de novo litigation or merit binding arbitration to finally resolve the claim that the Contractor submitted to CDOT, depending on which option was selected by the Contractor on Form 1378 which shall be submitted at the preconstruction conference. Such litigation or arbitration shall be strictly limited to those claims that were previously submitted and decided in the contractual dispute and claims processes outlined herein. This does not preclude the joining in one litigation or arbitration of multiple claims from the same project provided that each claim has gone through the dispute and claim process specified in subsections 105.22 through 105.24. The parties may agree, in writing, at any time, to pursue some other form of alternative dispute resolution.

Any offer made by the Contractor or the Department at any stage of the claims process, as set forth in this subsection, shall be deemed an offer of settlement pursuant to Colorado Rule of Evidence 408 and therefore inadmissible in any litigation or arbitration.

If the Contractor selected litigation, then de novo litigation shall proceed in accordance with the Colorado Rules of Civil Procedure and the proper venue is the Colorado State District Court in and for the City and County of Denver, unless both parties agree to the use of arbitration.

If the Contractor selected merit binding arbitration, or if both parties subsequently agreed to merit binding arbitration, arbitration shall be governed by the modified version of ARBITRATION PROVIDER’s Construction Industry Arbitration Rules which follow. Pursuant to the modified arbitration rules (R35 through R39), the arbitrators shall issue a binding decision with regard to entitlement and a non-binding decision with regard to quantum. If either party disagrees with the decision on quantum, the disagreeing party may seek a trial de novo in Denver District Court with regard to quantum only.
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AMERICAN ARBITRATION ASSOCIATION CONSTRUCTION INDUSTRY ARBITRATION RULES
MODIFIED FOR USE WITH CDOT SPECIFICATION SUBSECTION 105.24

REGULAR TRACK PROCEDURES

R-1. Agreement of Parties
(a) The parties shall be deemed to have made these rules a part of their Contract. These rules and any amendments shall apply in the form in effect at the time the administrative requirements are met for a demand for arbitration. The parties, by written agreement, may vary the procedures set forth in these rules. After appointment of the arbitrator, such modifications may be made only with the consent of the arbitrator.
(b) Unless the parties determine otherwise, the Fast Track Procedures shall apply in any case in which aggregate claims do not exceed $100,000, exclusive of interest and arbitration fees and costs. Parties may also agree to use these procedures in larger cases. Unless the parties agree otherwise, these procedures will not apply in cases involving more than two parties except for pass-through claims. The Fast Track Procedures shall be applied as described in Sections F-1 through F-13 of these rules, in addition to any other portion of these rules that is not in conflict with the Fast Track Procedures.
(c) Unless the parties agree otherwise, the Procedures for Large, Complex Construction Disputes shall apply to all cases in which the disclosed aggregate claims of any party is at least $1,000,000, exclusive of claimed interest, arbitration fees and costs. Parties may also agree to use these procedures in cases involving claims under $1,000,000, or in nonmonetary cases. The Procedures for Large, Complex Construction Disputes shall be applied as described in Sections L-1 through L-4 of these rules, in addition to any other portion of these rules that is not in conflict with the Procedures for Large, Complex Construction Disputes.
(d) All other cases shall be administered in accordance with Sections R-1 through R-45 of these rules.

R-2. Independent Arbitration Provider and Delegation of Duties
When parties agree to arbitrate under these rules, or when they provide for arbitration by an independent third-party (Arbitration Provider) and arbitration is initiated under these rules, they thereby authorize the Arbitration Provider to administer the arbitration. The authority and duties of the Arbitration Provider are prescribed in the parties’ Contract and in these rules, and may be carried out through such of the Arbitration Provider’s representatives as it may direct. The Arbitration Provider will assign the administration of an arbitration to its Denver office.

R-3. Initiation of Arbitration
Arbitration shall be initiated in the following manner.
(a) The Contractor shall, within 30 days after the Chief Engineer issues a decision, submit to the Chief Engineer written notice of its intention to arbitrate (the “demand”). The demand shall indicate the appropriate qualifications for the arbitrator(s) to be appointed to hear the arbitration.
(b) CDOT may file an answering statement with the Contractor within 15 days after receiving the demand. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedy sought.
(c) The Chief Engineer shall retain an Arbitration Provider, such as the American Arbitration Association, which will administer an arbitration pursuant to these Rules, except to the extent that such rules conflict with the specifications, in which case the specifications shall control.
(d) The Arbitration Provider shall confirm its retention to the parties.
R-4. Consolidation or Joinder
If the parties’ agreement or the law provides for consolidation or joinder of related arbitrations, all involved parties will endeavor to agree on a process to effectuate the consolidation or joinder.

If they are unable to agree, the Arbitration Provider shall directly appoint a single arbitrator for the limited purpose of deciding whether related arbitrations should be consolidated or joined and, if so, establishing a fair and appropriate process for consolidation or joinder. All requests for consolidation or joinder must be submitted to the Arbitration Provider prior to the appointment of an arbitrator or within 90 days of the date the Arbitration Provider determined that all administrative filing requirements were satisfied, whichever is later. The Arbitration Provider may take reasonable administrative action to accomplish the consolidation or joinder as directed by the arbitrator. Requests for consolidation or joinder submitted beyond these timeframes shall not be permitted absent a determination by the Merits Arbitrator that good cause was shown for the late request.

To request consolidation of arbitrations, the requesting party must have filed a demand for arbitration, including the applicable arbitration provision(s) from the parties’ contract(s) and must provide a written request for consolidation which provides the supporting reasons for such request.

To request joinder of parties, the requesting party must file with the AAA a written request to join parties to an existing arbitration which provides the names and contact information for such parties, names and contact information for the parties’ representatives, if known, and supporting reasons for such request.

R-5. Appointment of Arbitrator
An arbitrator shall be appointed in the following manner:
(a) Immediately after the Arbitration Provider is retained, the Arbitration Provider shall send simultaneously to each party to the dispute an identical list of 10 names of potential arbitrators. The parties are encouraged to agree to an arbitrator from the submitted list and to advise the ARBITRATION PROVIDER of their agreement. Absent agreement of the parties, the arbitrator shall not have served as the mediator in the mediation phase of the instant proceeding.
(b) If the parties cannot agree to arbitrator(s), each party to the dispute shall have 15 calendar days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the Arbitration Provider. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the Arbitration Provider shall invite an arbitrator to serve.
(c) Unless both parties agree otherwise one arbitrator shall be used for claims less than $250,000 and three arbitrators shall be used for claims $250,000 and greater. Within 15 calendar days from the date of the appointment of the last arbitrator, the Arbitration Provider shall appoint a chairperson.
(e) The entire claim record will be made available to the arbitrators by the Chief Engineer within 15 calendar days from the date of the appointment of the last arbitrator.

R-6. Changes of Claim
The arbitrator(s) will not consider any information that was not previously made a part of the claim record as transmitted by the Chief Engineer, other than clarification and data supporting previously submitted documentation.

R-7. Disclosure
(a) Any person appointed or to be appointed as an arbitrator shall disclose to the Arbitration Provider any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any interest in the result of the arbitration or any relationship with the parties or their representatives. Such obligation shall remain in effect throughout the arbitration.

(b) Upon receipt of such information from the arbitrator or another source, the Arbitration Provider shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others.

(c) In order to encourage disclosure by arbitrators, disclosure of information pursuant to this Section R-6 is not to be construed as an indication that the arbitrator considers that the disclosed circumstances are likely to affect impartiality or independence.

(d) In no case shall an arbitrator be employed by, affiliated with, or have consultive or business connection with the claimant Contractor or CDOT. An arbitrator shall not have assisted either in the evaluation, preparation, or presentation of the claim case either for the Contractor or the Department or have rendered an opinion on the merits of the claim for either party, and shall not do so during the proceedings of arbitration.

R-8. Disqualification of Arbitrator

(a) Any arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for: (i) partiality or lack of independence, (ii) inability or refusal to perform his or her duties with diligence and in good faith; and/or (iii) any grounds for disqualification provided by applicable law.

(b) Upon objection of a party to the continued service of an arbitrator, or on its own initiative, the Arbitration Provider shall determine whether the arbitrator should be disqualified under the grounds set out above, and shall inform the parties of its decision, which decision shall be conclusive.

R-9. Communication with Arbitrator

No party and no one acting on behalf of any party shall communicate ex parte with an arbitrator or a candidate for arbitrator concerning the arbitration.

R-10. Vacancies

(a) If for any reason an arbitrator is unable to perform the duties of the office, the Arbitration Provider may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.

(b) In the event of a vacancy in a panel of neutral arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

(c) In the event of the appointment of a substitute arbitrator, the panel of arbitrators shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

R-11. Jurisdiction

(a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.

(b) The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.
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(c) A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than 15 days after the Arbitration Provider confirms its retention to the parties. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

R-12. Administrative Conference
At the request of any party or upon the Arbitration Provider's own initiative, the Arbitration Provider may conduct an administrative conference, in person or by telephone, with the parties and/or their representatives. The conference may address such issues as arbitrator selection, potential exchange of information, a timetable for hearings and any other administrative matters.

Rule R-13. Preliminary Hearing
(a) At the request of any party or at the discretion of the arbitrator or the Arbitration Provider, the arbitrator may schedule as soon as practicable a preliminary hearing with the parties and/or their representatives. The preliminary hearing may be conducted by telephone at the arbitrator's discretion.
(b) During the preliminary hearing, the parties and the arbitrator should discuss the future conduct of the case, including clarification of the issues and claims, a schedule for the hearings and any other preliminary matters.

R-14. Pre-Hearing Exchange and Production of Information
(a) Authority of arbitrator. The arbitrator shall manage any necessary exchange of information among the parties with a view to achieving an efficient and economical resolution of the dispute, while at the same time promoting equality of treatment and safeguarding each party’s opportunity to fairly present its claims and defenses.
(b) Documents. The arbitrator may, on application of a party or on the arbitrator’s own initiative:
   i. require the parties to exchange documents in their possession or custody on which they intend to rely;
   ii. require the parties to update their exchanges of the documents on which they intend to rely as such documents become known to them;
   iii. require the parties, in response to reasonable document requests, to make available to the other party documents, in the responding party’s possession or custody, not otherwise readily available to the party seeking the documents, reasonably believed by the party seeking the documents to exist and to be relevant and material to the outcome of disputed issues; and
   iv. require the parties, when documents to be exchanged or produced are maintained in electronic form, to make such documents available in the form most convenient and economical for the party in possession of such documents, unless the arbitrator determines that there is good cause for requiring the documents to be produced in a different form. The parties should attempt to agree in advance upon, and the arbitrator may determine, reasonable search parameters to balance the need for production of electronically stored documents relevant and material to the outcome of disputed issues against the cost of locating and producing them.
(c) At the request of any party or at the discretion of the arbitrator, consistent with the expedited nature of arbitration, the arbitrator may direct:
   i. the production of documents and other information;
   ii. require the parties to update their exchanges of the documents on which they intend to rely as such documents become known to them; and/or
   iii. the identification of any witnesses to be called.
(c) At least five business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing.
(e) The arbitrator is authorized to resolve any disputes concerning the exchange of information.

(f) Additional discovery may be ordered by the arbitrator in extraordinary cases when the demands of justice require it.

R-15. Date, Time, and Place of Hearing
(a) The arbitrator shall set the date, time, and place for each hearing and/or conference. The parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule.

(b) The parties may mutually agree on the locale where the arbitration is to be held. Absent such agreement, the arbitration shall be held in the City and County of Denver.

(c) The Arbitration Provider shall send a notice of hearing to the parties at least ten calendar days in advance of the hearing date, unless otherwise agreed by the parties.

R-16. Attendance at Hearings
The arbitrator and the Arbitration Provider shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any person other than a party and its representative.

R-17. Representation
Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the Arbitration Provider of the name and address of the representative at least three calendar days prior to the date set for the hearing at which that person is first to appear.

R-18. Oaths
Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

R-19. Stenographic Record
Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three days in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties, or determined by the arbitrator to be the official record of the proceeding, it must be provided to the arbitrator and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator.

R-20. Interpreters
Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

R-21. Postponements
The arbitrator for good cause shown may postpone any hearing upon agreement of the parties, upon request of a party, or upon the arbitrator’s own initiative.
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R-22. Arbitration in the Absence of a Party or Representative
Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

R-23. Conduct of Proceedings
(a) The Contractor shall present evidence to support its claim. CDOT shall then present evidence supporting its defense. Witnesses for each party shall also submit to questions from the arbitrator and the adverse party. The arbitrator has the discretion to vary this procedure; provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.
(b) The arbitrator, exercising his or her discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute and may direct the order of proof, bifurcate proceedings, and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case. The arbitrator shall entertain motions, including motions that dispose of all or part of a claim or that may expedite the proceedings, and may also make preliminary rulings and enter interlocutory orders.
(c) The parties may agree to waive oral hearings in any case.

R-24. Evidence
(a) The arbitrators shall consider all written information available in the claim record and all oral presentations in support of that record by the Contractor and CDOT. Conformity to legal rules of evidence shall not be necessary.
(b) The arbitrators shall not consider any written documents or arguments which have not previously been made a part of the claim record, other than clarification and data supporting previously submitted documentation. The arbitrators shall not consider an increase in the amount of the claim, or any new claims.
(c) The arbitrator shall determine the admissibility, relevance, and materiality of any evidence offered. The arbitrator may request offers of proof and may reject evidence deemed by the arbitrator to be cumulative, unreliable, unnecessary, or of slight value compared to the time and expense involved. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where: (i) any of the parties is absent, in default, or has waived the right to be present, or (ii) the parties and the arbitrators agree otherwise.
(d) The arbitrator shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.
(e) An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

R-25. Evidence by Affidavit and Post-Hearing Filing of Documents or Other Evidence
(a) The arbitrator may receive and consider the evidence of witnesses by declaration or affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.
(b) If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence, unless otherwise agreed by the parties and the arbitrator, shall be filed with the Arbitration Provider for transmission to the arbitrator. All parties shall be afforded an opportunity to examine and respond to such documents or other evidence.
R-26. Inspection or Investigation
An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the Arbitration Provider to so advise the parties. The arbitrator shall set the date and time and the Arbitration Provider shall notify the parties. Any party who so desires may be present at such an inspection or investigation. In the event that one or all parties are not present at the inspection or investigation, the arbitrator shall make an oral or written report to the parties and afford them an opportunity to comment.

R-27. Interim Measures
(a) The arbitrator may take whatever interim measures he or she deems necessary, including injunctive relief and measures for the protection or conservation of property and disposition of perishable goods.
(b) A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

R-28. Closing of Hearing
When satisfied that the presentation of the parties is complete, the arbitrator shall declare the hearing closed.

If documents or responses are to be filed as provided in Section R-24, or if briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of documents, responses, or briefs. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties and the arbitrator, upon the closing of the hearing.

R-29. Reopening of Hearing
The hearing may be reopened on the arbitrator’s initiative, or by direction of the arbitrator upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed to by the parties in the arbitration agreement, the matter may not be reopened unless the parties agree to an extension of time. When no specific date is fixed by agreement of the parties, the arbitrator shall have 15 calendar days from the closing of the reopened hearing within which to make an award.

R-30. Waiver of Rules
Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object.

R-31. Extensions of Time
The parties may modify any period of time by mutual agreement. The Arbitration Provider or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The Arbitration Provider shall notify the parties of any extension.

R-32. Serving of Notice
(a) Any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection therewith, or for the entry of judgment on any award made under these rules, may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party.
b) The Arbitration Provider, the arbitrator and the parties may also use overnight delivery, electronic facsimile transmission (fax), or electronic mail (email) to give the notices required by these rules.

c) Unless otherwise instructed by the Arbitration Provider or by the arbitrator, any documents submitted by any party to the Arbitration Provider or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

R-33. Majority Decision

When the panel consists of more than one arbitrator, unless required by law or by the arbitration agreement, a majority of the arbitrators must make all decisions; however, in a multi-arbitrator case, if all parties and all arbitrators agree, the chair of the panel may make procedural decisions.

Where there is a panel of three arbitrators, absent an objection of a party or another member of the panel, the chairperson of the panel is authorized to resolve or delegate to another member of the panel to resolve any disputes related to the exchange of information or procedural matters without the need to consult the full panel.

R-34. Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 calendar days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the Arbitration Provider’s transmittal of the final statements and proofs to the arbitrator.

R-35. Form of Award

After complete review of the facts associated with the claim, the arbitrators shall render a written explanation of their decision. When three arbitrators are used, and only two arbitrators agree then the award shall be signed by the two arbitrators. The arbitrator’s decision shall include:

(a) A summary of the issues and factual evidence presented by the Contractor and the Department concerning the claim;

(b) Decisions concerning the validity of the claim;

(c) Decisions concerning the value of the claim as to cost impacts if the claim is determined to be valid;

(d) The contractual and factual bases supporting the decisions made including an explanation as to why each and every position was accepted or rejected;

(e) Detailed and supportable calculations which support any decisions.

R-36. Scope of Award

(a) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, equitable relief and specific performance of a contract.

(b) In addition to the final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. (c) The award of the arbitrator may include interest at the statutory rate and from such date as the arbitrator may deem appropriate.

R-37. Delivery of Award to Parties

Parties shall accept as notice and delivery of the award the placing of the award or a true copy thereof in the mail addressed to the parties or their representatives at the last known address, personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.
R-38. Modification of Award
Within 10 calendar days after the transmittal of an award, the arbitrator on his or her initiative, or any party, upon notice to the other parties, may request that the arbitrator correct any clerical, typographical, technical or computational errors in the award. The arbitrator is not empowered to re-determine the merits of any claim already decided.

If the modification request is made by a party, the other parties shall be given 10 calendar days to respond to the request. The arbitrator shall dispose of the request within 25 calendar days after transmittal by the Arbitration Provider to the arbitrator of the request.

If applicable law provides a different procedural time frame, that procedure shall be followed.

R-39. Appeal of Award
Appeal of the arbitrators’ decision concerning the merit of the claim is governed by the Colorado Uniform Arbitration Act, C.R.S. §§ 13-22-202 to -230. Either party may appeal the arbitrator’s decision on the value of the claim to the Colorado State District Court in and for the City and County of Denver for trial de novo.

R-40. Release of Documents for Judicial Proceedings
The Arbitration Provider shall, upon the written request of a party, furnish to the party, at its expense, certified copies of any papers in the Arbitration Provider’s possession that may be required in judicial proceedings relating to the arbitration.

R-41. Applications to Court and Exclusion of Liability
(a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.
(b) Neither the Arbitration Provider nor any arbitrator in a proceeding under these rules is a necessary or proper party in judicial proceedings relating to the arbitration.
(c) Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.
(d) Parties to an arbitration under these rules shall be deemed to have consented that neither the Arbitration Provider nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under these rules.

R-42. Administrative Fees
The Arbitration Provider shall prescribe filing and other administrative fees and service charges to compensate it for the cost of providing administrative services. The fees in effect when the fee or charge is incurred shall be applicable. Such fees and charges shall be borne equally by the parties.

The Arbitration Provider may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fees.

R-43. Expenses
The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required travel and other expenses of the arbitrator, Arbitration Provider representatives, and any witness and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties.
R-44. Neutral Arbitrator’s Compensation
Arbitrators shall be compensated a rate consistent with the arbitrator's stated rate of compensation. If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by the Arbitration Provider and confirmed to the parties. Such compensation shall be borne equally by the parties.

R-45. Deposits
The Arbitration Provider may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to cover the expense of the arbitration, including the arbitrator’s fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.

R-46. Interpretation and Application of Rules
The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the Arbitration Provider for final decision. All other rules shall be interpreted and applied by the Arbitration Provider.

R-47. Suspension for Nonpayment
If arbitrator compensation or administrative charges have not been paid in full, the Arbitration Provider may so inform the parties in order that the parties may advance the required payment. If such payments are not made, the arbitrator may order the suspension or termination of the proceedings. If no arbitrator has yet been appointed, the Arbitration Provider may suspend the proceedings.

FAST TRACK PROCEDURES

F-1. Limitations on Extensions
In the absence of extraordinary circumstances, the Arbitration Provider or the arbitrator may grant a party no more than one seven-day extension of the time in which to respond to the demand for arbitration or counterclaim as provided in Section R-3.

F-2. Changes of Claim
The arbitrator will not consider any information that was not previously made a part of the claim record as transmitted by the Chief Engineer, other than clarification and data supporting previously submitted documentation.

F-3. Serving of Notice
In addition to notice provided above, the parties shall also accept notice by telephone. Telephonic notices by the Arbitration Provider shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

F-4. Appointment and Qualification of Arbitrator
Immediately after the retention of the Arbitration Provider, the Arbitration Provider will simultaneously submit to each party a listing and biographical information from its panel of arbitrators knowledgeable in construction who are available for service in Fast Track cases. The parties are encouraged to agree to an arbitrator from this list, and to advise the Arbitration Provider of their agreement, or any factual objections to any of the listed arbitrators, within 7 calendar days of the transmission of the list. The Arbitration Provider will appoint the
agreed-upon arbitrator, or in the event the parties cannot agree on an arbitrator, will designate the arbitrator from among those names not stricken for factual objections.

The parties will be given notice by the Arbitration Provider of the appointment of the arbitrator, who shall be subject to disqualification for the reasons specified above. Within the time period established by the Arbitration Provider, the parties shall notify the Arbitration Provider of any objection to the arbitrator appointed. Any objection by a party to the arbitrator shall be for cause and shall be confirmed in writing to the Arbitration Provider with a copy to the other party or parties.

F-5. Preliminary Telephone Conference
Unless otherwise agreed by the parties and the arbitrator, as promptly as practicable after the appointment of the arbitrator, a preliminary telephone conference shall be held among the parties or their attorneys or representatives, and the arbitrator.

F-6. Exchange of Exhibits
At least 2 business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrator is authorized to resolve any disputes concerning the exchange of exhibits.

F-7. Discovery
There shall be no discovery, except as provided in Section F-4 or as ordered by the arbitrator in extraordinary cases when the demands of justice require it.

F-8. Date, Time, and Place of Hearing
The arbitrator shall set the date and time, and place of the hearing, to be scheduled to take place within 30 calendar days of confirmation of the arbitrator’s appointment. The Arbitration Provider will notify the parties in advance of the hearing date. All hearings shall be held within the City and County of Denver.

F-9. The Hearing
(a) Generally, the hearing shall not exceed 1 day. Each party shall have equal opportunity to submit its proofs and complete its case. The arbitrator shall determine the order of the hearing, and may require further submission of documents within two business days after the hearing. For good cause shown, the arbitrator may schedule 1 additional hearing day within 7 business days after the initial day of hearing.
(b) Generally, there will be no stenographic record. Any party desiring a stenographic record may arrange for one pursuant to the provisions above.

F-10. Time of Award
Unless otherwise agreed by the parties, the award shall be rendered not later than 14 calendar days from the date of the closing of the hearing or, if oral hearings have been waived, from the date of the Arbitration Provider’s transmittal of the final statements and proofs to the arbitrator.

F-11. Time Standards
The arbitration shall be completed by settlement or award within 45 calendar days of confirmation of the arbitrator's appointment, unless all parties and the arbitrator agree otherwise or the arbitrator extends this time in extraordinary cases when the demands of justice require it and such agreement is memorialized by the arbitrator prior to the expiration of the initial 45-day period.
F-12. Arbitrator’s Compensation
Arbitrators will receive compensation at a rate to be suggested by the Arbitration Provider regional office.

PROCEDURES FOR LARGE, COMPLEX CONSTRUCTION DISPUTES

L-1. Large, Complex Construction Disputes
The procedures for large, complex construction disputes shall apply to any claim with a value exceeding $500,000 or as agreed to by the parties.

L-2. Administrative Conference
Prior to the dissemination of a list of potential arbitrators, the Arbitration Provider shall, unless the parties agree otherwise, conduct an administrative conference with the parties and/or their attorneys or other representatives by conference call. The conference call will take place within 14 days after the retention of the Arbitration Provider. In the event the parties are unable to agree on a mutually acceptable time for the conference, the Arbitration Provider may contact the parties individually to discuss the issues contemplated herein. Such administrative conference shall be conducted for the following purposes and for such additional purposes as the parties or the Arbitration Provider may deem appropriate:
(a) To obtain additional information about the nature and magnitude of the dispute and the anticipated length of hearing and scheduling;
(b) To discuss the views of the parties about the technical and other qualifications of the arbitrators;
(c) To obtain conflicts statements from the parties; and
(d) To consider, with the parties, whether mediation or other non-adjudicative methods of dispute resolution might be appropriate.

L-3. Arbitrators
(a) Large, Complex Construction Cases shall be heard and determined by three arbitrators.
(b) The Arbitration Provider shall appoint arbitrator(s) in the manner provided in the Regular Construction Industry Arbitration Rules.

L-4. Preliminary Hearing
As promptly as practicable after the selection of the arbitrator(s), a preliminary hearing shall be held among the parties and/or their attorneys or other representatives and the arbitrator(s). Unless the parties agree otherwise, the preliminary hearing will be conducted by telephone conference call rather than in person.

At the preliminary hearing, the matters to be considered shall include, without limitation:
(a) Service of a detailed statement of claims, damages and defenses, a statement of the issues asserted by each party and positions with respect thereto, and any legal authorities the parties may wish to bring to the attention of the arbitrator(s);
(b) Stipulations to uncontested facts;
(c) The extent to which discovery shall be conducted;
(d) Exchange and pre-marking of those documents which each party believes may be offered at the hearing;
(e) The identification and availability of witnesses, including experts, and such matters with respect to witnesses including their biographies and expected testimony as may be appropriate;
(f) Whether, and the extent to which, any sworn statements and/or depositions may be introduced;
(g) The extent to which hearings will proceed on consecutive days;
(h) Whether a stenographic or other official record of the proceedings shall be maintained;
(i) The possibility of utilizing mediation or other non-adjudicative methods of dispute resolution; and
(j) The procedure for the issuance of subpoenas.

By agreement of the parties and/or order of the arbitrator(s), the pre-hearing activities and the hearing procedures that will govern the arbitration will be memorialized in a Scheduling and Procedure Order.

L-5. Management of Proceedings
(a) Arbitrator(s) shall take such steps as they may deem necessary or desirable to avoid delay and to achieve a just, speedy and cost-effective resolution of Large, Complex Construction Cases.
(b) Parties shall cooperate in the exchange of documents, exhibits and information within such party's control if the arbitrator(s) consider such production to be consistent with the goal of achieving a just, speedy and cost-effective resolution of a Large, Complex Construction Case.
(c) The parties may conduct such discovery as may be agreed to by all the parties provided, however, that the arbitrator(s) may place such limitations on the conduct of such discovery as the arbitrator(s) shall deem appropriate. If the parties cannot agree on production of document and other information, the arbitrator(s), consistent with the expedited nature of arbitration, may establish the extent of the discovery.
(d) At the discretion of the arbitrator(s), upon good cause shown and consistent with the expedited nature of arbitration, the arbitrator(s) may order depositions of, or the propounding of interrogatories to such persons who may possess information determined by the arbitrator(s) to be necessary to a determination of the matter.
(e) The parties shall exchange copies of all exhibits they intend to submit at the hearing 10 business days prior to the hearing unless the arbitrator(s) determine otherwise.
(f) The exchange of information pursuant to this rule, as agreed by the parties and/or directed by the arbitrator(s), shall be included within the Scheduling and Procedure Order.
(g) The arbitrator is authorized to resolve any disputes concerning the exchange of information.
(h) Generally, hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.

The following flow chart provides a summary of the disputes and claims process described in subsections 105.22, 105.23, and 105.24.
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Figure 105-1
DISPUTES AND CLAIMS FLOW CHART

105.22 Project Issue – Verbal discussions between Proj. Eng. and Supt.
Impasse

Contractor provides written notice of dispute to Project Engineer
15 Days – 105.22 (b)

Contractor provides written REA including the following:
1. Date of dispute
2. Nature of order and circumstances causing dispute
3. Contract provisions supporting dispute
4. Estimated cost of dispute with supporting documentation
5. Analysis of progress schedule and disruption, if any
15 Days – 105.22 (c)

CDOT Project Engineer and Contractor discuss merit of dispute
7 days – 105.22 (c)

PE denies merit of dispute

PE determines dispute has merit
105.22(a) Proj Eng initiates DRB process
Dispute is unresolved

Merit granted – Quantum negotiations
30 Days – 105.22 (c)

Adjustment of payment/schedule in consultation with Program Engineer - Dispute is resolved

Contractor accepts denial. Dispute is resolved.

Disagree on quantum
7 days – 105.22 (d)

Proj Eng/Res Eng & Supt/PM & Contractor’s rep with decision authority above the project level to meet regularly to discuss dispute
Up to 30 days – 105.22 (d)

DRB agreement signed

30/45 days – 105.23(b)

20 days – 105.23 (d)

Prehearing Submittal
15 days – 105.23 (e)

DRB Hearing
30 days – 105.23 (g)

DRB renders a recommendation
10 days – 105.23 (h)

Request for Clarification and Reconsideration
14 days – 105.23 (i)

Either party rejects DRB recommendation

DRB recommendation is accepted
5 Days – 105.23 (a)

Figure 105-1 continued on next page
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REVISION OF SECTION 105
DISPUTES AND CLAIMS FOR CONTRACT ADJUSTMENTS

Figure 105-1 (continued)

Either party rejects DRB recommendation

105.24 Notice of intent to file a claim

Contractor submits certified claim package w/RTD (and Audit Unit if over $250K)

RTD renders a decision

Contractor accepts decision

Decision is implemented

Adjustment of payment/schedule in consultation with Program Engineer - Dispute is resolved

Chief Engineer renders decision

30 days - 105.24 (a)

60 days - 105.24 (b)

60 days - 105.24 (d)

Contractor rejects and appeals RTD decision to CE

60 days - 105.24 (e)

Request for hearing

45 days - 105.24 (e)

30 days - 105.24 (c)

Contractor rejects CE decision

Contractor accepts CE decision

Decision is implemented

Optional Mediation

Dispute is unresolved

Dispute is resolved

Resolution is implemented

Contractor initiates

Binding Arbitration or Litigation (Whichever was selected at Contract execution)

Binding Arbitration

Arbitrator(s) render recommendation

Appeal process only for damages

Litigation

Court Decision

END OF SECTION