

ATTACHMENT 2 – SAMPLE AGREEMENT
MONTROSE REGIONAL AIRPORT
AGREEMENT FOR CONSTRUCTION SERVICES

Provided as a sample only; may be modified as necessary for the project

This Agreement, by and between the County of Montrose, Colorado, acting by and through its Board of County Commissioners, hereinafter “County”, and _____, hereinafter referred to as “Contractor.”

WHEREAS, Montrose County owns and operates Montrose Regional Airport, in Montrose County, Colorado; and

WHEREAS, County, through its Director of Aviation, published an Invitation to Bid (ITB) to modify the passenger holdroom at the Montrose Regional Airport (Airport), and to which Contractor responded with a bid proposal, and to which the construction bid was awarded by the County Commissioners; and

WHEREAS, the details of the work to be performed are contained in the ITB, and the Contractor’s proposal, dated _____ 2019, is set forth in detail in Contractor’s bid and is incorporated herein as part of Contractor’s bid proposal, and is incorporated as the Project Documents, and

WHEREAS, the County and Contractor are entering into this Agreement to supplement the Project Documents and to provide a clear understanding of how the project is expected to proceed to completion;

NOW, THEREFORE, in consideration of the mutual promises and covenants made herein, and in consideration of the payment for construction services, and the delivery of services to County, the parties hereto agree as follows:

1.0 CONTACTS FOR CONSTRUCTION

- 1.1 The County’s representative for construction purposes is Lloyd Arnold.
- 1.2 The Contractor’s representative for construction is _____.

2.0 THE PROJECT – COMMENCEMENT AND COMPLETION

- 2.1 The Project is as more specifically described in the Project Documents, which include the Invitation to Bid, all issued Addenda, Contractor’s Bid Proposal dated _____ 2019, Notice of Award, Performance and Payment Bonds, Notice to Proceed, Notice of Contractor’s Settlement, General Provisions, Special Provisions, Plans, Technical Specifications, attached appendices, and all documents incorporated by reference. Said Project Documents are incorporated herein by this reference as though fully set forth. In the event of any inconsistency or conflict between this Agreement and the terms of the Project Documents, the Project Documents will control. In the event of an inconsistency

or conflict between the ITB and Contractor's Bid Proposal, the provisions of the ITB shall control, it being the intent that the work to be completed is defined in this Agreement and the ITB. However, in the event that this Agreement and Project Documents can be read and interpreted together, they shall be.

- 2.2 Contractor shall complete all the work on the Montrose Regional Airport Holdroom as described in the Project Documents. The expected start date of construction will be September ____, 2019, and all work shall be completed, except as otherwise provided herein, not later than December 6, 2019. Extensions of the time for completion may be requested by the Contractor for good cause, but must be approved by the County, and may be approved or not approved at the County's sole discretion, and by written amendment to this Agreement. Liquidated damages in the amount of \$2,000.00 per day will be deducted from any remaining amounts due to Contractor for each day of work required to complete the Project beyond the completion date above.
- 2.3 Contractor agrees to perform all the work described in the Project Documents for the unit process and lump sums as submitted in Contractor's Bid dated _____, 2019. No alterations, changes or revisions to the plans, specifications, or technical requirements contained in the ITB which will result in an increase to the construction cost amount above the Contractor's bid proposal shall be made except upon written approval by the County.

3.0 PAYMENTS AND TOTAL PRICE

- 3.1 The total bid for this Project by Contractor is \$_____. County will not pay more than the Contract Amount except as specifically agreed upon and approved by the County in writing and by amendment to this Agreement.
- 3.2 The County states, pursuant to C.R.S. 24-91-103.6(2)(a) that the funds appropriated for the Project are equal to or in excess of the contract amount. The County agrees that the County, and the County's representative, will not issue any change order or other directive requiring additional work which causes the aggregate amount payable under this Contract to exceed the appropriated amount. Any increase in work or change in work to be performed which results in an increase in the Contract Price must be approved in writing by the County.
- 3.3 One payment will be made to Contractor after thirty (30) days, upon invoice from Contractor and will be paid within thirty (30) days of submission. Five percent (5%) of the invoiced amount will be retained by the County until satisfactory completion of the Project, until any workmen's liens to subcontractors have been paid by Contractor, and until the County has published notice for Final Payment.
- 3.4 Final Payment shall be made once the Project is completed, and after publication of a Notice of Final Payment, as required by law. County shall withhold from the Final Payment any amounts as required pursuant to C.R.S. 38-26-107.
- 3.5 Payments may be withheld by County due to defective work, work not remedied, claims asserted by sub-contractors, damages to property or injury to a third party by Contractor, or unapproved delay or unsatisfactory progress by Contractor towards completion of the Project.

- 3.6 Final Payment shall not be processed until the Contractor has provided such indemnification, warranties, as-built plans, or other completion items as provided in the Project Documents.
- 3.7 In the event that this Agreement is terminated due to unsatisfactory performance, County may withhold payment until such time as County determines the cost of engaging another Contractor to complete the work.

4.0 COUNTY RESPONSIBILITIES

- 4.1 The County will be responsible for having its representative available to the Contractor for questions, and to inspect the work being performed by Contractor. The County's representative will have access to the work site, will make periodic visits to the work site to determine generally if the work is proceeding in accordance with the Project Documents, and to report to the County any defects or deficiencies.
- 4.2 The County's representative will approve invoices submitted by the Contractor for payment, or will provide Contractor with such concerns or objections to the invoices as may be appropriate.
- 4.3 The County's representative will be, in the first instance, the interpreter of the requirements of the Project Documents, and will make decisions on all claims and disputes between the Contractor and the County.
- 4.4 The County's representative will have the authority to reject any work not conforming to the Project Documents.

5.0 CONTRACTOR RESPONSIBILITIES

- 5.1 The Contractor will perform all work as an independent contractor, and not as an employee of the County. Any workers used by Contractor during the Project will be either sub-contractors or employees of the Contractor, and not employees of the County.
- 5.2 Contractor will provide all labor, parts, materials and equipment to complete the work on the Project, as provided in the Project Documents.
- 5.3 Contractor will secure any permits, approvals or permissions necessary to complete the Project, and will pay any sales, consumer, use or other similar taxes imposed by law, and will ensure that all employees and sub-contractors have necessary and appropriate qualifications and skills to perform the work for which they are engaged.
- 5.4 Contractor will ensure jobsite safety, shall perform all work in compliance with regulations, and any applicable FAA or other regulations for workplace safety.
- 5.5 Contractor warrants to County that all materials, equipment, and parts used in the Project will meet the specifications of the Project Documents, will be of good quality, free from faults and defects, and suitable for airport use.
- 5.6 Contractor will comply with all state and federal regulations pertaining to the hiring of illegal aliens, and warrants to the County that no illegal aliens will be hired to work on the Project, in keeping with the statutory requirements of C.R.S. 8-17.5-101, et seq., and shall abide by the Addendum attached hereto pertaining to such requirements. Contractor also acknowledges the requirements pursuant to

C.R.S. 8-17-101 and 102 pertaining to the hiring of Colorado labor, and agrees to comply with such requirements for work on this Project.

5.7 Contractor shall be responsible for the acts and omissions of all Contractor's employees and all sub-contractors, their agents, employees, and all other persons performing any work on the Project under contract with Contractor.

5.8 Contractor will work cooperatively with the County's representative or designee and provide the County's Representative or designee with access to review and approve work being performed by Contractor, and will provide County's Representative or designee with any samples, plans, materials or other project components which County's Representative or designee is required to approve.

5.9 Contractor will use best efforts to maintain the work area from debris, trash, or waste materials. At the completion of the work, Contractor will leave the work area in a clean and orderly condition.

6.0 SUBCONTRACTORS

6.1 Contractor may engage such sub-contractors as are contemplated in the Project Documents. Contractor shall provide the County with a list of proposed sub-contractors. Contractor shall not use any sub-contractor to whom the County has a reasonable objection.

6.2 Contractor shall be responsible for paying all sub-contractors prior to Final Payment, or shall provide a bond for payment of subcontractors pursuant to C.R.S. 38-26-108.

7.0 DISPUTES

7.1 The provisions of this Article shall govern the procedures to be followed in the event of a dispute between Contractor and County over the work to be performed, any defects or unsatisfactory performance, or termination of services.

7.2 The County's Representative (CR) shall be the initial interpreter of the requirements of the Project Documents and will be the judge of the acceptability of the work performed by Contractor.

7.3 In the event that the County's Representative believes that any work has not been performed satisfactorily, or not in conformance with the Project Documents, the CR will bring it to the attention of the Contractor and shall provide a written claim or complaint for response within one business day by the Contractor. In the event that the CR and the Contractor do not reach agreement, the CR will provide notice to the County Commissioners and the County Attorney.

7.4 In the event that agreement cannot be reached with the Contractor, the County may initiate such action as may be appropriate under other Sections of this Agreement.

8.0 PERFORMANCE AND PAYMENT BONDS

Contractor shall provide such bonds as required by the Project Documents prior to commencing any construction or work on the Project, and as required by C.R.S. 38-26-106. Failure to provide such bonds may result in delay of payments on invoices, or may result in termination of this Agreement.

9.0 PERFORMANCE BY CONTRACTOR – TERMINATION OF AGREEMENT

9.1 In addition to the provisions of Article 3 above, at any time County determines that Contractor is not able to complete the work as contemplated in the Project Documents, whether due to unavailability of Contractor and employees to perform the work, unsatisfactory performance, or failure to meet the standards and specifications as provided in the Project Documents, County shall provide Contractor with written notice of the defects, unsatisfactory work, lack of progress, or other facts or reasons for termination of this Agreement.

Contractor shall have five (5) business days to respond, correct or remedy the failures, defects or lack of progress to the satisfaction of the County. In the event that no satisfactory response, whether by action or explanation, is timely provided by Contractor, County has the option, at its sole discretion, and in its sole determination of the standard of satisfactory response, action or explanation, to terminate this Agreement.

9.2 If the County elects to terminate this Agreement, as provided in Section 9.1 above, County may, without prejudicing any other action or claim it may have against Contractor, make claim for the proceeds of the bond posted by Contractor, may hire another Contractor to complete the work, and may finish the project by whatever method the County deems expedient and appropriate, in its sole discretion. If the unpaid balance of the Contract Price exceeds the expense of completing the Project, the unpaid balance shall be paid to the Contractor. However, if the expense of completing the Project exceeds the unpaid balance, County may retain the entire balance and may apply the proceeds of the bond, or demand payment from Contractor for the difference. These rights and remedies are in addition to any other rights or remedies available by law.

10. RISK OF LOSS

Contractor shall be responsible for all materials and equipment used by the Contractor to complete the Project, and shall bear all risk of loss to the work, materials, or equipment due to fire, theft, vandalism, or other loss or casualty until the work is completed and has been accepted by the County. Contractor shall comply with all applicable laws, ordinances, regulations, rules and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. All damage to or loss of any property caused in whole or in part by Contractor, Contractor's employees, or sub-contractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable, shall be remedied by Contractor.

11. INDEMNIFICATION AND INSURANCE

11.1 Contractor shall indemnify and hold harmless the County, its elected officials and employees, insurers, and self-insurance pool, from any and all liability, claims and demands on account of injury, loss or damage, including without limitation claims arising from bodily injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any way connected with Contractor's performance of this Agreement and pursuant to the Project Documents, if such injury, loss or damage

is caused in whole or in part by, or is claimed to be caused in whole or in part by the act, omission, error, professional error, mistake, negligence, or other fault of the Contractor or any sub-contractor of the Contractor, or which arise out of any worker's compensation claim of any employee of the Contractor or any sub-contractor of the Contractor.

- 11.2 Contractor agrees to investigate, handle, respond to, and provide defense for and against any such liability, claims or demands at the sole expense of the Contractor, or at the option of the County, agrees to pay for the reasonable defense costs incurred by the County in defending any such claims or demands, or liability. Contractor agrees to bear all other costs and expenses related thereto, including court costs, attorneys' fees, whether any such liability, claims or demands alleged are groundless, false or fraudulent. The obligation of Contractor shall not extend to any injury, loss or damage which is caused but the act, omission or other fault of the County or its employees, or representative.
- 11.3 Contractor agrees to procure and maintain, at its cost, a policy or policies of insurance sufficient to insure against all liability, claims or demands and other obligations assumed by the Contractor in the amounts as specified in the Project Documents. Such insurance does not relieve Contractor of any liability, claim or demands or other obligations provided herein or in the Project Documents. Failure to procure required insurance shall be grounds for termination of this Agreement.
- 11.4 Contractor shall require each sub-contractor with whom Contractor contracts to have insurance meeting the same requirements and in the same amounts of coverage as provided in the Project Documents.
- 11.5 Contractor shall procure and maintain at all times worker's compensation insurance as required by law, and shall similarly require each and every subcontractor to procure such worker's compensation insurance as is required by law or the Project Documents.
- 11.6 Insurance policies procured by Contractor shall include Montrose County as an additional insured, and no policy shall contain any exceptions, exclusions, or deductible except as Contractor agrees to provide bond to the County for such. Copies of certificates of insurance, showing Montrose County as an additional insured, shall be provided to the County prior to work commencing.
- 11.7 The parties understand and agree that County is relying on, and does not hereby waive, or intend to waive by any provisions of this Agreement or the Project Documents, the monetary limitations, or other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq., as amended, or otherwise available to County, its elected officials or employees and agents.
- 11.8 County shall be named as an additional insured, and a certificate of insurance shall be provided to the County prior to commencement of work.

12.0 ACCEPTANCE OF WORK

- 12.1 The Contractor shall correct any work that fails to conform to the requirements of the Project Documents and/or specifications contained therein, and shall remedy

any defects due to faulty permitting, design, materials, equipment or workmanship that appear within a period from one (1) year from the Date of Final Settlement, or such additional period of time as may be provided by the the manufacturer of any materials, parts or equipment. This provision also applies to subcontractors hired by Contractor. The provisions of this Article are in addition to, and not in lieu of, any other remedies or warranties that the County may have as provided by law.

12.2 Failure to act, to stop work or complain as provided elsewhere in this Agreement shall not be construed as a waiver by the County of any defective workmanship, materials, parts, or equipment, nor as acceptance of the work as satisfactory.

12.3 Contractor agrees to guarantee all work under this Agreement for the periods specified in the RFP from the date of Final Acceptance. If any unsatisfactory condition or damage develops within the time of this guaranty due to permitting, design, materials, parts, equipment or workmanship due to defects, inferior quality, or not in accordance with the RFP specifications, then the Contractor shall when notified by County of such unsatisfactory condition or defect, immediately remedy, redo, replace, or otherwise make the County whole and the condition satisfactory.

13.0 CHANGES IN WORK

13.1 No changes in work plan, materials, design, or specifications shall be made by the Contractor, whether additions, deletions, or modifications, without express and written approval from the County.

13.2 No changes in the price or the time for completion shall be made by the Contractor without the express and written approval of the County, except that if Contractor is able to complete the work prior to the deadline for completion, that is permitted without written approval by the County.

14.0 LIQUIDATED DAMAGES

Contractor agrees to commence work within ten (10) calendar days after the receipt of the Notice to Proceed from the County, and agrees to complete the work no later than December 6, 2019. Extensions of the permitted time to complete the work shall be given by the County in writing as an amendment to this Agreement and only for good cause. Liquidated damages in the amount of \$2,000.00 per day will be charged to the Contractor for any days beyond December 6, 2019 to complete the work. Such damages may be withheld by the County from the Final Payment due to the Contractor, or if the Liquidated Damages exceed the amount remaining to be paid to the Contractor, Contractor shall pay the County the amount exceeding the amount owed to Contractor by the County.

15.0 MISCELLANEOUS PROVISIONS

15.1 Each party agrees to cooperate in all reasonable respects necessary to complete the Project as contemplated by this Agreement and the Project Documents. Each party further agrees to execute any addendum necessary to correct typographical or clerical errors, or errors as to form when such errors hinder the consideration, performance or enforcement of this Agreement.

- 15.2 This Agreement is governed by the laws of the State of Colorado, and any action to enforce this Agreement shall be brought in a court of competent jurisdiction in Montrose County, Colorado.
- 15.3 This Agreement may not be assigned by either party without express written approval of both parties and an Amendment to this Agreement. This is a personal services Agreement, and Contractor may not assign, sell or otherwise convey the obligations of this Agreement. The provisions of this Agreement are binding on the heirs, successors, or assignees of the parties.
- 15.4 The rights and remedies available under this Agreement shall be in addition to any rights and remedies allowed by law.
- 15.5 No failure to enforce any provision of this Agreement on account of any breach thereof or non-compliance with same shall be construed as a waiver of any right to enforce the provisions of this Agreement for any subsequent or continuing breach.
- 15.6 If any provision of this Agreement is declared by any court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions. The remaining provisions shall be fully severable and this Agreement shall be construed as if such invalid provisions never had been inserted into this Agreement.
- 15.7 The terms of this Agreement shall remain in full force and effect following the Final Payment.
- 15.8 Contractor shall comply with all applicable provisions of Colorado law pertaining to employment of workers and Colorado labor, and shall execute the attached Addendum as a warranty that no illegal aliens will be hired to work on this Project.

BOARD OF COUNTY COMMISSIONERS
COUNTY OF MONTROSE, COLORADO

By: _____
Sue Hansen, Chair

Date: _____

Attest: _____
Deputy Clerk and Recorder

Date: _____

CONTRACTOR

By: _____

Date: _____

Title: _____