

**SAMPLE
CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT is dated as of the _____, by and between Eagle County, Colorado a body corporate and politic (hereinafter called "County" or "Owner") whose address for purposes hereof is P.O. Box 850, 500 Broadway, Eagle, CO 81631, and _____, a Colorado corporation licensed to work in the State of Colorado (hereinafter called "Contractor") whose address for purposes hereof is _____.

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

ARTICLE 1 – THE PROJECT AND THE WORK

1.1 The construction project which is the subject matter hereof is generally described as follows: construction services for a geothermal ground loop; replacement of the existing HVAC equipment in the Eagle County Building and Old Courthouse with a high efficiency all-electric HVAC system consisting of ground source heat pumps; upgrades to the existing heating and cooling distribution system; upgraded controls; and upgraded electrical service. Contractor shall supply and perform all work to complete the Project as specified in the Contract Documents ("Work").

1.2 A more complete description of the Project and a description of the applicable Project site (the "Site") is provided by the Contract Documents.

1.3 Capitalized terms that are not defined in this Agreement shall have the meanings ascribed to them in the General Conditions and (or) the other Contract Documents as applicable.

1.4 The intent of the Contract Documents is to include all items reasonably necessary for the proper execution and completion of the Work. The Contract Documents are complementary and what is required by any one shall be binding as if required by all. Based on Contractor's careful review of the Contract Documents, Contractor acknowledges that the Contract Documents require the construction of a completed Project in accordance with the terms hereof.

1.5 Contractor shall perform all the Work required by the Contract Documents or reasonably inferable therefrom, for the complete construction of the Project in accordance with the Contract Documents. Contractor shall provide and furnish all materials, supplies, equipment, tools, implements, all other facilities, and all other labor, supervision, security, transportation, utilities, storage, appliances and all other services as and when required for or in connection with the complete construction of the Project.

1.6 If the Work is taking place on property owned by other federal, state or local governmental entities, or a public utility or other third party, Contractor shall comply with any additional terms and conditions required by applicable law and (or) applicable permits.

ARTICLE 2 - OWNER'S REPRESENTATIVE

- 2.1 The Project is under the authority of the Owner, through the _____, _____, or his designee, shall be Owner's liaison with Contractor with respect to the performance of the Work.
- 2.2 Contractor's representative is _____.
- 2.3 Neither Owner's nor Contractor's representative shall be changed with less than ten (10) days prior written notice to the other party.

ARTICLE 3 - CONTRACT TIME

- 3.1 The Work will be Substantially Complete on or before _____, 2025. Final Completion in accordance with the Contract Documents shall occur on or before _____, 2025.
- 3.2 Contractor shall employ all such additional labor, services and supervision, including such extra shifts and over time, as may be necessary to maintain and to achieve Final Completion in accordance with the Contract Documents on or before _____, 2025 all without an increase in the Contract Price.
- 3.3 LIQUIDATED DAMAGES: Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense, and difficulties involved in proving at a legal or arbitration hearing, the actual loss suffered by Owner if the Work is not substantially complete on time. Accordingly, instead of requiring such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner two hundred fifty dollars (\$250.00) for each day that expires after the time specified in paragraph 3.1 for completion until the Work is Substantially Complete. If the liquidated damages set forth herein are determined to be invalid or unenforceable for any reason, Owner reserves the right to seek and recover actual, consequential, special damages which arise or are the result of Contractor's failure to achieve Substantial Completion on or prior to the date set forth in the Contract Documents.

ARTICLE 4 - CONTRACT PRICE

- 4.1 Owner shall pay Contractor, for Contractor's performance of the Work under the Contract Documents, including contingencies, an amount **not to exceed** _____ Dollars (\$ _____) "Contract Price" or

“Guaranteed Maximum Price” or “GMP”). Any project savings, below the Guaranteed Maximum Price, resulting from bidding of subcontractors and other costs of the work shall accrue to the County.

- 4.2 Notwithstanding anything in the Contract Documents to the contrary, the Contract Price includes, without limitation, the entire amount of overhead and profit payable to Contractor in connection with the Work under the Contractor Documents. Contractor shall not have the right to, nor shall it seek to recover, any additional compensation for overhead or profit. The quantities associated with unit prices may be adjusted as set forth in the Contract Documents subject to the not to exceed Contract Price. In no event shall the unit prices set forth in Contractor’s Proposal Form be adjusted.
- 4.3 Contractor acknowledges that Owner is a tax exempt entity and that Owner has appropriated funds for this Project in a sum equal to or in excess of the Contract Price.
- 4.4 Owner shall pay Contractor for performance of the Work in accordance with the Contract Documents.
- 4.5 Pursuant to the provisions of C.R.S. § 24-91-103.6, and notwithstanding anything to the contrary contained elsewhere in the Contract Documents, no change order or other form of order or directive by Owner, and no amendment to this Agreement, requiring additional compensable Work to be performed which Work causes the aggregate amount payable under the Agreement to exceed the amount appropriated for the original Agreement, shall be of any force or effect unless accompanied by a written assurance by Owner that lawful appropriations to cover the costs of the additional Work have been made or unless such Work is covered under a remedy-granting provision in the Agreement.
- 4.6 Eagle County is a governmental entity and all obligations beyond the current fiscal year are subject to funds being budgeted and appropriated. Specifically, notwithstanding anything to the contrary contained in this Agreement, Owner shall have no obligations under this Agreement, nor shall any payment be made to Contractor in respect of any period after December 31 of each calendar year during the term of this Agreement, without an appropriation therefore by the Owner in accordance with a budget adopted by the Board of County Commissioners in compliance with the provisions of Article 25 of Title 30 of the Colorado Revised Statutes, the Local Government Budget Law (C.R.S. § 29-1-101 *et. seq.*), and the TABOR Amendment (Constitution, Article X, Sec. 20).

ARTICLE 5 - PAYMENT PROCEDURES

Contractor shall submit Applications for Payment in accordance with the General Conditions. Applications for Payment will be processed as provided in the General Conditions.

- 5.1 **PROGRESS PAYMENTS:** Owner shall make monthly progress payments on account of the Contract Price and as provided in the Contract Documents. All progress payments will be on the basis of the progress of the Work. Owner shall have the right to

request and inspect supporting documentation for progress payments, including but not limited to receipts and invoices evidencing payments of charges associated with the Work.

- 5.2 The period covered by each Application for Payment shall be one calendar month beginning on the first of each month and ending on the last day of the month.
- 5.3 Each Application for Payment shall be based upon the unit prices, percentage of completion, and Contract Price and otherwise in accordance with the Contract Documents. Each Application for Payment shall show actual quantities incorporated into the Project for each portion of the Work as of the end of the period covered by such Application for Payment.
- 5.4 Prior to Completion, Owner shall authorize partial payments at the end of each calendar month or as soon thereafter as practicable if Contractor is satisfactorily performing the Agreement. Progress payments will be in an amount equal to:

95% of the Work completed. The withheld percentage of the Contract Price shall be retained until the Agreement is completed satisfactorily and finally accepted.
- 5.5 Progress payments and retained funds shall occur in compliance with the General Conditions attached hereto and C.R.S. § 24-91-103.
- 5.6 In taking action on Contractor's Applications for Payment, Owner shall be entitled to rely on the accuracy and completeness of the information furnished by Contractor and shall not be deemed to represent that (i) Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted by Contractor; (ii) Owner has made exhaustive or continuous on-site inspections of the Work; or (iii) Owner has made examination to ascertain how or for what purposes Contractor has used amounts previously paid on the Contract Price.
- 5.7 FINAL PAYMENT: Upon final completion and acceptance in accordance with the General Conditions, Owner shall pay the remainder of the Contract Price. The final payment shall not be made until after final settlement of this contract has been duly advertised at least ten days prior to such final payment by publication of notice thereof at least twice in a public newspaper of general circulation published in Eagle County, and the Board of County Commissioners sitting as the as sole member of Owner has held a public hearing thereon and complied with C.R.S. § 38-26-107. Final payment shall be made in accordance with the requirements of the aforesaid statute. Owner shall make a final settlement in accordance with C.R.S. § 38-26-107 within sixty days after the contract is completed satisfactorily and finally accepted by Owner.
- 5.8 Owner may withhold payments due to Contractor, to such an extent as may be necessary to protect Owner from loss, because of defective work or material not remedied or the failure of Contractor to carry out the Work in accordance with this Agreement.

- 5.9 Contractor acknowledges and agrees that payment shall be made in accordance with C.R.S. §§ 24-91-103 and 38-26-107 and hereby waives its right to lien the property. Contractor shall include the language of this paragraph 5.9 in any subcontracts for the Project.

ARTICLE 6 - CONTRACTOR'S REPRESENTATIONS

In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- 6.1 Contractor has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions, and federal, state, and local laws, ordinances, rules and regulations that in any manner may affect cost, progress, or performance of the Work.
- 6.2 Contractor has made, or caused to be made, examinations, investigations, and tests and studies of such reports and related data as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time, and in accordance with other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports, or similar data are, or will be required by Contractor for such purposes.
- 6.3 Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents.
- 6.4 Contractor has given Owner written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Owner is acceptable to Contractor.
- 6.5 In performing the Work under this Agreement, the Contractor acts as an independent contractor and is solely responsible for necessary and adequate worker's compensation insurance, personal injury and property damage insurance, as well as errors and omissions insurance. The Contractor, as an independent contractor, is obligated to pay federal and state income tax on moneys earned. The personnel employed by the Contractor are not and shall not become employees, agents or servants of the Owner because of the performance of any Work by this Agreement.
- 6.6 Contractor represents and warrants that it holds a license, permit or other special license, as required by law, to perform the Work required under the Contract Documents and shall keep and maintain such licenses, permits and special licenses in good standing and in full force and effect at all times while Contractor is performing the Work under the Contract Documents.

6.7 Contractor shall maintain insurance as set forth in the General Conditions. Before permitting any of his subcontractors to perform any Work under this Agreement, Contractor shall require each of his subcontractors to procure and maintain such insurance as set forth in the General Conditions.

ARTICLE 7 - CONTRACT DOCUMENTS

The Contract Documents which comprise the entire Agreement are made a part hereof, and consist of the following:

- 7.1 This Agreement including the Contractor's certificate of insurance.
- 7.2 Contractor's Proposal Form attached as Exhibit A.
- 7.3 Proposal Documents including Instructions to Proposers, if any is attached as Exhibit B.
- 7.4 General Conditions (Pages 1 to 34, inclusive) attached as Exhibit C
- 7.5 Construction Plan Set, Specifications, Standard Special Provision, Project Special Provisions, and Supplementary Information for the Project, including any addendum thereto, attached as Exhibits XX. [This will include geotech, drainage studies, wetland delineation, cultural resources survey, wildlife, and biological reports.]
- 7.6 Proposal Schedule Descriptions
- 7.7 Addenda
- 7.8 Performance and Payment Bonds.
- 7.9 Notice of Award and, if any, Notice to Proceed.
- 7.10 Any modification, including Change Orders, duly delivered after execution of Agreement.

The parties acknowledge and agree that this Agreement and the General Conditions attached hereto, shall supersede and control over any inconsistent or contrary provision in any other attachment or agreement. There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be altered, amended, or repealed by an executed, written amendment to this Agreement.

ARTICLE 8 – BONDS

- 8.1 Contractor shall deliver to the Owner the bonds required by the Contract Documents with the executed Contract Documents and before starting work. Notwithstanding anything to the contrary contained in the Contract Documents, Owner shall have no liability or obligation hereunder unless and until the bonds have been so delivered.

ARTICLE 9- SUBCONTRACTS AND OTHER AGREEMENTS

- 9.1 Those portions of the Work that Contractor does not customarily perform with Contractor's own personnel shall be performed under subcontracts and (or) by other appropriate agreements with Contractor (individually a "Subcontract" and collectively "Subcontracts").
- 9.2 All Subcontracts shall conform to provisions of this Agreement. Owner shall have the right to review and approve each form of Subcontract. By an appropriate written agreement, Contractor shall require the subcontractor to the extent of the Work to be performed by the subcontractor, to be bound to Contractor by the terms of the Contract Documents and to assume toward Contractor all the obligation and responsibility which Contractor, by these Documents, assumes towards Owner. Said agreement shall preserve and protect the rights of Owner under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. Contractor shall require each subcontractor to enter into similar agreements with its subcontractors. Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, the Contract Documents to which the subcontractor will be bound by this paragraph 9.2. Each subcontractor shall similarly make copies of such Contract Documents available to its subcontractors. Owner shall have the right to review and approve each form of Subcontract.
- 9.3 Contractor shall be responsible to Owner for the acts and omissions of its agents, employees, suppliers, subcontractors performing Work under a contract with Contractor and such subcontractors' lower-tier subcontractors, agents and employees.
- 9.4 Nothing contained in the Contract Documents shall be deemed to create any contractual relationship between any subcontractor of any tier and Owner.

ARTICLE 10 - MISCELLANEOUS

- 10.1 No assignment by a party hereto of any rights under, or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 10.2 Owner and Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 10.3 *Intentionally Omitted.*

- 10.4 Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, if applicable.
- 10.5 This Agreement shall be governed by the laws of the State of Colorado. Jurisdiction and venue of any suit, right, or cause of action arising under, or in connection with this Agreement shall be exclusive in District Court for Eagle County, Colorado.
- 10.6 This Agreement supersedes all previous communications, negotiations and/or contracts between the respective parties hereto, either verbal or written, and the same not expressly contained herein are hereby withdrawn and annulled. This is an integrated agreement and there are no representations about any of the subject matter hereof except as expressly set forth in the Contract Documents.
- 10.7 Any notice and all written communications required under this Agreement shall be deemed properly delivered when (i) personally delivered, (ii) mailed in the United States mails, first class postage prepaid, (iii) delivered by FedEx or other comparable courier service, charges prepaid, to the parties at their respective addresses listed below, or (iv) when transmitted via e-mail with confirmation of receipt.

Owner: Eagle County

Ron Siebert
3289 Cooley Mesa Road
Building A
Gypsum, CO 81637
1-970-328-8881
ron.siebert@eaglecounty.us

Contractor: _____

Notices delivered in person shall be effective as of the date of delivery, mailed notices will be deemed given three business days after the date of deposit in a regular depository of the United States Postal Service, and Fax notices will be deemed given upon transmission, if during business hours, or the next business day. Either party can change its address for notice by notice to the other in accordance with this paragraph.

- 10.8 Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract Documents, and all such

accounting and control systems shall be satisfactory to Owner. Owner and Owner's accountants shall be afforded access to, and shall be permitted to audit and copy Contractor's records, books, correspondence, instructions, drawings, receipts, Subcontracts, purchase orders, vouchers, memoranda and other data relating to the Contract Documents and Contractor shall preserve these documents for a period of not less than three (3) years after final payment, or for such longer period as may be required by law.

- 10.11 Any indemnity, warranty or guaranty given by Contractor to Owner under the Contract Documents shall survive the expiration or termination of the Contract Documents and shall be binding upon Contractor until any action thereunder is barred by the applicable statute of limitations or as otherwise expressly provided on the Contract Documents.
- 10.12 The signatories to this Agreement aver to their knowledge, no employee of the Owner has any personal or beneficial interest whatsoever in the Work or property described in this Agreement. The Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the Work and Contractor should not employ any person having such known interests.
- 10.13 In the event a change order or amendment to the Contract Documents is agreed to by the parties, the same shall be in writing and executed by both parties. Signature by Owner may be made by Owner's project manager, Kevin Sharkey, so long as such change orders and amendments are within the budget constraints set for the Project. Change orders in excess of the budgeted amount must be approved by the Board of County Commissioners with additional funding appropriation allocated to the Project.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2019.

“Owner”:
COUNTY OF EAGLE, STATE OF COLORADO,
By and Through Its BOARD OF COUNTY
COMMISSIONERS

By: _____
Jeanne McQueeney, Chair

Attest:

By: _____

Regina O'Brien, Clerk to the Board

"Contractor":

By: _____

Its: _____

STATE OF COLORADO)
)ss:
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me by _____,
as _____ of _____ this _____, day
of _____, 2019.