CONTRACT FOR THE PROVISION OF CONSTRUCTION

THIS Contract for Construction at the Aspen/Pitkin County Airport is made and entered by and between the Board of County Commissioners of Pitkin County, Colorado, 530 E. Main St., Suite #302, Aspen, CO 81611, ("County") and Contractor Legal Entity, Contractor Street Address (Include Suite/Unit), City, ST ZIP (hereinafter called the "Contractor") to perform the following work: Runway and Taxiway Pavement Maintenance.

I. Term of Contract: The term of this Contract is from Contract Start Date to Contract End Date.

II. Scope of Work and Work Schedule:

A. Scope of Work:

B. All work performed under this Contract shall be done according to the following work schedule:

III. Compensation and Expenses, Invoicing, Payment and Offset. This Contract is funded in part through grant funds the County will receive through the FAA. The County agrees to pay, and the Contractor agrees to accept, in full payment for the performance of this Contract, the total price of spell out number of dollars dollars and spell out number of cents cents ($0.00) in accordance with this Contract, subject to increase or decrease in accordance with the provisions of this Contract; but any payment by the County may be offset by any amount the Contractor owes the County for any reason.

A. Payment Procedures

1) Contractor shall submit applications for payment monthly for work done to date.

2) Progress payments for Contracts exceeding one hundred fifty thousand dollars ($150,000.00)

a. County shall make progress payments, within thirty (30) days of County's approval of Contractor's pay request.

b. In accordance to amend Section 2 Colorado Revised Statutes (C.R.S.) § 24-91-103, for contracts exceeding one hundred fifty thousand dollars ($150,000.00) and if the Contractor is satisfactorily performing this Contract, progress payments shall be in an amount equal to ninety-five percent (95%) of the calculated value of

completed Project work. If, in the opinion of the Project Lead and County, satisfactory progress is not being made on the Project, or if claims are filed under Section C.R.S. § 38-26-107, as amended, County may retain such additional amounts as County may deem necessary to assure completion of the Project or to pay such claims and any Project Lead's and attorney's fees reasonably incurred or to be incurred by County in defending or handling such claims. The withheld percentage of the Contract Price shall be retained until the Project is completed satisfactorily and finally accepted by County in accordance with the provisions of this Contract. Progress payments shall not constitute final acceptance of the Project.

3) County shall make final payment, including release of retainage, to Contractor in accordance with this Contract and Section C.R.S. § 38-26-107, as amended.

IV. County's Exclusive Ownership of Work Product. Drawings, specifications, guidelines and other documents prepared by Contractor in connection with this Contract shall be the property of the County. However, Contractor shall have the right to utilize such documents in the course of its marketing, professional presentations, and for other business purposes. Contractor assigns to County the copyrights to all work prepared, developed, or created pursuant to this Contract, including the right to: 1) reproduce the work; 2) prepare derivative works; 3) distribute copies to the public; 4) perform the works publicly; and 5) to display the work publicly. Contractor shall have right to use materials produced in the course of this Contract for marketing purposes and professional presentations, articles, speeches and other business purposes.

V. Contractor Obligations:

A. Supervision and Superintendence

1) The Contractor shall supervise and direct the Project competently and efficiently devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Project in accordance with this Contract. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor shall be responsible to see that the finished Project compiles accurately with this Contract.

2) The Contractor shall appoint and identify to the County and Project Lead, a competent on-site superintendent to be kept on the Project at all times during its progress and who shall not be replaced without written notice to the County and the Project Lead except under extraordinary circumstances. The superintendent will be the Contractor's representative at the site and shall have authority to act on behalf of the Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor.

B. Subcontractors, Suppliers and Others

1) The Contractor shall not employ any subcontractor, supplier or other person or organization (including those acceptable to the County and the Project Lead, whether initially or as a substitute) against whom the County or the Project Lead may have reasonable objection.

2) The identity of subcontractors, suppliers or other persons or organizations including those who are to furnish the principal items of materials and equipment must be submitted to the County in advance of any work performed or materials supplied under this Contract for acceptance by the County and the Project Lead. No acceptance by the County or the Project Lead of any such subcontractor, supplier or other person or organization shall constitute a waiver of any right of the County or the Project Lead to reject defective Project work.

3) The Contractor shall be fully responsible to the County and the Project Lead for all acts and omissions of the subcontractors, suppliers and other persons and organizations performing or furnishing any of the Project work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in this Contract shall create any Contractual relationship between the County or the Project Lead and any such subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of the County or the Project Lead to pay or to see to the payment of any moneys due any such subcontractor, supplier or other person or organization except as may otherwise be required by laws and regulations.

4) All Project work performed for Contractor by a subcontractor will be pursuant to an appropriate contract between the Contractor and the subcontractor which specifically binds the subcontractor to the applicable terms and conditions of this Contract for the benefit of the County and the Project Lead.

C. Patent Fees and Royalties. The Contractor shall pay all license fees and royalties and assume all costs incident to their use in the performance of the Project or the incorporation in the Project of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. Contractor shall indemnify and hold harmless the County and the Project Lead and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorney's fees and court costs) arising out of any infringement of patent rights or copyrights incidental to the use in the performance of the Project or resulting from the product or device not specified in this Contract, and shall defend all such claims in connection with any alleged infringement of such rights.

D. Permits. Unless otherwise provided in this Contract, the Contractor shall obtain and pay for all construction permits and licenses. The County shall assist the Contractor, when necessary, in obtaining such permits and licenses. The Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Project. The Contractor shall pay all charges of utilities for connections to the Project, and the County shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

E. Laws and Regulations. The Contractor shall be familiar with and shall comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to furnishing and performance of the Project including rules, regulations, and ordinances the County promulgates at any time. Except where otherwise expressly required by applicable laws and regulations, neither the County nor the Project Lead shall be responsible for monitoring the Contractor's compliance with any Laws or Regulations.

F. Taxes. The Contractor shall pay all existing and future applicable federal, state and local sales, consumer, use and other similar taxes whether direct or indirect. Federal excise tax may not apply to materials purchased by the County. The Contract price shall include all other federal, state, and/or local direct or indirect taxes, which do apply. The Contract price shall include the cost of compliance with all other Federal Laws and Regulations at no additional cost to the County (except as provided in this Contract). The Contractor shall not be reimbursed separately for any taxes, which may apply except as provided in this Contract, and the Contractor shall be responsible for all taxes, which may apply. The County is tax exempt from Federal Excise Tax and Colorado State or local sales or use taxes. The Contractor and its subcontractors shall apply to the Colorado Department of Revenue for a Certificate of Exemption indicating that the Contractor or subcontractor's purchase of construction material or building materials is for use in a building, structure, or other public work owned and used by the County.

G. Use of Premises.

1) The Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas permitted by this Contract, law, ordinances, and permits. The Contractor shall assume full responsibility for any damage to any such land or area, or to the County or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Project. Should any claim be made against the County or the Project Lead by any such owner or occupant because of the performance of the Project, Contractor shall promptly settle with such other party. The Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold the County harmless from and against all claims, damages, losses and expenses (including, but not limited to,

fees of engineers, architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against the County or the Project Lead to the extent based on a claim arising out of the Contractor's performance of the Project.

2) During the progress of the Project, the Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Project. At the completion of the Project, the Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, temporary structures, stumps or portions of trees, and surplus materials, and shall leave the site clean and ready for occupancy by the County. The Contractor shall restore to original condition all property not designated for alteration by this Contract.

3) The Contractor shall not load or permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the Contractor subject any part of the Project or adjacent property to stresses or pressures that will endanger it.

H. Safety and Protection.

1) The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

a. All employees in the Project area and other persons and organizations who may be affected thereby;

b. All the Project materials and equipment to be incorporated therein, whether in storage on or off the site; and

c. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, road-ways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

2) The Contractor shall be required to assume sole and complete responsibility for job site conditions during the course of construction of the Project, including the safety of all persons who may enter on the job site for any reason and the security of all property located on the job site. This requirement shall apply at all times during the course of the Contract and not only to normal Project work hours.

3) The Contractor shall at all times conduct the Project in such manner as will incur the least practicable interference with traffic and existing utility systems. No section of any road shall be closed to the public, nor any utility system put out of service except after permission, has been granted by the Project Lead. Each item of the Project shall be prosecuted

to completion without delay and in no instance will the Contractor be permitted to transfer its forces from an uncompleted Project to a new Project without prior written notification of the Contractor to the Project Lead.

a. Unless this Contract specifically provides for the closing to traffic of any local road or highway while construction is in progress, such road or highway shall be kept open to all traffic by the Contractor. The Contractor shall also provide and maintain in a safe condition temporary approaches, crossings, or intersections with roads and highways. The Contractor shall bear all expense of maintaining traffic over the section of road affected by the Project to be done under this Contract, and of constructing and maintaining such approaches, crossing, intersections and any necessary features without direct compensation, except as otherwise provided.
b. The Contractor shall provide, erect and maintain all necessary barricades, signs, danger signals and lights to protect the Project and the safety of the public. The Contractor's responsibility for necessary barricades, signs, and lights shall not cease until the Project has been accepted.

I. Shop Drawings and Samples.

1) After checking and verifying all field measurements and after complying with applicable procedures specified in this Contract, the Contractor shall submit to the Project Lead for review and approval in accordance with the approved schedule of shop drawing submissions, three (3) copies (unless otherwise specified) of all shop drawings, which will bear a stamp or specific written indication that the Contractor has satisfied the Contractor's responsibilities under this Contract with respect to the review of the submission. All submissions will be identified as the Project Lead may require. The data shown on the shop drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the Project Lead to review the information as required.

2) The Contractor shall also submit to the Project Lead for review and approval with such promptness as to cause no delay in Project, all samples required by this Contract. All samples will have been checked by and accompanied by a specific written indication that the Contractor has satisfied the Contractor's responsibilities under this Contract with respect to the review of the submission and will be identified clearly as to material, supplier, pertinent data such as catalog numbers and the use for which intended.

3) Before submission of each shop drawing or sample, the Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog

numbers and similar data with respect thereto; and reviewed or coordinated each shop drawing or sample with other shop drawings and samples and with the requirements of the Project and this Contract.

4) At the time of each submission, the Contractor shall give the Project Lead specific written notice of each variation that the shop drawings or samples may have from the requirements of this Contract, and, in addition, shall cause a specific notation to be made on each shop drawing submitted to the Project Lead for review and approval of each such variation.

5) Where a shop drawing or sample is required by the specifications, no related Project work shall be commenced prior to the Project Lead's review and approval of the shop drawing or samples.

6) The cost of furnishing all shop drawings and samples shall be borne by Contractor.

VI. Performance and Payment Bond.

A. Contractor shall furnish a performance and payment bond in the amount of one-hundred percent (100%) of the total Contract value and all Bonds shall be in the form acceptable to the County. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

B. If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state or it ceases to meet the requirements of paragraph A of this Section, Contractor shall within five (5) days thereafter substitute another Bond and Surety, both of which must be acceptable to the County.

VII. Pitkin County's Obligations. Pitkin County shall administer this Contract through a County Representative identified as the Project Lead. The services provided and products delivered by the Contractor under this Contract will be subject to review by the County's Representatives, or a designee, for compliance with Contractor's obligations prior to final payment.

VIII. Termination Prior to Expiration of Contract Term. The County has the right to terminate this Contract, with or without cause, by giving written notice to the Contractor of such termination and specifying the effective date thereof. Such notice shall be given at least ten (10) days before the effective date of such termination. In such event all finished or unfinished documents, data, studies and reports prepared by the Contractor pursuant to this Contract shall become the County's property. Contractor shall be entitled to receive compensation in accordance with the Contract for any satisfactory work completed pursuant to the terms of this Contract prior to the date of termination. Notwithstanding the above, Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the contract by the Contractor.

IX. Independent Contractor Status.

A. The parties to this Contract intend that the relationship between them contemplated by the Contract is that of independent contractor. Contractor, and any agent, employee, or servant of Contractor shall not be deemed to be an employee, agent, or servant of Pitkin County.

B. Contractor is not required to offer his services exclusively to Pitkin County under this Contract. Contractor may choose to work for other individuals or entities during the term of this contract, provided that the basic services and deliverable products required under this Contract are submitted in the manner and on the schedule defined under this Contract.

C. Contractor warrants that all work produced will conform to all applicable industry standard of care, skill and diligence in the performance of Contractor's obligations under this Contract. As used herein, the term "Standard of Care" refers to the required standard for the Services to be provided by the Contractor. All Services provided by the Contractor shall comply with the requirements of any and all laws, codes, ordinances, rules and regulations applicable to the project, the proposed Scope of Work or promulgated by any federal, state and local Authority Having Jurisdiction ("AHJ") regarding the project and/or task. The Services shall fulfill the degree of skill and care that would be used by a similar contractor working on similar projects in the state of Colorado. All instruments of service provided by the Contractor must clearly and accurately indicate or illustrate all essential points of the work to which they refer. The County's knowledge or approval of the Contractor's use of any subcontractor to perform any portions of Services required for under this contract shall not relieve, release or absolve the Contractor of its responsibility for all Services provided pursuant to this Contract. As may be applicable, the Contractor represents that it and each of its subcontractors shall be properly licensed in the jurisdiction of the projects or tasks and legally authorized to perform the Services to be provided by them. Further, the Contractor agrees that each of its employees and the employees of its subcontractor shall be qualified to perform the Services assigned to them in the performance of this Contract. At any time, and without any additional cost or expense to the County, the County may reject any subcontractors, vendors, suppliers and agents used by the Contractor to perform any portion of the work or services, and the same shall be immediately replaced with a replacement acceptable to the County as determined by its Airport Director or his designee.

D. Contractor shall not attempt to oversee or supervise the work or actions of any Pitkin County employee, servant or agent in the course of completing work under this Contract.

E. Contractor is not entitled to any Workers' Compensation benefits through Pitkin County and is responsible for payment of any federal, state, FICA and other income taxes.

X. Assignability. This Contract is not assignable by either party. Any use of subcontractors by the Contractor for performance of this Contract must be accepted in writing by the County.

XI. Severability. In the event that any provision of this Contract shall be held to be invalid or unenforceable, the remaining provisions of this Contract shall remain valid and binding upon the parties hereto.

XII. Integration and Modification.

A. This Contract represents the entire and integrated Contract between the County and the Contractor and supersedes all prior negotiations, representations, or Contract, either written or oral. This Contract may be amended only by written Contract signed by both the County and the Contractor.

B. The County may, from time to time, request changes in the scope of services of the Contractor to be performed hereunder. Such changes, including the increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon between the County and the Contractor, shall be in writing and upon execution shall become part of this Contract.

XIII. Indemnity.

A. The Contractor agrees to indemnify, hold harmless and, not excluding the County's right to participate, defend the County, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, volunteers, and any jurisdiction or agency issuing permits for any work included in the project,, hereinafter referred to as indemnitee, from all suits and claims, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature 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. 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 subsidiary, parent, 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.

B. The Contractor further shall investigate, process, respond to, adjust, provide defense for and defend, pay or settle all claims, demands, or lawsuits related hereto at its sole expense and shall bear all other costs and expenses related thereto, even if the claim, demand or lawsuit is groundless, false or fraudulent.

XIV. Insurance. Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract

are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

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 shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverages. 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.

A. Coverage and Limits of Insurance. Coverage and Limits of Insurance. Contractor shall provide coverage with limits of liability not less than those stated below. An umbrella and/or excess liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1) Statutory Workers' Compensation: Colorado statutory minimums
   a. Policy shall contain a waiver of subrogation against the County.
   b. 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:

Coverage A (Workers' Compensation)	Statutory	
Coverage B (Employers Liability)	$	500,000
	$	500,000
	$	500,000

2) Commercial General Liability – ISO 1CG 0001 form or equivalent. *(With County named as an additional insured)*

Minimum Limits:

General Aggregate	$	2,000,000
Products/Completed Operations Aggregate	$	2,000,000
Each Occurrence Limit	$	1,000,000
Personal/Advertising Injury	$	1,000,000
Fire Damage (Any One Fire)	$	50,000
Medical Payments (Any One Person)	$	5,000

Coverage to include:

- Premises and Operations
- Explosions, Collapse and Underground Hazards
- Personal / Advertising Injury
- Products / Completed Operations
- Liability assumed under an Insured Contract (including defense costs assumed under contract)
- Independent Contractors
- Designated Construction Project(s) General Aggregate Limit, ISO CG 2503 (1997 Edition) or equivalent
- Additional Insured—Owners, Lessees or Contractors Endorsement, ISO Form 2010 (2004 Edition) or equivalent
- Additional Insured—Owners, Lessees or Contractors Endorsement, ISO CG 2037 (2004 Edition) or equivalent
- The policy shall be endorsed to include the following additional insured language on the Additional Insured Endorsements specified above: "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".

3) Auto Liability: Bodily injury and property damage for any owned, hired and non-owned vehicles used in the performance of this Contract.

Minimum Limits:	Statutory
Coverage Bodily/Property Damage (Each Accident)	$ 1,000,000

4) Special Coverages *(check as appropriate and insert amount):*

a. ☒ Performance Bond $_____
b. ☐ Professional Errors and Omissions
c. ☐ Aircraft Liability
d. ☐ Owner's Protective
e. ☐ Builder's Risk
f. ☐ Boiler and Machinery
g. ☐ Loss of Use Insurance
h. ☐ Pollution Liability
i. ☐ Crime, including Employee Dishonesty Coverage, or Fidelity Bond

B. Proof of Insurance:

1) Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the County, except when cancellation is for non-payment of premium, then ten (10)

days prior notice may be given. Such notice shall be emailed directly to Procurement@pitkincounty.com. If the insurance carrier will not provide the required notice, the Consultant/Contractor and or its insurance broker shall notify the County of any cancellation, or reduction in coverage or limits of any insurance within seven (7) days of receipt of insurers' notification to that effect. Simultaneously with the Certificates of Insurance, the Contractor shall file with the Procurement Officer a certified statement as to claims pending against the required coverages, reserves established on account of such claims, defense costs expended and amounts remaining on policy limits.

2) In addition, these Certificates of Insurance shall contain the following clauses:
   a. The contractor's insurance shall be primary and non-contributory with any insurance or self-insurance purchased by the County.
   b. The insurance companies issuing the policy or policies hereunder shall have no recourse against the County of Pitkin for payment of any premiums or for assessments under any form of policy.
   c. Any and all deductibles or self-insured retentions in the above-described insurance policies shall be assumed by and be for the amount of, and at the sole expense of the Contractor.
   d. Location of operations shall be: "all operations and locations at which work for the referenced Project is being done."
3) Certificates of Insurance for all renewal policies shall be delivered to the Procurement Officer at least fifteen (15) days prior to a policy's expiration date except for any policy expiring on the expiration date of this contract or thereafter.
4) The County reserves the right to request and receive a copy of any policy and any policy endorsement at any time during the term of this Contract.

XV. Exemptions and Preferences. All purchases of construction or building or any other materials for this Contract shall not include Federal Excise Taxes or Colorado State or local sales or use taxes. Pitkin County is exempt from such taxes under registration numbers 98-02624 and 84-78000-5k.

XVI. Protection and Restoration of Property and Landscape; Hazardous Materials.

A. Protection and Restoration of Property and Landscape.
   1) The Contractor shall be responsible for the preservation of all public and private property and shall carefully protect from disturbance or damage all land and property, as well as any monuments and property marks until the Project Lead has witnessed or otherwise referenced their location and shall not remove them until directed.
   2) The Contractor shall be responsible for all damage or injury to property of any character, during the prosecution of the Project, resulting from any act, omission, neglect, or misconduct in its manner or method of executing the Project, or at any time due to defective Project work or materials, and said responsibility shall not be released until the project shall have been completed and accepted.

3) When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct by the Contractor in the execution of the Project, or in consequence of the non-execution thereof by the Contractor, it shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as may be directed, or it shall make good such damage or injury in an acceptable manner.
4) Materials storage, equipment parking, vehicle parking and stockpiling excavated materials shall be allowed only in those areas designated by the Project Lead.
5) If the Contractor disturbs any of the landscape not called for removal, it shall restore those areas as directed by the Project Lead at the Contractor's expense.

B. Hazardous Materials
1) The County shall not be responsible for the cost of and the removal or cleanup of Hazardous Materials found in any materials brought to the Project site, after the Project site is turned over to the Contractor.
2) The Contractor shall provide the Project Lead with a written certification each time materials or equipment is brought onto the Project site that such materials or equipment do not contain Hazardous Materials.

XVII. <u>County Work at the Project Site.</u>

A. The County may perform other work related to the Project at the site by the County's own forces, have other work performed by utility owners or let other direct contracts therefor which shall contain terms similar to these. The Contractor shall perform and coordinate its activities with other contractors to avoid conflict and minimize disruptions.

B. The Contractor shall afford each utility owner and other contractor who is a party to such a direct contract (or the County if the County is performing the additional work with the County's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the work with theirs. The Contractor shall do all cutting, fitting and patching of the Project that may be required to make its several parts come together properly and integrate with such other work. The Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Project Lead and the others whose work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of the Contractor in said direct contracts between the County and such utility owners and other contractors.

C. If any part of the Contractor's Project depends for proper execution or results upon the work of any such other contractor or utility owner (or the County), the Contractor shall

inspect and promptly report to the Project Lead in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. The Contractor's failure to report such conditions will constitute an acceptance of the other work as fit and proper for integration with the Contractor's Project except for latent or non-apparent defects and deficiencies in the other work.

XVIII. Changes in the Project and Use of Change Orders.

A. The County may, from time to time, request changes in the scope of services of the Contractor to be performed hereunder.

1) The Project Lead shall issue a notice informing the Contractor of a planned change in the Project and requesting the Contractor's detailed price proposal and adjusted schedule of work. The Contractor shall submit a priced proposal for performing the proposed change in the Project within five (5) days of notice or such other time acceptable to both parties. When the Contractor and the County reach Contract on the adjustments to the Contract price and/or Contract time, and changes in the Project, such adjustments shall be promptly recorded in an executed Change Order.

B. All Contractor initiated change requests shall be submitted to the County and the Project Lead in a letter or written notice with the reference notation "Contractor Change Request". If the Contractor: (i) receives any oral or written instructions, directives or interpretations of Contract Documents, or determinations from the Project Lead or, (ii) identifies what it believes are design errors or omissions in the Contract Drawings or Specifications, or (iii) encounters a differing site condition; or, (iv) is delayed in the progress of the Project; or, (v) becomes aware of any other matter or circumstance which it believes would require a change in the Contract Price or Contract Time, the Contractor shall give the Project Lead prompt written notice of such matters.

1) All Contractor change requests shall be dated, numbered sequentially, and shall describe the action or event which the Contractor believes may require an extension in time, price or other modification. The Contractor shall also provide descriptions of possible Contractor actions or solutions to minimize the cost of the Contractor change request and, provide an estimate of the adjustment in the Contract Price and/or Contract Time, which it believes is appropriate.

2) Contractor Time Requirements

a. With respect to orders, instructions, directives, interpretations, determinations, or the discovery of any errors or omissions in this Contract, a Contractor change request shall be submitted before the Contractor acts on them, but in no event more than ten (10) consecutive calendar days after they were received or discovered.

b. With respect to any differing site conditions, a Contractor change request shall be submitted before the conditions are disturbed, but in no event more than ten (10) consecutive calendar days after the conditions are first discovered.

c. With respect to delays, a Contractor change request shall be submitted as soon as the Contractor has knowledge of the delay, but in no event more than ten (10) consecutive calendar days therefrom.

d. With respect to any matters or circumstance which the Contractor believes would require a change, including delays, a Contractor change request shall be submitted as soon as the Contractor has knowledge of the matter or circumstance, but in no event more than ten (10) consecutive calendar days after the Contractor becomes aware of such circumstance or matter.

3) Submittal Requirements and Waiver of Claims

a. If the Contractor does not submit a Contractor change request within the time required above, any action by the Contractor related to such order, direction, instruction, interpretation, determination, design error or omission, or other matter, including delays or differing site conditions, will not be considered by the County as a change to the Project and the Contractor waives any claim for an adjustment on the Contract Price or the Contract Time.

b. The Contractor shall, at the time a Contractor change request is submitted provide the Project Lead with a complete and itemized proposal of Contract price and time adjustments. The proposal shall also contain a detailed explanation, citing all applicable provisions in this Contract, which supports the Contractor change request. If the Contractor does not submit its itemized proposal within the time described above or within such extension, which the Project Lead, in his/her discretion may have granted in writing, it waives any claim for an adjustment in the Contract price or Contract time arising out of the act or event described in the Contract change request.

c. If a Contractor change request is denied by the Project Lead, in whole or in part, any claim for an increase in the Contract price or Contract time arising out of the act or event described in the Contractor change request is waived unless the Contractor timely complied with the provisions of paragraphs 2(a-d) of this Section.

XIX. Warranty and Guarantee; Tests and Inspections; Correction, Removal or Acceptance of Defective Project Work

A. Warranty.

1) The Contractor warrants and guarantees to the County that all Project work, whether supplied, furnished, installed, provided, or performed by Contractor, a subcontractor, or supplier, will be in accordance with this Contract and will not be defective and that all Project work

shall be performed in a skillful and workmanlike manner. Additionally, the Contractor shall warrant that all equipment which is incorporated into the Project or any subsystem shall be new, free from liens and defects in design, have clear title, be free from faulty materials and workmanship, and shall conform in all aspects to the terms of this Contract, to the drawings issued for manufacture by the Contractor, and shall be in conformance with the those technical specifications provided in Section II (Scope of Work) of this Contract and Contractor's Proposal. Except where longer periods of warranty are indicated for certain items, Contractor warrants Project work, whether furnished, installed, provided, performed or supplied by Contractor, a subcontractor or supplier, to be free from faulty materials and workmanship and that each piece of equipment or any part thereof incorporated into the Project or any subsystem shall conform to the aforementioned warranty and guarantee provisions and be free from failure for a period of not less than one (1) year from date of Final Payment. Landscaping replacement shall be warranted for two (2) growing seasons.

2) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for Project work performed and materials furnished under the Contract, the Contractor shall:

a. Obtain all warranties that would be given in normal commercial practice. To the extent that the subcontractor's, manufacturer's, or supplier's, standard warranty exceeds the minimum County requirements as set forth in this Section or elsewhere in this Contract, the subcontractor's, manufacturer's, or supplier's standard warranty shall apply.
b. Require all warranties to be executed, in writing, for the benefit of the County, if directed by the Project Lead; or
c. Enforce all warranties for the benefit of the County, if directed by the Project Lead.
d. Assign all warranties and guarantees in writing to the County upon the request of the County.

B. Access to Project. The Project Lead and the Project Lead's representatives, other representatives of the County, testing agencies and governmental agencies with jurisdictional interests shall have access to the Project, at any time for their observation, inspecting and testing. Contractor shall provide proper and safe conditions for such access.

C. Tests and Inspections.

1) The Contractor shall cooperate with material testing persons and firms, and for required inspections, and compliance and approval tests for the work performed by the Contractor or its subcontractor.

2) If any laws, ordinances, rules, regulations, code or order of any public body having jurisdiction requires any Project work (or part thereof) to specifically be inspected, tested or approved, the Contractor shall assume full

responsibility therefore, pay all costs in connection therewith and furnish the Project Lead the required certificates of inspection, testing or approval. The Contractor shall also be responsible for and shall pay all costs in connection with any inspection or re-testing required in connection with the County's or the Project Lead's acceptance of a supplier of materials or equipment proposed to be incorporated in the Project, or of materials or equipment submitted for approval prior to the Contractor's purchase thereof for incorporation in the Project. The cost of all inspections, testing, re-testing and approvals in addition to the above which are required by this Contract shall be paid by the Contractor (unless otherwise specified). The County will conduct and pay for the conformance tests on materials installed in-place, and the Contractor shall pay for re-testing of all failing and non-conforming materials thereafter.

3) All inspections, tests or approvals other than those required by laws, ordinances, rule, regulations, code, or order of any public body having jurisdiction shall be performed by organizations acceptable to the Project Lead.

4) If any Project work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of the Project Lead, it must be uncovered for observation. Such uncovering and testing when required by the Project Lead shall be at the Contractor's expense.

5) Neither observations by the Project Lead nor inspections, tests or approvals by others shall relieve the Contractor from the Contractor's obligations to perform the Project in accordance with this Contract.

D. Correction or Removal of Defective Work. If required by the Project Lead or the County, the Contractor shall promptly, as directed, either correct all defective Project work, whether or not fabricated, installed or completed, or, if the Project work has been rejected by the Project Lead or the County, remove it from the site and replace it with non-defective Project work. The Contractor shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

E. Correction Period. If within two (2) years after the date of Final Payment or such longer period of time as may be prescribed by laws or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Project work is found to be defective, the Contractor shall promptly without cost to County and in accordance with County's written instructions, either correct such defective Project work, or, if it has been rejected by County, remove it from the site and replace it with non-defective Project work. If the Contractor does not promptly (within seven (7) days from receipt) comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the County may have the defective Project work corrected or the rejected Project work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by the Contractor. Contractor shall also pay for any damage

to other Project work, other property, or person, which occurred as a result of the defective Project work.

F. County May Correct Defective Work. If the Contractor fails within ten (10) consecutive calendar days after written notice of the Project Lead or the County to proceed to correct and to correct defective Project work or to remove and replace rejected Project work as required by the Project Lead or the County in accordance with paragraph D of this Section, or if the Contractor fails to perform the Project work in accordance with the Contract Documents, or if the Contractor fails to comply with any other provision of the Contract Documents, the County may, after seven (7) days' written notice to the Contractor, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph the County shall proceed expeditiously to the extent necessary to complete corrective and remedial action. The County may exclude the Contractor from all or part of the site, take possession of all or part of the Project, and suspend the Contractor's services related thereto, take possession of the Contractor's tools, appliances, construction equipment and machinery at the site and incorporate in the Project all materials and equipment stored at the site or for which the County has paid the Contractor but which are stored elsewhere. The Contractor shall allow the County, the County's representatives, agents and employees such access to the site as may be necessary to enable the County to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of the County in exercising such rights and remedies will be charged against the Contractor, and a Change Order will be issued by the County incorporating the necessary revisions in the Contract price. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of the Contractor's defective Project work. The Contractor shall not be allowed an extension of the Contract time because of any delay in performance of the Project work attributable to the exercise by the County of the County's rights and remedies hereunder.

XX. Liquidated Damages. It is the County's intent to complete this project no later than Enter Substantial Completion Date. Liquidated damages as Per Liquidated Damages Schedule defined in Special Provisions per calendar day shall be paid if project is not completed by that deadline.

A. Time for Completion. It is hereby understood and mutually agreed, by and between the Contractor and the County, that the date of beginning Project work and the time of completion as specified herein are essential conditions of the Contract. The Contractor agrees that said Project shall be prosecuted regularly, diligently, and at such rate of progress as will ensure completion within the time(s) specified. It is expressly understood and agreed, by and between the Contractor and the County, that the time(s) for completion of the Project described herein are reasonable time(s) for the completion of the Project, taking into consideration the average climatic conditions prevailing in the locality of the Project.

B. Time is of the Essence to the Contract. It is further agreed that time is of the essence in completing the Project, and that the Project Work Schedule and all dates set forth therein and where in this Contract, an additional time is allowed for the completion of

the Project, the new time limit fixed by such extension shall be of the essence of the Contract.

C. Liquidated Damages. Completion of the Project is of paramount importance to the County. If any portion of the Project is not completed in accordance with any time extensions granted by the County, the County will suffer damage, the extent of which will be impractical and extremely difficult to estimate accurately. Therefore, as part of the consideration for executing the Contract, it is hereby agreed that the Contractor shall pay to the County the liquidated damage amounts specified in the Contract. This particular provision shall not be construed as a penalty upon said Contractor for failing fully to complete said Project as agreed in the Proposal and this Contract nor is it intended, but as Liquidated Damages to compensate the County for all costs incurred as a result of such breach of Contract.

D. Delays in Project Completion of Construction Phase. Subject to the terms of "Excusable Delays", as contained in paragraph E of this Section, the Contractor expressly agrees to pay the County as a reasonable estimate of just compensation for damages contemplated with the clause, the amount set forth as liquidated damages for each consecutive calendar day that completion is delayed in the construction of the Project.

E. Excusable Delays - Force Majeure. If, by reason of Force Majeure, any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract then such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the liability then claimed, but for no longer period, and any such party shall remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Colorado or any political subdivision, except the County, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

F. Cumulative Remedy. The liquidated damages referred to herein are intended to be and are cumulative and shall be in addition to every other remedy now or hereafter enforceable at law, in equity, by statute, or under Contract.

XXI. Records. The Contractor shall maintain comprehensive, complete and accurate books, records, and documents concerning its performance relating to this Contract for a period of three (3) years after final payment under the Contract and the County shall have the right within the three (3) year period to inspect and audit these books, records

and documents, upon demand, in a reasonable manner and at reasonable times, for the purpose of determining, by accepted accounting and auditing standards, compliance with all provisions of the Contract and applicable law.

XXII. Contract Made in Colorado. The parties agree that this Contract was made in accordance with the laws of the State of Colorado and shall be so construed. Venue is agreed to be exclusively in the courts of Pitkin County, Colorado.

XXIII. Submittals for Agency Reviews. As applicable, any and all documents prepared as part of the services furnished pursuant to this Contract shall be submitted to the County for review and approval prior to transmittal to other regulatory agencies or AHJ. Specifically, the Contractor agrees:

A. That any facility to be used in the performance of this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
B. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder; and
C. That, as a condition for the award of this Contract, the Contractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the Contract is under consideration to be listed on the EPA List of Violating Facilities.

XXIV. Attorney's Fees. In the event that legal action is necessary to enforce any of the provisions of this Contract, the substantially prevailing party shall be entitled to its costs and reasonable attorney's fees.

XXV. Governmental Immunity. Contractor agrees and understands that Pitkin County is relying on and does not waive, by any provision of this Contract, the monetary limitations or terms (presently $150,000 per person and $600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, 24-10-101, *et seq*., C.R.S., as from time to time amended, or otherwise available to Pitkin County or any of its officers, agents or employees. Further, nothing in this Contract shall be construed or interpreted to require or provide for indemnification of the Contractor by the County for any injury to any person or any property damage whatsoever which is caused by the negligence or other misconduct of the County or its agent or employees.

XXVI. Current Year Obligations. The parties acknowledge and agree that any payments provided for hereunder or requirements for future appropriations shall constitute only currently budgeted expenditures of Pitkin County. Pitkin County's obligations under

this contract are subject to Pitkin County's annual right to budget and appropriate the sums necessary to provide the services set forth herein. No provisions of the contract shall constitute a mandatory charge or requirement in any ensuing fiscal year beyond the then current fiscal year of Pitkin County. No provision of the contract shall be construed or interpreted as creating a multiple-fiscal year direct or indirect debt or other financial obligation of Pitkin County within the meaning of any constitutional or statutory debt limitation. This contract shall not directly or indirectly obligate Pitkin County to make any payments beyond those appropriated for Pitkin County's then current fiscal year. No provisions of this contract shall be construed to pledge or create a lien on any class or source of Pitkin County's moneys, nor shall any provision of this contract restrict the future issuance of Pitkin County's bonds or any obligations payable from any class or source of Pitkin County's money.

XXVII. Accounting Practices.

A. The Contractor must follow standard accounting practices for a "not-to-exceed" or lump sum contract Contract, as well as accounting practices and document retention procedures required by the Department of Transportation Title 49, CFR Part 21. The Contractor shall permit a representative of the County or the Federal Aviation Administration to inspect its Project books and records at any time. Such records are to be kept available for six (6) years from the date of the final payment for Services performed pursuant to this Contract.

B. The County and the Federal Aviation Administration shall have the right to audit the Contractor's records pertaining to the Services performed pursuant to this Contract at any time. The County's audit rights include, but are not limited to, inspecting records to verify personnel hours (by payroll classification, billing rate or direct hours) spent on the projects, DBE participation activities, all invoices for Reimbursable Expenses (whether by the Contractor or any subcontractors) and overhead rates and charges.

C. The Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the County, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this Contract for a period of not less than six (6) years after final payment is made and all pending matters are closed.

XXVIII. Notice. Any notice required or permitted under this Contract shall be in writing and shall be provided by electronic delivery to the e-mail addresses set forth below and by one of the following methods 1) hand-delivery or 2) registered or certified mail, postage pre-paid to the mailing addresses set forth below. Each party by notice sent under this paragraph may change the address to which future notices should be sent. Electronic delivery of notices shall be considered delivered upon receipt of confirmation of

delivery on the part of the sender. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

To Pitkin County:
Pitkin County Procurement
530 E. Main St., Suite #304
Aspen, CO 81611
Procurement@PitkinCounty.com

with copies to:
Pitkin County Attorney's Office
530 E. Main St., Suite #301
Aspen, Colorado 81611
Attorney@pitkincounty.com

To Contractor:
Contractor Legal Entity
Contractor Street Address (Include Suite/Unit)
City, ST ZIP
Phone: ( ) -
Email: first.last@emailserver.com

XXIX. Public Contracts for Services and Public Contracts with Natural Persons. In conformance with the provisions of C.R.S. §§ 8-17.5-101, *et seq.,* as amended **and** C.R.S. §§ 24-76.5-101, *et seq.,* as amended:

A. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, et seq. C.R.S.

[Not applicable to Contracts relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Contracts, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program established under Pub. L. 104-208 or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political

subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101 *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

B. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq*., C.R.S.

Contractor, if a natural person 18 years of age or older, hereby swears and affirms under penalty of perjury that he or she **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101 *et seq*., C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

XXX. Confidentiality. The Contractor agrees that any information the Contractor receives or reviews concerning the County or the Airport, including, but not limited to, any information concerning the County or Airport's past, present and future research, development, operations and business activities, and any other information or material proprietary to the County of which the Contractor may obtain knowledge or access from the County during the Contractor's performance hereunder (hereinafter "Confidential Information") is proprietary and confidential to the County. The Contractor agrees, on behalf of itself and all of its agents, to hold in confidence and not to directly or indirectly reveal, report, publish, disclose or transfer any of the Confidential Information to any person or entity, or utilize any of the Confidential Information for any purpose, except as may be agreed in writing in advance between the County and the Contractor. Prior to disclosure of Confidential Information to any of its employees or other authorized persons or subcontractors, the Contractor agrees to obtain an appropriate Contract, containing all of the elements set forth herein, from those persons or firms to whom such information is disclosed or who otherwise gain access to such information to maintain the confidentiality of Confidential Information. The Contractor further agrees to indemnify the County against any and all liability, loss, cost, legal or other professional fees resulting from, or arising in connection with, unauthorized use or disclosure of Confidential Information by the Contractor, its employees or any other authorized person to whom the Contractor has disclosed Confidential Information.

XXXI. Waiver of Default. No waiver by the Parties hereto of any default or breach of any term, condition, or covenant of this Contract will be deemed to be a waiver of any

subsequent default or breach of the same or of any other term, condition, or covenant contained herein.

XXXII. Federal Government Contracts. This Contract is subordinate to the provisions of any existing or future Contracts between the County and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

XXXIII. National Emergency. All provisions of this Contract are subordinate to the right of the United States of America to lease or otherwise assume control of the Airport, or any part thereof, during time of war or national emergency, for military use, and any provisions of this Contract inconsistent with the provisions of such Contract with the United States of America will be suspended thereby.

XXXIV. Successors and Assignment. The terms, conditions, and covenants contained in this Contract apply and inure to the benefit of, and are binding upon the Parties hereto and their respective successors in interest and legal representatives, except as otherwise herein expressly provided. All rights, powers, privileges, immunities and duties of the County under this Contract including, but not limited to, any notices required or permitted to be delivered by the County to the Contractor hereunder may, at the County's option, be exercised or performed by the County's agent or attorney, including but not limited to its Airport Director. The Contractor may not assign its rights, interests or obligations under this Contract without the prior and express written consent of the County. The Contractor agrees the work and Services to be furnished to the County are of a unique and specialized character, and the County may otherwise object to and reject any proposed assignment as the County deems fit.

XXXV. Title VI Clauses for Compliance with Nondiscrimination Requirements (FAA Provision A6.3.2). During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

A. Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.

B. Non-discrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and

Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

D. Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

1) Withholding payments to the Contractor under this Contract under the Contractor complies; and/or

2) Cancelling, terminating, or suspending the Contract, in whole or in part.

F. Incorporation of Provisions: The Contractor will include the provisions of paragraphs XXX.A through XXX.F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the County to enter into any litigation to protect the interests of the County. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

XXXVI. <u>Title VI List of Pertinent Non-discrimination Acts and Authorities (FAA Provision A6.3.6).</u> During the performance of this Contract, the Contractor, for itself, its

assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
B. 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
C. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
F. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
H. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
I. The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure

compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

L. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et. seq).

XXXVII. Federal Fair Labor Standards Act (FAA Provision A16). This Contract and any sub-contractor contract shall incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Contractor has full responsibility to monitor compliance to the referenced state or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

XXXVIII. Affirmative Action Requirement (FAA Provision A2). Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity.

A. The Contractor's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Opportunity Construction Contract Specifications" set forth herein.

B. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

1) Goals for minority participation for each trade: 32.3%
2) Goals for female participation in each trade: 6.9%

These goals are applicable to all of the Contractor's construction work (whether or not it is Federal or federally-assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a

violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

C. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under this Contract. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

D. As used in this notice and in the contract resulting from this solicitation, the "covered area" is Aspen, Pitkin County, Colorado.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date first set out herein above.

CONTRACTOR LEGAL ENTITY

_____

Date

PITKIN COUNTY, COLORADO

MANAGER APPROVAL:

_____

Date

ATTORNEY APPROVAL:

_____

Date