

OWNER-CONTRACTOR AGREEMENT

This Owner-Contractor Agreement ("**Agreement**") is entered into by and between the Evans Fire Protection District, a political subdivision of the State of Colorado ("**Owner**"), and [REDACTED] ("**Contractor**"). The Owner and Contractor shall be referred to collectively as the "**Parties**" and individually as a "**Party**".

PART 1 – SCOPE OF WORK AND PROJECT

Contractor agrees to remodel and expand the Evans Fire Protection District Fire Station #2 in accordance with the Contract Documents defined in Part 2, below ("**Project**"). Contractor agrees to furnish all labor, materials, equipment, tools and services necessary to perform and complete in a workmanlike manner construction of the Project in strict compliance with the Contract Documents defined in Part 2, below, and the Contract Time stated in Part 4, below ("**Work**").

PART 2 – CONTRACT DOCUMENTS

- A. The following documents comprise the entire agreement between the Parties (collectively, "**Contract Documents**") and, in the event of a conflict, shall control in the order listed:
1. Any terms and conditions of the Grant Agreement between the State of Colorado Department of Local Affairs and Evans Fire Protection District ("**Grant Agreement**"), attached as Appendix A, which govern or apply to this Agreement or the Contractor's performance of the Work; then,
 2. This Agreement and any written amendment to this Agreement signed by the Parties; then,
 3. The construction drawings and Project Manual (collectively, the "**Specifications**"), attached as Appendix B; then,
 4. Any Change Order executed after this Agreement; then,
 5. Shop Drawings, Product Data, Samples, or similar submittals furnished by Contractor during performance of the Work and approved by the Owner.

There are no Contract Documents other than those listed above in this Part 2.

PART 3 – GUARANTEED MAXIMUM PRICE

Owner shall pay Contractor for satisfactory performance of the Work and completion of the Project in strict accordance with the Contract Documents the total price of [REDACTED] (\$ [REDACTED]) ("**Contract Price**"). The Parties expressly agree that the Contract Price shall constitute the Guaranteed Maximum Price. All fees, costs of Work, or other costs and expenses associated with the Project that are not agreed to by the Owner in writing through a Change Order, and that would cause the Contract Price to be exceeded, shall be paid by the Contractor without reimbursement by the Owner. Any written Change Order approved by the Owner shall be for the actual cost of the Work described in the Change Order, plus [REDACTED]% markup for the Contractor's fee ("**Contractor's Fee**").

3. The Contractor warrants that it shall keep all Work free and clear of liens, claims, security interests or encumbrances by Contractor, subcontractors, vendors, suppliers, or manufacturers, or other persons or entities providing labor, materials and equipment relating to the Work.

4. Any undisputed payment that is not paid within the time provided in this Part 5 shall bear interest at eight percent (8%) per annum compounded annually from the due date until paid.

B. Verified Statement Of Claim. If at any time prior to the date and time for Final Settlement, a Verified Statement Of Claim is filed with the Owner, the Owner will take such actions as are required by C.R.S. § 38-26-107, including withholding from payments to the Contractor funds sufficient to ensure payment of the claim for the period set forth in C.R.S. § 38-26-107, unless the Contractor submits to the Owner a Certificate of Release of such claim by the Clerk of the Weld County District Court in accordance with C.R.S. § 38-26-108.

PART 6 – CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

A. The Contractor has familiarized itself with the nature and extent of the Contract Documents, the Work and the site, and is familiar with all federal, state and local laws, ordinances, rules and regulations, that in any manner may affect cost, progress or performance of Project.

B. For a period of one year from the date of Substantial Completion, the Contractor warrants all materials and equipment on the Project. Materials and equipment furnished under the Contract will be of good quality, without defect and new (unless the Contract Documents require or permit otherwise). The Contractor's warranty of materials and equipment set forth in the preceding paragraph is in addition to, and separate from, any express or implied warranty provided by any subcontractor, sub-subcontractor, vendor, supplier or manufacturer. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. In addition, the Contractor warrants for a period of one year from the date of Substantial Completion, the workmanship of the Work and that the Work, materials and equipment will conform to the requirements of the Contract Documents.

The Contractor's foregoing warranties exclude remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.

The Contractor shall serve as the Warranty Administrator for the Project. The Warranty Administrator shall be responsible for all aspects of the timely and effective administration of all warranties, including but not limited to: 1) receiving all warranty claims from the Owner, 2) identifying and contacting the individual(s) or entity(ies) issuing the warranty under which the claim is being made; 3) arranging for all warranty work; and 4) processing all documents necessary and appropriate for the proper and timely processing of each warranty claim.

PART 7 – ILLEGAL ALIENS

A. Pursuant to C.R.S. §8-17.5-101, *et seq.*, the Contractor represents and warrants to the Owner that:

1. Contractor will not knowingly employ or contract with an illegal alien in performing the Work or the Project; nor will Contractor enter into a contract with a subcontractor who fails to certify that it will not knowingly employ or contract with an illegal alien to perform Work in connection with the Project.

2. Pursuant to C.R.S. § 8-17.5-102, Contractor certifies that it does not knowingly employ or contract with an illegal alien who will perform Work in connection with the Project, and that Contractor will participate in the E-Verify Program or the State Department of Labor and Employment Program ("**Department Program**") in order to confirm the employment eligibility of all employees newly hired by Contractor for the purpose of performing the Work and the Project. Under no circumstances will the Contractor use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants during the course of performing the Work or the Project.

3. If, during the course of performing the Work or the Project, Contractor acquires actual knowledge that a subcontractor performing Work in connection with the Project knowingly employs or contracts with an illegal alien, Contractor will (a) notify the subcontractor and Owner within three (3) business days that Contractor has actual knowledge the subcontractor is employing or contracting with an illegal alien; and (b) terminate the subcontractor's contract if within three (3) business days of receiving the notice required in (a), above, the subcontractor does not stop employing or contracting with the illegal alien; except, the Contractor will not terminate the Subcontractor's contract if during the three (3) business days the Subcontractor provides information establishing the subcontractor has not knowingly employed or contracted with an illegal alien.

4. The Contractor will comply with any reasonable request by the Colorado Department of Labor and Employment made during an investigation pursuant to C.R.S. § 8-17.5-102(5).

5. The Contractor agrees that, if it violates one of the foregoing provisions, Owner may terminate this Agreement and the Contractor's services, and may seek all appropriate remedies. The Contractor acknowledges Owner also will notify the Secretary of State, which may take further action against the Contractor.

PART 8 – GENERAL CONDITIONS

A. The Owner's Obligations and Authority.

1. In accordance with C.R.S. § 24-91-103.6, and Article X, Section 20 of the Colorado Constitution, the Owner states that it has currently appropriated funds sufficient to meet its financial obligations under this Agreement. Further, the Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that it has appropriated funds to meet its financial obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

2. The Owner will ensure that Contractor has access to the Project site reasonably necessary for performance of the Work. Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

3. If the Contractor fails to correct Work that is not in strict accordance with the requirements of the Contract Documents ("**Non-Conforming Work**"), or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor

to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The Owner's right to stop the Work shall not give rise to a duty by the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

4. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a 7-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies it may have, correct the deficiencies. The Owner shall issue a Change Order deducting from payments then or thereafter due the Contractor the reasonable cost of correcting the deficiencies, including Owner's expenses and any additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

5. The Parties expressly recognize that each of their rights and demands arising under this Agreement are contingent upon the Owner's receipt of anticipated Grant funds in accordance with the Grant Agreement. In the event the Grant funds or any part thereof are suspended, terminated, or otherwise not available to the Owner, the Owner may immediately terminate this Agreement. The Contractor shall submit to the Owner a detailed Pay Application for the cost of the Work performed through the date of termination, plus reasonable Contractor's Fees prorated to the date of termination. Within 15 calendar days of receiving the Pay Application, the Owner shall pay Contractor 95% of the undisputed portion of the Pay Application for Contractor's satisfactory performance of the Work and the Project performed through the date of termination. Final Settlement shall thereafter be made in accordance with Paragraph 11(C), below.

B. The Contractor's Obligations and Authority.

1. The Contractor shall perform the Work in strict accordance with the Contract Documents, and shall not be relieved of the obligations by either the Owner's activities or duties in administering the Contract Documents, or by tests, inspections or approvals required or performed by persons other than the Contractor.

2. The Contractor shall supervise and direct the Work as necessary, using its best skill and attention, and shall enforce strict discipline and good order among the Contractor's employees, subcontractors and other persons carrying out the Contract Documents. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract Documents, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner.

3. The Contractor shall be responsible to the Owner for the intentional or negligent acts and omissions of the Contractor's employees, vendors, suppliers and subcontractors, and their agents and employees, and all other persons or entities performing portions of the Work for or on behalf of Contractor or any of its subcontractors. Nothing in this Agreement or any other Contract Documents shall relieve the subcontractors, vendors and suppliers from any duty owed the Owner under federal, state and local law.

4. The Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor may make substitutions if the Owner and Contractor have signed a written Change Order.

5. As a unit of local government, the Owner is tax exempt. The Contractor is responsible for paying any sales, consumer, use and similar taxes for the Work performed by the Contractor, its employees or subcontractors that could have been avoided as a result of the Owner's tax-exempt status. The Owner shall secure and pay for any building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

6. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work. If the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify Owner in writing, and necessary changes shall be accomplished by Change Order. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

7. The Contractor shall maintain at the site for the Owner one record copy of the Specifications and Change Orders in good order and accurately marked to reflect all changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals required by the Contract Documents. The Contractor shall deliver all of the foregoing data, drawings, samples and documents to the Owner upon completion of the Work.

8. The Contractor shall review for compliance with the Contract Documents, approve and submit to the Owner Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work. By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents it has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within the submittal with the requirements of the Work and the Contract Documents. The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the Owner has approved the submittal. The Owner's approval of Shop Drawings, Product Data, Samples or similar submittals shall not relieve the Contractor of liability for deviations from the Contract Documents, unless the Contractor specifically informed the Owner in writing of the deviation at the time of submittal and a Change Order was issued authorizing the deviation.

9. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish resulting from its performance of the Work. At completion of the Work, the Contractor shall remove from the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

10. The Contractor shall provide the Owner access to the Work in preparation and progress wherever located.

11. The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract Documents; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Contractor shall preserve these for a period of 3 years after final payment, or for such longer period as may be required by law. The Owner and/or the Owner's accountants shall reimburse the Contractor for the reasonable costs, if any, that it incurs in connection with the Owner and/or the Owner's accountant's inspection of the Contractor's records after the Final Settlement Payment has been made.

PART 9 - DISPUTES

The Parties shall engage in mediation to resolve any dispute arising from or relating to this Agreement, the other Contract Documents, the Work or the Project. Unless the Parties mutually agree otherwise, the mediation shall be conducted through the Judicial Arbiters Group ("JAG"), located in Denver, Colorado. Request for mediation shall be filed in writing with JAG, with a copy to the other Party. The Parties shall share the mediator's fee and any filing fees equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

If mediation is unsuccessful, either Party may commence a civil action. Jurisdiction and venue for a civil action involving a dispute arising from or relating to this Agreement, the other Contract Documents, the Work or the Project, shall lie exclusively in the District Court for Weld County. In any civil action, the prevailing Party shall be awarded its reasonable attorneys' fees, costs and expenses, including the reasonable attorneys' fees, costs and expenses incurred in collecting or executing upon any judgment, order or award.

PART 10 - CHANGE ORDERS AND CORRECTIONS TO THE WORK

A. Change Order. Changes in the Work may be accomplished after execution of this Agreement by a Change Order. No Change Order that which would increase the Contract Price shall be signed by the Owner and the Contractor unless the Owner gives the Contractor written assurance that lawful appropriations have been made for the costs of the additional Work, or such Work is covered under a remedy granting provision of the Contract Documents.

B. Corrections to the Work. The Contractor shall promptly correct Work that does not conform to the Contract Documents or, if not covered by the Contract Documents, best industry practices ("*Non-Conforming Work*") The Contractor shall pay all professional fees, and all other costs and expenses, of correcting Non-Conforming Work. The Owner may, in its sole discretion, choose to accept Non-Conforming Work by sending the Contractor written notice of its election to accept the Non-Conforming Work. If the Owner chooses to accept Non-Conforming Work, the Contract Price shall be adjusted as appropriate and equitable, regardless whether Final Settlement payment has been made to the Contractor.

PART 11 – SUBSTANTIAL COMPLETION, FINAL ACCEPTANCE, AND FINAL SETTLEMENT

A. Substantial Completion.

1. Substantial Completion of the Project shall be deemed to have occurred when the Work is sufficiently complete in accordance with the Contract Documents that the Owner can use the Work for its intended purpose. When the Contractor believes the Work is substantially complete, the Contractor shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to Final

Settlement ("**Final Punch List**"). Failure to include an item on the Final Punch List does not alter the Contractor's responsibility to complete all Work in accordance with the Contract Documents.

2. Upon receipt of the Contractor's proposed Final Punch List, the Owner, or its agent, will inspect the Work to determine if it is substantially complete. If the inspection discloses any item, whether or not included on the proposed Final Punch List, that is not sufficiently complete in accordance with the Contract Documents for the Owner to use the Work for its intended purpose, the Contractor shall, before issuance of the Notice of Substantial Completion, complete or correct such item upon notification by the Owner or the Owner's agent. The Contractor shall then submit a request for another inspection by the Owner to determine Substantial Completion.

3. When the Work is substantially complete, the Owner will issue a Notice of Substantial Completion that shall establish the date of Substantial Completion.

B. Final Acceptance.

1. Upon completing all of the items on the approved Final Punch List, the Contractor shall send the Owner written request for final inspection and acceptance of the Work. If after inspecting the Work, the Owner finds the Work acceptable under the Contract Documents and the Contract Documents fully performed, the Owner will promptly issue a Notice of Final Completion.

2. Final Settlement payment shall not become due until the Contractor submits to the Owner (a) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, b) a certificate evidencing that insurance required by the Contract Documents to remain in force after Final Settlement payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (c) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (d) other data, in a form acceptable to the Owner, establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of or relating to the Work or the Project.

C. Final Settlement.

1. Pursuant to C.R.S. § 38-26-107, the Owner shall publish a Notice of Final Settlement two times in a newspaper of general circulation in Weld County, which publications shall occur at least 10 calendar days before the Final Settlement date. If a Verified Statement Of Claim is filed before the date and time of the Final Settlement payment, the Owner shall withhold from the Final Settlement payment sufficient funds to pay the claim until the claim is paid or withdrawn. The Owner's obligations thereafter shall be governed by C.R.S. § 38-26-107.

2. Acceptance of Final Settlement payment by the Contractor, a subcontractor, vendor or supplier shall constitute a waiver of claims by that payee except those previously made by submitting a Verified Statement of Claim to the Owner.

PART 12 - GOVERNMENTAL IMMUNITY AND INDEMNIFICATION

A. This Agreement and the other Contract Documents are not intended, and shall not be construed, as a waiver of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by, the Owner and its current and former directors, officers, employees, volunteers,

representatives and agents under federal or state constitutional, statutory or common law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

B. The Contractor and its employees, agents and representatives shall indemnify, defend, and hold harmless the Owner and its current and former directors, officers, agents, employees, volunteers, and representatives from and against any loss, liability, damage, claim, cost or expense (including reasonable attorneys' fees, costs and expenses) of any kind or nature whatsoever arising from or relating to any intentional or negligent act or omission of the Contractor, or any subcontractor, vendor or supplier or other person or entity performing this Agreement, the other Contract Documents, the Work or the Project. The Owner has the right to select its legal counsel, even though the Contractor is solely responsible for the payment of the defense costs.

PART 13 - INSURANCE AND BOND

A. The Contractor shall purchase and maintain the following insurance from a company(ies) lawfully authorized to do business in Colorado and satisfactory to the Owner and the State of Colorado Department of Local Affairs ("*State*"). All such insurance shall be subject to the applicable terms and conditions stated in sections 13(B) through 13(D) of the Grant Agreement.

1. Workers' compensation and employer's liability insurance, as provided in section 13(B)(i) of the Grant Agreement;
2. General liability insurance, as provided in section 13(B)(ii) of the Grant agreement;
3. Automobile liability insurance, as provided in section 13(B)(iii) of the Grant Agreement; and,
4. Malpractice/professional liability insurance, as provided in section 13(B)(iv) of the Grant Agreement.

B. Prior to commencement of the Work, the Contractor shall obtain a performance bond for 100% of the amount of the Contract Price and payment bond in an amount equal to 100% of the Contract Price, in accordance with sections 8.3.2 and 8.3.3 of Exhibit B to the Grant Agreement.

C. The Owner shall purchase and maintain the following insurance from a company(ies) lawfully authorized to do business in Colorado and satisfactory to Owner and the State. All such insurance shall be subject to the applicable terms and conditions stated in sections 13(B) through 13(D) of the Grant Agreement.

1. Property insurance, as provided in section 13(B)(vi) of the Grant Agreement; and,
2. Builder's risk insurance, as provided in section 13(B)(viii) of the Grant Agreement.

PART 14 – ADDITIONAL TERMS

A. Colorado law governs this Agreement. This Agreement is the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may only be amended by a document signed by the Parties. Course of conduct, no matter how long, shall not constitute an amendment to this Agreement. If any provision is held invalid or unenforceable, all other provisions shall continue in full force and effect. Waiver of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach of this Agreement. This Agreement is not assignable. This Agreement shall inure to the benefit of and be binding upon the Parties and their legal

representatives, and successors. This Agreement is not intended to, and shall not, confer rights on any person or entity not named as a party to this Agreement. This Agreement may be executed in several counterparts and by facsimile or electronic PDF, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

B. Unless otherwise expressly provided, any reference herein to days shall mean calendar days. All times stated in the Contract Documents are of the essence.

C. Any written notice required or permitted under the Contract Documents shall be given by: (1) delivery in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended; or (2) registered or certified mail to the last business address known to the Party giving notice. Notice by registered mail shall be deemed given on the date received, or within 3 business days of the date sent, if not accepted by the Party to whom it was sent, whichever is earlier.

D. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available at law or in equity.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement.

DATE: _____

OWNER:

Evans Fire Protection District

By: _____
Ron Pristera, Fire Chief

DATE: _____

CONTRACTOR:

By: _____
Title: _____

Appendix A
Grant Agreement

Appendix B
Specifications