

CONSTRUCTION CONTRACT

AGREEMENT

THIS AGREEMENT is made between the City of Delta, Colorado, (Owner or City) and the Contractor, _____
_____ for the Construction Project known as:

The Owner's Representative (OR) is:

Ellen Michelson, City Engineer
City of Delta - Public Works

The Owner and Contractor agree as follows:

ARTICLE 1

THE WORK:

The Contractor shall perform all the Work required by the Contract Documents entitled 2016 Concrete Replacement Project.

ARTICLE 2

TIME OF COMMENCEMENT AND COMPLETION:

The Work to be performed under this Contract shall be commenced _____
and completed _____
Time is of the essence for this Contract.

ARTICLE 3

CONTRACT AMOUNT AND BASIS:

3.1 The Owner shall pay the Contractor for the satisfactory performance of the Work, subject to additions and deductions by Change Order as provided in the General Conditions, the following:

3.2 The contract shall be paid based on actual work performed in accordance with the Unit Rates specified in the

contract proposal/bid form, a copy of which has been attached to this agreement. All items on the bid form identified as "LS" shall be lump sum bids not subject to adjustment based on any field conditions or other factors. For all other line items, on the event that Contractor determines that quantities have changed or will change from the quantities shown on the bid form, Contractor shall promptly submit a request for a Change Order, and payment for any such increased costs shall be subject to Owner's approval of the Change Order pursuant to Article 20 of this Agreement.

3.3 The Owner represents that an amount equal to or in excess of the Contract Amounts set forth in Paragraph 3.1 has been appropriated.

ARTICLE 4
PROGRESS PAYMENTS:

Based upon Applications for Payment submitted to the OR by the Contractor and Certificates for Payment issued by the OR, the Owner shall make progress payments to the Contractor as follows:

5% of each amount certified for payment shall be retained by the City until final payment.

ARTICLE 5
FINAL PAYMENT:

After completion of the Work, provided the Contract be then fully performed, subject to the provisions of Article 16 of the General Conditions, the City shall publish a Notice of Final Settlement twice at least 10 days prior to the date of final settlement. Final settlement shall occur within sixty (60) days after this Contract is deemed complete to the City's satisfaction. The City shall withhold from final payments any amounts as required pursuant to C.R.S. 38-26-107.

ARTICLE 6
ENUMERATION OF CONTRACT DOCUMENTS:

The Contract Documents are as noted in Paragraph 7.1 of the General Conditions and are indicated as follows:

- Agreement including General Conditions
- Special Conditions
- Specifications
- Drawings
- Addenda
- Change Orders (if any)
- Modifications (if any)
- Written Interpretation of OR (if any)
- Performance Bond or Letter of Credit
- Payment Bond or Letter of Credit
- Notice to Proceed
- Request for Bids

ARTICLE 7

CONTRACT DOCUMENTS:

7.1 The Contract Documents consist of this Agreement (which includes the General Conditions), Special Conditions, the Drawings, the Specifications, all Addenda issued prior to the execution of this Agreement, all modifications, any performance or payment bonds, all Change Orders, all written interpretations of the Contract Documents issued by the OR, and those items listed in Article 6. These form the Contract and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, materials, equipment and other items as provided in Paragraph 10.2 necessary for the proper execution and completion of the Work and the terms and conditions of payment therefor, and also to include all Work which may be reasonably inferable from the Contract Documents as being necessary to produce the intended results.

7.2 The Contract Documents shall be signed in not less than duplicate by the Owner and the Contractor. If either the Owner or the Contractor do not sign the Drawings, Specifications, or any of the other Contract Documents, the OR shall identify them. By executing the Contract, the Contractor represents that he has visited the site and familiarized himself with the local conditions under which the Work is to be performed.

7.3 The term "Work" as used in the Contract Documents includes all labor necessary to produce the construction

required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in such construction.

ARTICLE 8

OWNER'S REPRESENTATIVE (OR):

8.1 The OR will provide general administration of the Contract and will be the Owner's representative during construction and until issuance of the final Certificate for Payment.

8.2 The OR shall at all times have access to the Work wherever it is in preparation and progress.

8.3 The OR will make periodic visits to the site to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of his on-site observations, he will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor. The OR will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The OR will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and he will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

8.4 Based on such observations and the Contractor's Applications for Payment, the OR will determine the amounts owing to the Contractor and will issue Certificates for Payment in accordance with Article 16. In no event shall the OR issue a Certificate of Payment without the Owner's review and approval.

8.5 The OR will be, in the first instance, the interpreter of the requirements of the Contract Documents. He will make decisions on all claims and disputes between the Owner and the Contractor.

8.6 The OR will have authority to reject Work which does not conform to the Contract Documents.

ARTICLE 9

OWNER:

9.1 The Owner shall secure any required permanent easements or real property necessary for the project and advise Contractor of the boundaries of City easements or property.

9.2 The Owner shall issue all instructions to the Contractor through the OR.

ARTICLE 10

CONTRACTOR:

10.1 The Contractor shall supervise and direct the Work, using his best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

10.2 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.

10.3 The Contractor shall at all times enforce strict discipline and good order among his employees, and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

10.4 The Contractor warrants to the Owner and the OR that all materials and equipment incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards may be considered defective.

10.5 The Contractor shall pay all sales, consumer, use and other similar taxes required by law and shall secure all permits, and licenses necessary for the execution of the Work at Contractor's expense, except as provided in Article 24. The City is exempt from State and local sales and use taxes. Contractor shall take steps to obtain such exemption from the Colorado Department of Revenue.

10.6 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work, and shall notify the OR if the Drawings and Specifications are at variance therewith.

10.7 The Contractor shall be responsible for the acts and omissions of all his employees and all subcontractors, their agents and employees and all other persons performing any of the Work under a contract with the Contractor.

10.8 The Contractor shall review, stamp with his approval and submit all samples and shop drawings as directed for approval of the OR for conformance with the design concept and with the information given in the Contract Documents. The Work shall be in accordance with approved samples and shop drawings.

10.9 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as his tools, construction equipment, machinery and surplus materials, and shall clean all glass surfaces and shall leave the Work "broom clean" or its equivalent, except as otherwise specified.

10.10 The Contractor shall indemnify and hold harmless the Owner and the OR and their officers, agents and employees from and against all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss, or expense (1) is attributable to bodily injury, sickness, disease or death, or to damage to or destruction of tangible property including the loss of use resulting therefrom, and (2) is caused in whole or in part by any act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder, provided, however, nothing in this Agreement shall require Contractor or any other person to hold the City of Delta harmless against the City's own negligence. In any and all claims against the Owner or the OR or any of their officers, agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly

employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 10.10 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts. The obligations of the Contractor under this Paragraph 10.10 shall not extend to the liability of the Owner, the OR, or his agents or employees arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the OR, his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 11
SUBCONTRACTS:

11.1 A subcontractor is a person who has a contract with the Contractor to perform any of the Work at the site.

11.2 Unless otherwise specified in the Contract Documents or in the Instructions to Bidders, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the OR in writing a list of the names of subcontractors proposed for the principal portions of the Work. The Contractor shall not employ any subcontractor to whom the OR or the Owner may have a reasonable objection. The Contractor shall not be required to employ any subcontractor to whom he has a reasonable objection. Contracts between the Contractor and the subcontractor shall be in accordance with the terms of this Agreement and shall include the General Conditions of this Agreement insofar as applicable.

11.3 Whenever Contractor receives payment pursuant to Article 2 of this Contract and the Contractor's request for payment included costs attributable to any subcontractor, Contractor shall make payments to each subcontractor of any amounts actually received and attributable to such contractor.

ARTICLE 12
SEPARATE CONTRACTS AND OWNER WORK:

12.1 The Owner reserves the right to award other contracts in connection with other portions of the Project or other work on the site or to perform such work itself.

12.2 The Contractor shall afford other contractors or Owner reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate his Work with theirs.

12.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefor.

ARTICLE 13

ROYALTIES AND PATENTS:

The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof.

ARTICLE 14

PERFORMANCE AND PAYMENT BONDS:

A Performance and a Payment Bond shall be submitted by Contractor for all contracts in excess of \$50,000 or if indicated in Article 6.

Each bond shall be in the amount of the contract sum and shall either be in the form supplied by Owner or shall be in such other form as approved by Owner. Each bond shall comply with the requirements of C.R.S. § 38-26-105 and 106.

When indicated in Article 6, a clean irrevocable letter of credit to the City from a bank acceptable to the City may be substituted for the bond indicated. Such letter of credit shall not expire prior to one year following final settlement.

ARTICLE 15

TIME:

15.1 All time limits stated in the Contract Documents are of the essence of the Contract.

15.2 If the Contractor is delayed at any time in the progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in transportation, unavoidable casualties, causes beyond the Contractor's control, or by any cause which the OR may determine justifies the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the OR may determine.

15.3 The parties understand and agree that calculating actual damages for a delay in the completion of the Work is impossible. Therefore, a daily charge will be made against the Contractor for each calendar day that any work remains uncompleted after the elapse of the contract time. This daily charge will be deducted from any money due the Contractor. This deduction will not be considered a penalty but as liquidated damages.

The schedule of liquidated damages is as set in Table 15.1 below.

Original Contact Amount		Liquidated Damages per Day when Contract Time is Based
From More Than	To and Including	On Calendar Day or Completion
\$ 0	\$ 50,000	\$ 350
50,000	100,000	380
100,000	250,000	440
250,000	500,000	520
500,000	1,000,000	640
1,000,000	2,000,000	820
2,000,000	4,000,000	1,080
4,000,000	8,000,000	1,450
8,000,000	12,000,000	1,820
12,000,000	16,000,000	2,250
		Increase per each additional 2,000,000 Contract Amount or part thereof over 16,000,000
16,000,000	No Limit	120

Table 15.1

Due account will be taken of any adjustment of the Contract Time for completion of the Work granted under the provisions of subsection 15.2 above.

Permitting the Contractor to continue and finish the Work or any part thereof after lapse of Contract Time will not

operate as a waiver on the part of the City of any of its rights under the Contract.

Any deduction assessed as liquated damages under this subsection shall not relieve the Contractor from liability for any damages or costs resulting from delays to other contractors or subcontractors on the project or other projects caused by failure of the assessed Contractor to complete the Work according to Contract times.

ARTICLE 16

PAYMENTS:

16.1 Payments shall be made as provided in Article 4 of this Agreement.

16.2 Payments may be withheld on account of (1) defective Work not remedied, (2) claims asserted or evidence which indicates probable assertion of claims, (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment, (4) damage to another contractor or Owner, or (5) unsatisfactory prosecution of the Work by the Contractor.

16.3 Final payment shall not be due until (1) the Contractor has delivered to the Owner a bond, a clean irrevocable letter of credit, cash or other security satisfactory to the Owner indemnifying Owner against any claim which has been asserted by anyone for labor, materials, equipment or otherwise arising out of the contract or on account of any claim which either City or Contractor believes may be asserted, (2) the City has inspected and approved the Work as complying with the contract, (3) written consent of surety, if any is given, (4) any manufacturers' or suppliers' warranties and equipment literature, and any as built plans required are delivered to Owner, and (5) notice of final settlement has been published in accordance with C.R.S. § 38-26-107.

16.4 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from (1) unsettled claims, (2) faulty or defective Work appearing after Substantial Completion, (3) failure of the Work to comply with the requirements of the Contract Documents, or (4) terms of any special guarantees required by the Contract Documents. The acceptance of final payment shall constitute a waiver of all

claims by the Contractor except those previously made in writing and still unsettled.

ARTICLE 17

PROTECTION OF PERSONS AND PROPERTY AND RISK OF LOSS:

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. He shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the Work and other persons who may be affected thereby, (2) all the Work and all materials and equipment to be incorporated therein, and (3) other property at the site or elsewhere. Contractor shall bear all risk of loss to the work, or materials or equipment for the work due to fire, theft, vandalism, or other casualty or cause, until the work is fully completed and accepted by the City. He shall comply with all applicable laws, ordinances, rules, regulations 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 or loss to any property caused in whole or in part by the Contractor, any subcontractor, any sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor, except damage or loss attributable to faulty Drawings or Specifications or to the acts or omissions of the Owner or OR or anyone employed by either of them or for whose acts either of them may be liable, but which are not attributable to the fault or negligence of the Contractor.

ARTICLE 18

INSURANCE:

18.1 Contractor shall maintain in force a Workmen's Compensation and Employer's Liability Insurance Policy in the amounts and with the coverage as required by the Workmen's Compensation Laws of the State of Colorado. A Certificate of such insurance shall be filed with the City.

18.2 Contractor shall also maintain the following insurance policies and coverage as indicated in the minimum amounts as indicated below:

18.2.1 [] General Liability in the minimum amounts of \$350,000 per person for a single occurrence, \$1,000,000 for injury to two or more persons per occurrence for both bodily injury and property damage to include the following coverage:

- Comprehensive Form
- Premises/Operations
- Underground, Explosion and Collapse Hazard
- Products/Completed Operations
- Contractual
- Independent Contractors
- Broad Form Property Damage
- Personal Injury
-

18.2.2 [] Automobile Liability in the minimum amounts of \$350,000 per person, \$1,000,000 per occurrence for both bodily injury and property damage covering the following:

- Any Auto
- All Owned Autos (Private Passengers)
- All Owned Autos (Other than Private Passengers)
- Hired Autos
- Non-Owned Autos
- Garage Liability
-

18.2.3 Contractor shall either provide the City with a Certificate of Insurance providing that the above insurance cannot be cancelled without 30 days written notice to the City or they shall have the City included as an additional insured on such policies and provide the City with a copy of the policy, and all endorsements. A Certificate of Insurance stating that failure to mail the notice to the City shall impose no obligations or liability upon the insurance company shall not be acceptable.

ARTICLE 19

PROPERTY INSURANCE:

19.1 Unless otherwise provided, the Contractor shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interest of the Owner, the Contractor,

subcontractors and sub-subcontractors in the Work and shall insure against the perils of Fire, Theft, Extended Coverage, Vandalism and Malicious Mischief. Such policy shall be an "all risk" Builder's Risk Policy.

19.2 Any insured loss is to be adjusted with the Owner and made payable to the Owner as trustee for the insured, as their interests may appear, subject to the requirements of any mortgage clause.

19.3 The Contractor shall file a copy of all such policies with the Owner prior to the commencement of the Work.

19.4 The Owner and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance provided under this paragraph. The Contractor shall require similar waivers by subcontractors and sub-subcontractors.

ARTICLE 20

CHANGES IN THE WORK:

20.1 The Owner, without invalidating the Contract, may order Changes in the Work consisting of additions, deletions, or modifications with the Contract Sum and the Contract Time being adjusted accordingly. Any such changes in the Work shall only be authorized by written Change Order signed by the Owner. All Change Orders must be accompanied by a written assurance from the Owner stating that lawful appropriations to cover the costs of the Change Order have been made and that said appropriations are available prior to the performance of the additional work.

20.2 The Contract Sum and the Contract Time may be changed only by Change Order.

20.3 The cost or credit to the Owner, if any, from a Change in the Work shall be determined by unit prices if specified in the Contract Documents, or by mutual agreement.

20.4 If the Owner requests a Change in the Work, the Owner will reimburse the Contractor on a periodic basis for costs incurred prior to finalization if the Change Order. In no event will periodic reimbursement be required before the Contractor has provided an estimate of the cost for the additional, compensable work to be performed.

ARTICLE 21

CORRECTION OF WORK:

The Contractor shall correct any Work that fails to conform to the requirements of the Contract Documents where such failure to conform appears during the progress of the Work, and shall remedy any defects due to faulty materials, equipment or workmanship which appear within a period of one year from the Date of Final Settlement of the Contract or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents. The provisions of this Article 21 apply to Work done by subcontractors as well as to Work done by direct employees of the Contractor, and are in addition to any other remedies or warranties provided by law.

ARTICLE 22

TERMINATION BY THE CONTRACTOR:

If the OR fails to issue a Certificate of Payment for a period of thirty days through no fault of the Contractor, or if the Owner fails to make payment thereon for a period of thirty days, the Contractor may, upon seven days written notice to the Owner and the OR, terminate the Contract and recover from the Owner payment for all Work executed and for any proven loss sustained upon any materials, equipment tools, and construction equipment and machinery, including reasonable profit and damages.

ARTICLE 23

TERMINATION BY THE OWNER:

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Owner may, after seven days written notice to the Contractor and without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor or, at his option, may terminate Contractor's work under the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method he may

deem expedient, and if the unpaid balance of the Contract Sum exceeds the expense of finishing the Work, such excess shall be paid to the Contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the Owner. These rights and remedies are in addition to any right to damages or other rights and remedies allowed by law.

ARTICLE 24

PERMITS:

CDOT will require a Certified Traffic Control Company and Plan for work performed on Hwy 50 Right-of-Way and will require approval prior to project commencement

ARTICLE 25

MISCELLANEOUS PROVISIONS:

25.1 This Agreement is being executed and is to be performed in the State of Colorado, and shall be enforced and construed according to the laws of the State of Colorado. In the event of action concerning this Agreement, the parties agree that venue for such action shall be in the Delta County District Court. In the event of such a dispute, the prevailing party shall, to the extent permitted by law, be entitled to an award of reasonable attorney fees and costs in addition to all other remedies.

25.2 Contractor shall not assign this Contract. The provisions of the Contract are binding on the heirs, successors or assignees of the parties.

25.3 The rights and remedies available under this Contract shall be in addition to any rights and remedies allowed by law.

25.4 No failure to enforce any provision of the Contract on account of any breach thereof, shall be considered as a waiver of any right to enforce provisions of this Contract concerning any subsequent or continuing breach.

25.5 The terms of this Agreement shall remain in full force and effect following final payment.

25.6 In lieu of customary lien rights, Sections 38-26-107

et seq. C.R.S., as amended, provides relief for any claimant having furnished labor, materials, rental machinery, tools, equipment or services toward construction of the particular public work in that final payment may not be made to the Contractor until all such creditors have been put on notice by publication in the public press of such pending payment and given opportunity to stop payment to the Contractor in the amount of such claims.

25.7 By executing below the Owner states that it has appropriated money equal to or in excess of the contract amount. The parties acknowledge and agree that no change order or other work order or other directive which requires additional compensation and causes the aggregate amount payable under this Agreement to exceed the appropriated amount, shall be issued unless appropriation for the costs thereof has been made. Contractor acknowledges that no Owner employee has the authority to bind Owner with regard to any payment for any work which exceeds amount appropriated for and payable pursuant to this Agreement. No provision of this Agreement shall be construed or interpreted: i) to directly or indirectly obligate Owner to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 16 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or iii) as a donation or grant by Owner to or in aid of any person, company or corporation within the meaning of the Colorado Constitution

25.8 The Owner and its duly authorized representatives shall have access to any books, documents, papers, and records of the Contractor and its Subcontractors that are related to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Owner is subject to and bound by the Colorado Open Records Act, § 24-72-101 et seq. C.R.S. Any and all documents Contractor prepares pursuant to this Agreement may be subject to production and/or reproduction pursuant to those statutes, irrespective of any copyrights held by the Contractor. The Contractor hereby waives any other claims of any kind whatsoever against Owner for the Owner's compliance or attempted compliance with the provisions of the Open Records Act.

ARTICLE 26

ADDITIONAL PROVISIONS:

SPECIAL PROVISIONS UNDER C.R.S. SECTION 8-17.5-101.

Exhibit B must be executed certifying that the contractor complies with Colorado State Law concerning employment of and/or contracting with illegal immigrants.

This Agreement is dated _____.

OWNER:

CITY OF DELTA

By _____
Signature

Printed Name and Title

CONTRACTOR:

Name of Entity

By _____
Signature

Printed Name and Title

Reviewed by the City Attorney this _____ day of _____,
_____.

City Attorney