



# REQUEST FOR PROPOSALS

**CDBG-DR WATERSHED RESILIENCE & NRCS EMERGENCY WATERSHED PROTECTION  
IMPLEMENTATION PROJECT:**

**Estes Valley Watershed Coalition EWP Restoration Projects**

**For**

**Big Thompson River and Fall River**

**DATE:**

February 6, 2017

**ISSUED BY:**

Estes Valley Watershed Coalition

P.O. Box 4494

Estes Park, CO 80517

**PROJECT NUMBER:**

EVEWP-2017

**PROPOSAL DUE DATE:**

March 10, 2017

## TABLE OF CONTENTS

REQUEST FOR PROPOSALS (RFP) .....	4
1.0 PROJECT BACKGROUND AND SCOPE .....	5
1.1 Project Background and Purpose.....	5
1.2 Scope of Work.....	7
1.3 Permitting .....	9
1.4 Construction Surveying .....	9
1.5 Construction.....	9
1.6 Construction Administration.....	10
2.0 Proposal Process .....	12
2.1 General.....	12
2.2 Proposal .....	12
2.3 Qualifications of Proposer.....	12
2.4 Contractor Experience and Capability to Perform Work .....	12
2.5 Experience and Qualifications of Project Team .....	13
2.6 Project Understanding and Value Engineering Approaches.....	13
2.7 Unit Costs .....	13
2.8 Proposed Work Schedule and Workload Capacity .....	13
2.9 Completion and Signing .....	13
2.10 Bid Bond .....	13
2.11 Addenda .....	13
2.12 Unbalanced Proposal .....	14
2.13 Site Inspection and Investigations .....	14
2.14 Inconsistencies and Interpretations.....	14
2.15 Award of Contract.....	14
2.16 Selection Process .....	15
2.17 Selection Criteria.....	15
2.18 Rejection of Proposal .....	15
2.19 Failure to Execute Contract and Furnish Bond .....	16
2.20 Confidential Information.....	16
3.0 PROJECT FORMS AND EXHIBITS .....	17
3.1 Supplemental Exhibits.....	17
3.2 Project Design Plans, Technical Specifications, and Probable Costs.....	17

3.3 Best Value Bid Form ..... 17

3.4 Sample Construction Contract ..... 17

## **REQUEST FOR PROPOSALS (RFP)**

The Estes Valley Watershed Coalition is requesting proposals for a single consulting team to construct eight (8) smaller projects collectively known as the Estes Valley EWP projects that are federally-funded through CDBG-DR Watershed Resilience & NRCS Emergency Watershed Protection Implementation Projects on the Big Thompson and Fall Rivers. Proposals must be submitted electronically and received by the Estes Valley Watershed Coalition (EVWC), [molly.mills@evwatershed.org](mailto:molly.mills@evwatershed.org), by 5:00 pm on **March 10, 2017**. Late proposals will not be considered regardless of delays as a result of electronic server or other electronic communication problems.

Proposal documents are available via the coalition website at [www.evwatershed.org](http://www.evwatershed.org) or at the Colorado EWP website at [www.coloradoewp.com/bids](http://www.coloradoewp.com/bids).

### **Mandatory Pre-Proposal Meeting & Site Visit:**

**Thursday February 23rd 10:00 a.m., followed by a site visit at 11:00 a.m. LOCATION: 1191 Woodstock, Estes Park CO 80517**

Cost may not exceed \$1,036,258

For additional information regarding this RFP, please contact:

Molly Mills, Coordinator

970-203-5116

[Molly.mills@evwatershed.org](mailto:Molly.mills@evwatershed.org)

### **ANTICIPATED SCHEDULE FOR PROJECT NUMBER EVEWP-2017**

Pre-proposal meeting: Thursday February 23, 2017 at 10:00 PM at 1191 Woodstock, Estes Park, CO 80517.

Pre-Proposal Inquiry deadline: Wednesday March 1, 2017

Last day for submitting proposal: March 10, 2017

Contract period: contract signing date through September 2017

Construction period: contract signing date through August 2017

# 1.0 PROJECT BACKGROUND AND SCOPE

## 1.1 Project Background and Purpose

This RFP is requesting proposals for a series of eight (8) projects within the Upper Big Thompson and Fall Rivers within the Estes Valley. These projects propose to construct the following improvements:

- Excavate and export sand and gravel sediment deposited from the flood;
- Stabilize channel banks and repair flood cause erosion;
- Provide long term stream stability via in-stream structures;
- Install aquatic habitat features throughout project limits; and
- Revegetate the floodplain within the project boundaries.

The primary objective of the work proposed in the Estes Valley Projects, is to protect life and property. This will be accomplished by expanding floodplain capacity, and increasing channel stability, promoting sediment transport, and enhancing the ecological conditions of the river.

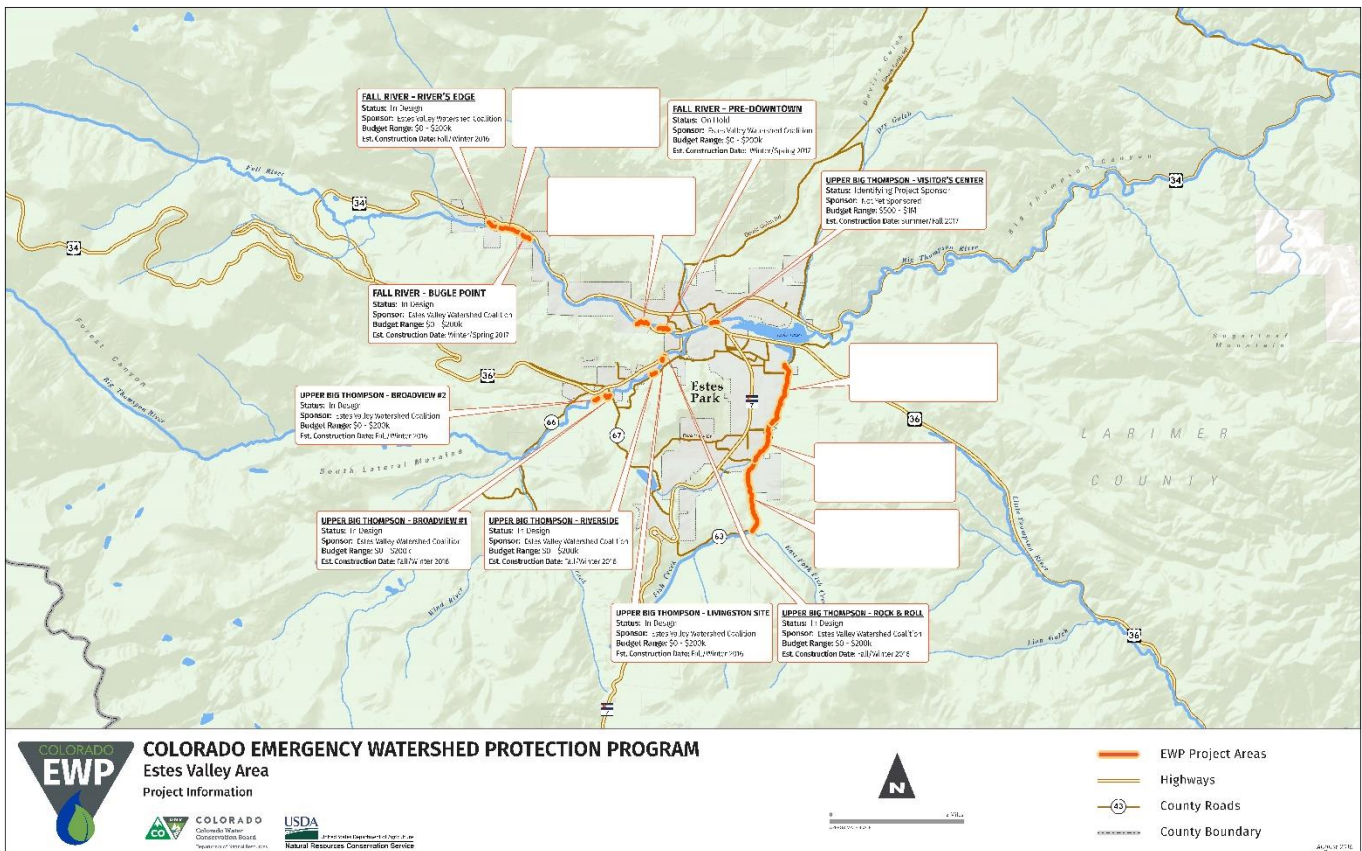


Figure 1: Estes Valley Watershed Coalition EWP Projects

Estes Valley Watershed is concentrating on flood recovery work between Rocky Mountain National Park and Lake Estes. This project will concentrate on six projects in The Upper Big Thompson River as it flows east from Rocky Mountain National Park through the center of Estes Valley and downtown Estes Park and into Lake Estes and two projects on Fall River as it flows through the north areas of the Estes Valley.

The Estes Valley Watershed Coalition (“EVWC” or the “Coalition”) has received a project award from the Natural Resources Conservation Service (NRCS) under the Emergency Watershed Protection (EWP) Program. This project award, is intended to remove sediment deposited by the flood, reestablish a resilient river channel and stabilize the floodplain with native riparian vegetation. Additionally, the Coalition received cost share match funding from the Colorado Department of Local Affairs Community Development Block Grant - Disaster Recovery (CDBG-DR) Watershed Resilience Pilot Program. Due to the nature of this funding, the EVEWP project must comply with all regulations associated with the CDBG-DR Watershed Resilience Pilot Program, including Davis Bacon and Section 3 of the Housing and Urban Development Act of 1968. This federally-funded Program is designed to help watersheds recover from damage sustained in the federally-declared fire and flood events of 2012 and 2013. The Program’s goal is to align watershed restoration and risk mitigation with community and economic development goals using a collaborative, multi-jurisdictional, coalition-of-partners approach. Project implementation grants are meant to address long-term watershed system improvements that build watershed resilience.

The selected contractor shall perform or supply all necessary services as specified in this document, or pursuant to generally accepted standard industry practice, with regard to construction surveying, utility location and coordination, traffic control plans, stormwater discharge permit, erosion control best management practices, and as-built plans with associated GIS shape files.

All construction work will be performed by a qualified contractor with experience on similar types of projects under the direction and supervision of the design engineer, hereto referred to as the ENGINEER in this RFP.

EVWC is a 501(c)(3) nonprofit, landowner-driven organization dedicated to the restoration of flood damaged rivers throughout the Estes Valley. The Coalition’s mission is to promote an ecologically healthy watershed that also seeks to maximize public benefits and minimizes public risk, through community engagement and sound science. It is made up of landowners in each watershed within the Estes Valley serving as the Board of Directors with an Advisory Committee of stakeholders from various river reaches, representatives from government agencies, technical experts in river restoration, volunteer organizations, and others. The Coalition formed in response to the September 2013 floods and has been working since that time to restore the watershed.

EVWC is an Equal Opportunity Employer and no otherwise qualified individual shall be subject to discrimination on the basis of race, color, religion, creed, national origin, ancestry, sex, age, sexual orientation (incl. transgender status), physical or mental disability, marriage to a co-worker and retaliation for engaging in protected activity (opposing a discriminatory practice or participating in an employment discrimination proceeding) in any phase of employment for this position.

Further, the work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3), which states that: 1) Employment, training, contracting and other economic opportunities generated by HUD assistance shall, to the greatest extent feasible, be directed to low and very low-income persons residing within the project area; and 2) Contracts for work in connection with the projects shall, to the greatest extent feasible, be awarded to businesses which are located in, or owned substantially by persons residing in the project area. All CDBG-DR funded projects must, to the greatest extent feasible, comply with Section 3 when contracting for professional services.

The selected Contractor must adhere to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). Selection will be made based on qualifications and the cost of proposed

services that provide best value to the project. The project to which the construction work covered by this proposal is being assisted by the United States of America and must comply with all provisions of the Davis-Bacon Act.

## **1.2 Scope of Work**

The following provides a summary of the items to be completed under the contract for construction for this project. CONTRACTOR will be responsible for bidding unit costs for project as specified in the FORMS.

### **UPPER BIG THOMPSON**

#### [Broadview 1 & 2](#)

The primary purpose of these projects is to protect the Lower Broadview Road that is the sole access for approximately 20 residences. Further protection will be accomplished by reestablishing vegetation and channel work that will relocate the thalweg away from the bank that is undercutting the road. There are two project sites that are approximately ~100-foot each where the Upper Big Thompson River takes a sharp turn putting the road on the outside bend creating erosion areas that are encroaching on the road. In the flood of 2013, vegetation was lost that now exposes the bank to further erosion with each passing event. Channel work should be accomplished to improve or create fisheries habitat, however careful consideration needs to be taken to work only on the south bank due to a shared boundary with Rocky Mountain National Park which is unwilling to participate in this restoration effort.

#### [Riverside](#)

The primary purpose of this ~200-foot section is to protect Riverside Drive. The Upper Big Thompson has experienced damage from the 2013 flood that has eroded the outside bend of the river and created an unstable bank that supports the road. Restoration will include the construction of a crib wall that will provide protection from further erosion that might put Riverside Drive at risk for collapse. Current plans incorporate the use of local logged material to reduce velocities on the outside bend and support vegetation that will help to stabilize soil material. The property is privately owned but within a Larimer County right of way.

#### [Rock N Roll](#)

The primary purpose of this ~100-foot reach is to protect the Rock Shop property by replacing a structural concrete wall that protects the Rock Shop property. This is a unique project that will remove the existing concrete wall that was damaged during the flood and ultimately failed due to being both overtopped and flanked causing the foundation to wash out. This area is very restricted in the availability of a floodplain, and the Upper Big Thompson River makes a near 90 degree turn at this point. Because the wall currently supports property, limiting alternatives for bank stabilization and removal of the wall will need to be done from the river. The concrete pieces can be creatively reused as stabilization pieces in other projects within this RFP if prudent. Any re-use of concrete will need to be approved by the engineer. In-channel work needs to be done to seamlessly incorporate the accomplish protection work and enhance the aquatic vegetation if possible. Revegetation in this area will be minimal but still required paying mind to the heavy traffic experienced here by visitors and ducks. Any channel work that can be accomplished that will control velocities or direct flows to protect downstream properties should be considered.

#### [Livingston](#)

The primary purpose of this ~150-foot reach is to protect the residence at 509 Pine River Lane by repairing and enhancing the rip rap and boulder toe. Additional protection will be provided by revegetating the south bank, and removing approximately 225 cubic yards of sediment that has accumulated on the North bank of the Upper Big Thompson River. This project is only ~100 feet downstream of the Rock N Roll Project and was part of NRCS EWP round exigent work that has begun to fail and erode the bank that was historically secured with several large trees. Although this project is focusing on one residential house, it is controlled by an HOA.

### Visitor's Center

The primary purpose of this ~600-foot reach project is to protect the Visitor Center property, building and parking lot by repairing and expanding existing toe protection along the Upper Big Thompson River. Additional protection will be provided by bank stabilization and revegetation. This area is heavily utilized by the 4.5 million visitors to the Estes Valley and therefore must blend protection of the property with public accessibility with special care will be taken to improve aquatic habitat features in the river channel. U.S. Bureau Reclamation owns and operates a flume immediately downstream of the project area and entails yearly dredging operations to keep clear. It is required that restoration efforts do not impede the operation of the flume or of the dredging operations.

## **FALL RIVER**

### River's Edge

The primary purpose of this ~600-foot reach is to protect the River's Edge Condominiums along Fall River and enhance the floodplain conveyance for the downstream communities. Much of this work focuses on improving rip rap directly in front of the Condominiums and lowering the north bank to provide the river floodplain access that will diminish velocities. Additional protection will be provided by vegetation that will be strategically installed after grading is confirmed and developing plans that incorporate existing vegetation wherever possible. Upper Thompson Sanitation District is conducting work on the North bank but will be working upstream and downstream of this reach. At this juncture, the primary property owner has not given permission for the work to move forward but is aware of the proposed construction; EVWC will continue working with this landowner, but the project is not confirmed yet. This project will also include channel work to improve pedestrian access to the river within the rip rap along the south bank as well as aquatic habitat improvements that enhance fisheries and wildlife habitat.

### Bugle Point

The primary purpose of this ~800-foot reach is to protect the Bugle Point Condominiums as well as the downstream condominiums by increasing floodplain conveyance. The majority of the project involves lowering of the floodplain bench at Bugle Point 1 to create strategic deposition zones and areas that will slow velocities. Additional protection will be accomplished by vegetating the existing rip rap near the Fish Hatchery Road bridge and revegetating the floodplain bench that has been lowered. Channel work is required in this reach due to



damage during the 2013 flood that artificially created a wide and shallow reach. Special care should be taken to preserve any existing vegetation creating habitat or stability.

### **1.3 Permitting**

It is anticipated that the Army Corps permit, Larimer County and all Town of Estes Park land use and floodplain development permits, will receive a provisional approval obtained by EVWC prior to construction. The contractor will be required to obtain the State Stormwater Discharge permit and associated erosion control plan, traffic control permit, and an oversize/overweight permit for construction prior to commencing work. The traffic control/management plan must include:

- a. The applicant shall provide the haul routes to be used at building permit application for approval.
- b. Flaggers and/or other traffic control measures must be used at the intersections of the access points during hauling operations.
- c. Locations and types of warning signs along the roads shall be shown.
- d. The applicant must use vehicle tracking to minimize the amount of rocks, mud, and other debris tracked.
- e. The applicant must provide a sweeping plan for the affected roads if
- f. sweeping becomes necessary.
- g. Prior to project commencement, the applicant must photo-document the conditions of all County roads used for hauling. The applicant must restore all affected roadways to pre-project conditions or better.
- h. The project shall be coordinated with the Larimer County and Town of Estes Park Transportation Departments.

The Consultant is required to locate utilities prior to beginning construction. Appropriate erosion control measures shall be installed downslope and parallel to contours for all disturbed areas including staging areas. The location of erosion control shall be shown on site plans submitted for Town of Estes Park or Larimer County building permit approval. Stockpiled fill piles over 30 days shall be properly covered and/or stabilized with temporary vegetation.

### **1.4 Construction Surveying**

The contractor will be responsible for all construction surveying and staking. Control will be provided by the design engineer. The contractor will also be responsible for as-built surveys with associated CADD files.

### **1.5 Construction**

Complete construction of all improvements identified in the plans including providing a safe work environment, complying with permitting requirements, and close coordination with the Engineer. The contractor will address all landowner requests and concerns facilitated through the Coalition staff. Under no circumstance will the contractor do work for a landowner that is not approved by the design engineer and coalition staff. Project design and Construction Specifications can be found in Section 4 of this RFP.

With a total eight (8) projects, we expect that project timelines and budgets will be aligned in a way that facilitates the successful completion of the projects with efficiency and logic. Each project will aim to provide protection of a specific asset; however, the approach may vary. In all cases, channel work to improve fisheries and aquatic habitat are important and will be considered part of the project.

## 1.6 Construction Administration

- A. The management and administration of the Consultant's Construction Phase contract obligations including, but not limited to, the following activities:
- Provide all requisite bonds and insurance for the construction of the project;
  - Possess the requisite licenses and assure that all subcontractors are also appropriately licensed and bonded for the tasks needed to complete the construction phase of the project;
  - Procure and manage all construction contractors to complete the Construction Phase scope of work for the project;
  - Hold weekly progress/construction meetings between the contractor, the coalition and the ENGINEER;
  - Develop and update a construction management plan that includes Construction Phase quality control procedures, safety programs, construction document management protocol, etc.;
  - Manage subcontractors (contracts, compliance, insurance, and bonds);
  - Work with ENGINEER as they perform construction oversight and be responsive to necessary adaptive management, field fitting suggestions, and updated design;
  - Prepare payment requests, relevant back up documentation, and maintain cash flow projection, including wage compliance with Davis-Bacon;
  - Track permit compliance;
  - Track Requests for Information and/or clarification (RFIs);
  - Manage change orders and documentation necessary to support changes; all change orders require written approval from EVWC prior to implementing work under the change order;
  - Prepare and provide as-built drawings;
  - Coordinate all monitoring activity as described previously; and
  - Administer warranties through the warranty period.
- B. Site Security will be the responsibility of the contractor throughout the duration of the Construction Phase. The contractor will need to develop an acceptable security control plan to control access to the construction site during all phases of construction while maintaining traffic flow. The contractor will be responsible for construction of any alternate entrance locations or detours, as well as any repairs required to bring facilities back to their current condition. The contractor may close the site to the public during construction.
- C. Project Schedule requirements will include developing a detailed project construction schedule defining construction activities of each element of the project and their inter-relationships, along with milestone dates relative to project completion and permit requirements. Regular monitoring, updating, and reporting of the project schedule and implementation process will be required to demonstrate an efficient and timely delivery of the product. The detailed project schedule must include all critical path permit activities through the issuance of Proposed Agency Action by each respective permitting agency. Critical permits include any necessary permits that, if delayed, would delay the Project Schedule.
- D. Project Budget reporting requirements will include the preparation of a project budget monitoring protocol to provide regular updates on the status and attributes of the project. Provide documentation of any resultant changes in the projected project costs resulting from construction-related decisions and/or changes. Change orders, including additive change orders, are allowable but only with prior written approval from EVWC. Circumstances that would warrant a change order are primarily those which would require shifting the project location. Note that all

work must be done within the area covered in the environmental review. In addition, cost of services must not exceed the total funds awarded for this project, and construction costs must not exceed the Not to Exceed figure established at the time of contracting.

- E. Permitting requirements for the contractor during the Construction Phase will include compliance with all permit requirements as well as the responsibility for the completion of all necessary work activities needed for the completeness determination of all permits and approvals required to construct and operate the project. All permits, whether obtained by EVWC or contractor, will become part of the project construction specifications and final design package. Permit completeness determination includes, but is not limited to, the following tasks:
- Develop a permitting compliance schedule and/or matrix, generating and/or assembling associated requisite technical data/documents as required for permit compliance;
  - Prepare permit applications and fees for all required permits with the exception of those obtained by the EVWC;
  - Coordinate responses to Requests for Information (RFIs); and
  - Develop requisite permit compliance and monitoring programs associated with permits obtained by the design engineer along with any potential redesign activities required to achieve permit compliance.
- F. Design Compliance Review, will be included in the weekly construction meetings with EVWC to validate that the design requirements are being provided during the Construction Phase. EVWC will establish a small project team to communicate with the contractor during this phase. The meetings will occur at a frequency dictated by EVWC and agreed upon by the contractor. One objective of these meetings will be to review the contractor's documentation of any resultant changes in the projected costs resulting from construction-related decisions and/or changes.
- G. Construction Document Management will be implemented as defined in the construction management plan to collect and store the following data in a readily retrievable manner: correspondence, payment requests, schedule updates, RFIs, change requests, and as-built drawings.
- H. Project Closeout will include activities needed to achieve final completion of the Construction Phase following the notification of Substantial Completion by the EVWC. Closeout activities will include, but not be limited to, the completion of all punch list items defined at the point of Substantial Completion, final permit closeout, production of as-built drawings and survey, and project document transfer.
- I. Warranty Administration will be provided by the contractor throughout the requisite warranty period and will include activities such as: warranty request tracking, event documentation, and response. Geomorphic monitoring must conform to the CWCB Standard Operating Procedure for Topographic Survey of Stream Channels. The Contractor must directly interface with suppliers, subcontractors, and others for requesting and monitoring all warranty service needs and corrective activities, and provide any modification and/or updates to the project record drawings that may result from warranty activities. The warranty period for the Project will be 12 months from the date of closeout, unless otherwise negotiated and agreed upon between EVWC and contractor and included in the amended Contract for Phase B – Construction Phase Services.
- J. The work under this project must be Davis-Bacon Act compliant. EVWC is responsible for monitoring the consultant for Davis-Bacon compliance, including monitoring consultant's weekly payroll. In addition, all work will comply with federal, state, and local law, including but not limited to the Copeland "Anti-Kickback" Act (40 USC 276c), Contract Work Hours and Safety Standards Act (40 USC 327-332), Fair Labor Standards Act (29 USC 102 et seq), and comply

with minimum wage (8-16-101 CRS 1973, as amended), discrimination and affirmative action (24-34-402, 1973 as amended), and Colorado labor preference (8-17-101 & 102 CRS 2013, as amended).

## **2.0 Proposal Process**

The intent of the Proposal Process is to select the lowest responsive and responsible proposer. Due to the overall schedule of the NRCS EWP program and deadlines for CDBG-DR grants, designs for the project are not yet fully completed. The plans and specifications included herein are **preliminary only**. Changes, including but not limited to adjustments to quantities, revised plan layouts, and updated specification revisions may still be made to the construction documents. The contractor is to provide a proposal, specifically unit prices, based on the preliminary construction documents provided with the RFP. The proposal price provided in the RFP will not be used as the final price. Instead, it is the intention of this process to bring the contractor on-board as part of a collaborative project partners team consisting of the EVWC, the engineer, and the contractor. In the first 30 days or less, the contractor will perform permitting tasks and provide value engineering and support to the design team. This work will not be paid for separately, but will be considered subsidiary to all construction activities. Costs for this time should be included in the overall unit costs provided by the contractor. The contractor and engineer will work together to clarify design details, design intent, discuss materials, and value engineer the project. Once a final plan set and quantities are developed, the contractor, using the **original unit costs** provided in the contractor's initial proposal, will prepare a final proposal to be used for the construction contract covering the physical construction of the project. If, during the project partners process, further clarification of the design allows or necessitates that the contractor revise a unit price for the project the finalized unit costs may not exceed 15% above the original proposed unit costs. Unit costs will not be changed due to adjustments in quantities. This project partner's process to finalize the design and proposal will not exceed 30 days.

### **2.1 General**

These instructions apply to proposal preparation for construction work for the Estes Valley Watershed Coalition.

### **2.2 Proposal**

Each proposal must include information requested in the FORMS section, it is not required that this format or sheet is included so long as the information is provided in the submitted proposal. All FORMS shall be submitted electronically as instructed in the request for proposals.

### **2.3 Qualifications of Proposer**

Specific qualifications related to the project shall be submitted as required in the FORMS. Additional detail related to the information required on the FORMS is provided in the following sections.

### **2.4 Contractor Experience and Capability to Perform Work**

Provide company background and relevant project experience using the PREVIOUS PROJECT EXPERIENCE table provided with the FORMS. Project experience should reflect work performed on stream stabilization improvements, stream and floodplain restoration, flood recovery, revegetation, and if projects involved alternative project delivery approaches. Provide up to six relevant project examples and note whether they were federally funded in part or in whole. In addition, for each project please provide the following:

- Narrative of project work and key components.
- Client contact information for each project.
- Up to 3 photos of completed work.

## **2.5 Experience and Qualifications of Project Team**

Describe the contractor's team for the project. Include key staff on the PROPOSED PROJECT TEAM MEMBERS table provided with the FORMS.

## **2.6 Project Understanding and Value Engineering Approaches**

Provide understanding of the project and the location; potential risks that may directly affect cost, schedule, or project success; proposed contractor activities to mitigate the identified risk; and provide value engineering approaches for the proposed work.

## **2.7 Unit Costs**

Provide unit costs using the attached BID SCHEDULE and/or electronic schedule included with the proposal documents. Approximate quantities for this project are included on the BID SCHEDULE, however, these shall not be considered final quantities. Final quantities will be determined following the project partners process described in Section 1.2.

## **2.8 Proposed Work Schedule and Workload Capacity**

Due to the unique nature of flood recovery work in a natural disaster of this significance, sufficient contractor workload capacity is critical for this contract. Anticipated implementation of this project requires that construction be completed within 220 days of a signed Financial Assistance (FA) agreement between the Natural Resources Conservation Service (NRCS) and the Colorado Water Conservation Board. The anticipated signature date of the FA agreement is mid-January, 2017 putting the end of the contract in August of 2017. The contractor's ability and commitment to perform this work in the available time frame is essential.

Provide a proposed work schedule with milestone deliverables and dates, with a completion date according to details listed in "Contract Term." Also, please list your proposed project team's current workload capacity and commitments in addition to its anticipated capacity for the EVEWP project, through August 2017. Please state your team's commitment to accomplish this project in what is acknowledged to be a tight time frame.

## **2.9 Completion and Signing**

Proposal must be legibly signed in ink and must cover all of the items of work called for herein and no others. All of the blank spaces in the BEST VALUE BID FORM must be properly completed. Proposer must sign and give a complete business address. Proposal(s) by corporations must be signed with the name of the corporation followed by the signatures and designations of the President and Secretary (or other person authorized to bind it in the matter) and must have the corporate seal affixed thereto.

## **2.10 Bid Bond**

All proposals must be accompanied by a bid bond at 5% of the proposed price. Proposals without a bid bond will be removed from consideration.

## **2.11 Addenda**

Proposer must acknowledge the receipt of all Addenda on the proposal, in the place provided, and include it with the proposal. There will be at least one addendum, which will include the pre-proposal Meeting attendee list and answers to questions.

## **2.12 Unbalanced Proposal**

Any proposal that, in the opinion of owner, is unbalanced so that each item does not reasonably carry its own proportion of cost, or that contains inadequate or unreasonable prices for any item, may be rejected.

## **2.13 Site Inspection and Investigations**

Prior to submitting a proposal, proposer(s) must inspect the work Site and its surroundings. It will be conclusively presumed that the inspection of the Site has been made by the submittal of a proposal.

DRAWINGS and SPECIFICATIONS, defining the work, were prepared on the basis of interpretation by ENGINEER of information derived from investigations of the work Site. Such information and data are subject to sampling errors, and the interpretation of the information and data depends to a degree on the judgment of ENGINEER. In view of this, proposer is invited to make additional investigations. Information about the degree of difficulty of the work to be done cannot totally be derived from either the DRAWINGS and SPECIFICATIONS or from ENGINEER or ENGINEER's representatives.

Since the proposal information cannot be guaranteed, proposer will have assumed the risks attendant to successful performance of the work at the amount of the proposal and will never make claim for additional payments or time extensions on the grounds that the nature or amount of work to be done was not understood by proposer when submitting the proposal.

## **2.14 Inconsistencies and Interpretations**

Any seeming inconsistencies between different provisions of the contract documents or any point requiring explanation must be inquired into by proposer, in writing, to owner at least five (5) days, excluding Saturdays, Sundays, and holidays, prior to the deadline for submission of proposal. A copy of the decision will be distributed only to those who have registered their contact information with EVWC. After proposals are opened, all proposers must abide by the decision of EVWC as to such interpretation.

If the decision or interpretation requires that addenda to the CONTRACT DOCUMENTS be issued, such ADDENDA will be distributed only to those who have registered their contact information with EVWC. Each proposer must acknowledge the addenda in the proposal.

Only those interpretations, clarifications, and explanations issued in writing by EVWC, either by addenda or by a formal written decision, will be binding. Oral or other interpretations, clarifications, or explanations will be without legal effect.

## **2.15 Award of Contract**

EVWC reserves the right to award the contract at any time within ninety (90) days from the date of the opening of proposals unless otherwise specified in the CONTRACT DOCUMENTS. EVWC further reserves the right to reject any and all proposals and waive any and all informalities, and the right to disregard all non-conforming or conditional or counter proposals.

In evaluating the proposal, EVWC will consider the following: capability of contractor to perform work, experience and qualifications of proposed construction team, project understanding and value engineering approaches, cost, and proposed work schedule and work capacity. Each of the five listed evaluation criteria will be scored and weighted specifically for the project as follows:

## 2.16 Selection Process

The consultant selection process is anticipated to follow the previously described schedule. Upon receipt of proposals, EVWC will tabulate each proposal. EVWC will hold an opening to open and read aloud the received proposals. The selection committee will individually review and score each proposal and meet to make a selection. The scores will be compiled in order to rank the applicants from highest to lowest. While price is one of the primary factors in proposal selection, the selection committee will select the lowest responsive and responsible proposer, comparing price with qualifications. The best value contracting company(s) will be selected to enter into a professional services agreement with EVWC, subject to the approval of the designated selection committee of the EVWC. Interviews may be held with a short-list of top-scoring contracting companies if necessary and/or desired by the selection committee.

## 2.17 Selection Criteria

The proposals will be evaluated using the following general criteria with a maximum of 100 points available:

### **Contractor Experience and Ability of Contractor to Perform Work (0-20 points):**

Previous experience by the construction team implementing stream channel modifications, stream bank stabilization, floodplain revegetation, previous flood recovery work, revegetation, understanding of the unique permitting requirements of river related construction projects, and previous experience working on Colorado watersheds. LTWC will also consider prior experience with projects funded in whole or in part with federal funding.

### **Experience and Qualifications of the Proposed Construction Team (0-20 points):**

Construction manager, key team members, and the construction company's qualifications; defined responsibilities; key team member's experience working together (continuity). Note team members with relevant experience with federally-funded projects involving regulations such as Davis Bacon and Section 3 of the Housing and Urban Development Act of 1968 (described above in Section 1 of this RFP).

### **Project understanding and Value Engineering Approaches (0-20 points):**

Demonstrated understanding of the project goals and objectives, potential project risks, and evaluation of value added engineering approaches.

### **Cost (0-20 points):**

Costs will be evaluated based on engineer's estimate, current industry construction bids/proposals and competitiveness with other received proposals.

### **Proposed Work Schedule and Workload Capacity (0-20 points):**

Demonstrated capacity to complete the work within the 220-day construction period and understanding of project components and scheduling.

## 2.18 Rejection of Proposal

If, at a minimum, any of the below-listed items are encountered, then the proposal will be deemed unacceptable.

1. Proposer(s) name is not on the plan holders list (established at the mandatory pre-proposal meeting);
2. Proposal is missing any of the Procurement Forms;
3. Required bonds and requirements are not included in the proposal package;
4. Proposal not signed by an authorized person of the corporation or company; and

5. Receipt of addenda not acknowledged by proposer on the proposal;

### **2.19 Failure to Execute Contract and Furnish Bond**

If the successful proposer fails to execute the contract and furnish the performance and payment bonds and certificate of insurance within ten (10) days from the issuance of the notice of award, the proposer shall forfeit the proposal security accompanying the proposal. The proposal security shall be retained as liquidated damages by the EVWC, and it is agreed that this said sum is a fair estimate of the amount of damages the EVWC will sustain.

### **2.20 Confidential Information**

Pursuant to the Colorado Open Records Act, C.R.S. §§ 24-72-201 et seq. (“Act”), all information contained in any bid or proposal is subject to public disclosure unless it meets one of the exceptions set forth in the Act. To avoid disclosure of trade secrets, privileged information, or confidential commercial, financial, geological, or geophysical data (“Confidential Information”), the proposer must clearly mark all Confidential Information as such and provide a written, detailed justification with its bid or proposal of the protected nature of the Confidential Information under Colorado law. This justification must address, at a minimum, the specific competitive harm that may result from any disclosure, the intrinsic value of the Confidential Information to the proposer, and any safeguards the proposer uses to protect the Confidential Information from disclosure.

By submitting a proposal, the proposer agrees to hold the EVWC harmless from any claim arising from the release of Confidential Information not clearly marked as such by the proposer or lacking written, detailed justification supported by Colorado law.



## **3.0 PROJECT FORMS AND EXHIBITS**

### **3.1 Supplemental Exhibits**

- 3.1.1 VIII-H [INVITATION FOR BIDS](#)
- 3.1.2 VIII-I [INSTRUCTIONS TO BIDDERS](#)
- 3.1.3 VIII-O [CONTRACTOR/SUBCONTRACTOR CERTIFICATIONS](#) This form must be included with the proposal.
- 3.1.4 VIII-D [WAGE DETERMINATION](#) This form must be included with the proposal.
- 3.1.5 VIII-K [BID FOR LUMP SUM CONTRACTS](#) This form must be included with the proposal.
- 3.1.6 VIII-L [BID FOR UNIT PRICE CONTRACTS](#) This form must be included with the proposal.
- 3.1.7 VIII-M [BID BOND](#) This form must be included with the proposal.
- 3.1.8 [Federal Labor Standards](#)

### **3.2 Project Design Plans, Technical Specifications, and Probable Costs**

Please access the [Project Design Plans](#) with this link.

### **3.3 Best Value Bid Form**

Please access the [Best Value Bid Form](#) with this link. This form must be included with the proposal.

### **3.4 Sample Construction Contract**

This is a sample and will be filled in and signed after negotiations with the awarded consultant. Please review and be aware of language and expectations in the [Contract](#) and [General Conditions](#).

## **ESTES VALLEY WATERSHED COALITION SAMPLE CONSTRUCTION CONTRACT**

THIS CONTRACT is made this \_\_\_\_ day of \_\_\_\_\_, 2016 by and between the **Estes Valley Watershed Coalition**, a Colorado nonprofit corporation (hereafter “the **Watershed Coalition**”), and \_\_\_\_\_ (hereafter the “**Contractor**”).

### **RECITALS**

WHEREAS, the Watershed Coalition desires to have designed and constructed \_\_\_\_\_ as more fully described in a Request for Proposals dated \_\_\_\_\_, 2016 (hereafter the “**Project**”).

WHEREAS, the Contractor provides professional design and construction services to the public and is fully qualified to perform the design and construction of the Project.

WHEREAS, pursuant to Title I of the Housing and Community Development Act of 1974, as amended, the State of Colorado Department of Local Affairs (“**DOLA**”) is authorized by the federal Department of Housing and Urban Development (“**HUD**”) to provide State of Colorado Community Development Block Grant Disaster Recovery Program funds (hereinafter referred to as “**CDBG-DR funds**”) to nonprofit organizations selected to undertake and carry out certain programs and projects under the State of Colorado Community Development Block Grant Disaster Recovery Program in compliance with all applicable local, state, and federal laws, regulations and policies.

WHEREAS, the Watershed Coalition, as part of its CDBG-DR grant agreement with DOLA under contract number CDBG-DR \_\_\_\_\_, has been awarded CDBG-DR funds for the purposes set forth herein (hereinafter referred to as the “**CDBG-DR Grant Agreement**”).

WHEREAS, the Scope of Work (as hereinafter defined) included in this contract is authorized as part of the Watershed Coalition’s CDBG-DR Grant Agreement.

WHEREAS, it would be beneficial to the Watershed Coalition to utilize the Contractor as an independent entity to accomplish the Scope of Work as set forth herein and such endeavor would tend to best accomplish the objectives of the CDBG-DR Grant Agreement.

WHEREAS, the Watershed Coalition has designated \_\_\_\_\_, its Watershed Coordinator, to act as the “**Project Manager**” for this Project. Watershed Coordinator and the State’s Technical Assistance Team will jointly act as the “**Coalition’s Representative**” with respect to this Project.

NOW, THEREFORE, in consideration of the mutual promises, covenants and provisions contained herein, and the mutual benefits to be derived therefrom, the parties hereto agree as follows:

#### **COVENANTS AND CONDITIONS**

NOW, THEREFORE, in consideration of the promises and obligations set forth below, the Watershed Coalition and the Contractor agree as follows:

##### **I. GEOGRAPHIC SCOPE OF WORK UNDER THIS CONTRACT**

###### **A. General.**

The Project is to be constructed on property owned by third parties and not on property owned by the Watershed Coalition (see Section III, below). The general geographic area involved within the scope of this contract can be described as:

Fish Creek Ranch owned Jeff Cheley and Cheley Colorado Camp, located at 4125 Fish Creek Rd, Estes Park, CO 80517

The foregoing may be referenced herein as the “**Project Area.**” All of the Project Area is contained within Larimer County, Colorado.

###### **B. Specific Affected Properties.**

The specific parcels of real properties directly involved or significantly affected by the Project as presently known are as set forth on Exhibit A , attached hereto and incorporated herein as if fully set forth. These parcels may be referred to herein as the “**Affected Properties**”. The owners of the Affected Properties, as shown in the

records of Larimer County, are as set forth on Exhibit A and may be referred to herein as the **“Affected Landowners.”**

C. Other Interested Properties.

Other parcels of properties that either adjoin or neighbor the specifically affected properties as presently known may also be set forth on Exhibit A , attached hereto and incorporated herein as if fully set forth. These parcels may be referred to herein as **“Interested Properties”**. The owners of the Interested Properties, as shown in the records of Larimer County, are as set forth on Exhibit A and may be referred to herein as the **“Interested Landowners”**. It is not presently contemplated that the Contractor shall have any need to or will actually (i) perform any work under this Contract on any parcel that is only an Interested Property, (ii) use an Interested Property as a means of access, ingress or egress to perform any work under this Contract, or (iii) otherwise set foot on, store equipment or materials on (even temporarily) or directly impact any parcel of an Interested Property. In the event that any of the foregoing does occur, the Contractor will immediately notify EVWC and the Coalition’s Representative and appropriate remediation steps, if any are necessary, shall be taken at the Contractor’s sole cost and expense.

**II. SCOPE OF WORK UNDER THIS CONTRACT (the “Work”)**

A. General.

The Contractor shall finalize all necessary plans, designs, drawings and specifications for the Project, complete all construction work necessary to complete the construction of the Project, and furnish all equipment and materials needed for the completion of the Project in accordance with such plans, designs, drawings and specifications.

B. Consultation with the Watershed Coalition.

The Contractor shall communicate with the Watershed Coalition about the Project as necessary or appropriate in order to ensure that the Project is completed on time and in accordance with the goals, objectives and requirements of the Project as set forth in the Scope of Work, as hereinafter defined. Such communication shall occur primarily through the Coalition’s Representative with copies of all written communication also given to EVWC.

C. Specific Duties and Responsibilities.

Additional specifics for the Project are set forth in Exhibit B, captioned “Scope of Work,” which is attached hereto and made a part hereof (hereafter the **“Scope of Work”**).

- (i) Part 1 of the Scope of Work describes the preliminary plans and designs that have been heretofore prepared by or on behalf of the Watershed Coalition. Such preliminary plans and designs constitute less than a 30% completion of the design work for the Project and shall be supplemented, reduced in scope or modified as may be agreed upon by the Contractor and the Watershed Coalition during the Final Design Plan Development stage of the work to be done by the Contractor.
- (ii) Part 2 of the Scope of Work sets for a breakdown of the Project into specific tasks to be accomplished by the Contractor.
- (iii) Part 3 of the Scope of Work contains a more detailed statement of the goals, objectives and requirements of the Project.

D. Cleanup and Remediation.

The Contractor shall remove all debris and excess material generated by its work and remediate and mitigate any disturbance of vegetation and soil conditions on the Affected Properties caused by or resulting from, either directly or indirectly, the work performed by the Contractor. Such cleanup and remediation shall be to the satisfaction of the Watershed Coalition in its reasonable discretion.

E. Compliance with Applicable Laws.

The design and construction of the Project will comply with all applicable laws including but not limited to those of the Town of Estes Park, Colorado, if applicable, the County of Larimer, Colorado, the State of Colorado and all federal laws including, again without limitation, those set forth in the General Provisions attached hereto as Exhibit C which is, by this reference, incorporated herein as if fully set forth. The Contractor shall obtain any and all permits necessary for the completion of the Project. The Contractor and any and all subcontractors or tradespersons providing services to the Contractor in the performance of the work under this Contract shall obtain and maintain during the term of their work under this Contract all licenses that may be necessary under local, state or federal law.

F. Subcontractors.

The Contractor may not assign this Contract but may subcontract any or all of the work to be performed under this Contract. However, notwithstanding any subcontract of work, the Contractor shall supervise all work performed by such subcontractor and shall be strictly liable for the performance of such work and the compliance by such subcontractors with the terms of this Contract including, without limitation, their compliance with Paragraph E of this Section II. If any additional subcontractor is brought on, the prime must make efforts to comply with Section 3 and outreach to LMI & minority & women-owned businesses. They must also submit proof of this to EVWC. The General Conditions set forth in Exhibit C will be incorporated into each and every subcontract for work performed under this Contract. The Contractor must certify that none of its subcontractors are ineligible or debarred through HUD or the General Services Administration.

G. Participation of the Contractor in Public and Private Meetings.

An important and essential part of the duties of the Contractor will involve the presentation by representatives of the Contractor of plans and designs to (i) Affected Landowners (either in a group setting or, in limited situations, with a single Affected Landowner), (ii) groups of interested members of the public, (iii) the Board of Directors of the Watershed Coalition, and/or (iv) the staff and/or board of trustees of the Town of Estes Park and/or the staff or commissioners of Larimer County (collectively "**Stakeholder Meetings**"). The Contract Price set forth in Section V below includes all costs associated with or arising out of the Contractor's participating in such Stakeholder Meetings. EVWC shall arrange all such meetings and shall exercise reasonable efforts to consolidate such meetings and limit, to the extent possible, the number of such meetings. The duties of the Contractor include the preparation of handout materials and displays as may be reasonable necessary or appropriate for such meetings as well as travel to attend such meetings.

H. Change Orders and Extra Services.

Upon the written request of the Watershed Coalition acting through EVWC, the Contractor shall, if requested, alter the design and construct improvements in addition to and/or instead of the design and improvements set forth in the Scope of Work. Notwithstanding the foregoing, services requested by the Watershed Coalition in writing shall only constitute a change order pursuant to this subsection if this Paragraph H of Section II is

expressly referenced in that written request (a **“Change Order”**). The Contractor shall charge the Watershed Coalition for such extra services, if any, in accordance with the contract price adjustment, if any, set forth in the Change Order. In no case may the total project budget of \$1,036,258 be exceeded. If no contract price adjustment is referenced in the Change Order, the Contract Price as set forth in Section V shall remain unadjusted.

### **III. LANDOWNER RELATIONS**

#### **A. Landowner Consent Agreement for Planning and Design Activities.**

The Watershed Coalition has obtained or will exercise reasonable efforts to obtain an executed Landowner Authorization, Consent and Limited Easement for Planning and Design Activities from each of the Affected Landowners either prior to or as soon as possible after the execution of this Contract. The Watershed Coalition will provide written notice to the Contractor of any Affected Landowner who has not executed such a consent agreement or any instance in which such an executed consent agreement ceases to be in full force and effect.

#### **B. Landowner Consent Agreement for Implementation and Construction.**

The Watershed Coalition will exercise reasonable efforts to obtain an executed Landowner Authorization, Consent and Limited Easement for Implementation and Construction from each of the Affected Landowners once final designs are completed by the Contractor and prior to the Contractor commencing work on the Affected Property of such Affected Landowner unless the Scope of Work does not involve implementation or construction activities on the property of an Affected Landowner and the Scope of Work can be accomplished without the Contractor needing access across the property of an Affected Landowner.

#### **C. Contractor’s Strict Compliance with Terms of Landowner Consent Agreements.**

The Contractor will not engage in any activities except as permitted under executed and effective Landowner Authorization, Consent and Limited Easement agreements entered into by the Watershed Coalition with Affected Landowners. The Contractor shall strictly comply with all terms, conditions and responsibilities of the Watershed Coalition and its Authorized Parties as provided under such agreements.

### **IV. TIME OF PERFORMANCE**

The Contractor hereby agrees to commence Work under this Contract on or before a date to be specified in a written “Notice to Contractor to Proceed” issued by the Watershed Coalition and to fully complete all Work under this Contract within 200 consecutive calendar days thereafter. The Contractor agrees to pay, as liquidated damages, the sum of \$200 for each calendar day or portion thereof between the end of such period and the actual completion of the Work under this Contract as further provided in Paragraph 42 of the General Conditions.

**V. AMOUNT OF PAYMENTS TO CONTRACTOR AND TIME OF PAYMENTS**

**A. Total Amount of Payments.**

The total amounts to be paid by the Watershed Coalition to the Contractor for completion of the Project and the performance by the Contractor of its obligations under this Contract shall not exceed the sum of one million, thirty-six thousand, two hundred fifty eight dollars (\$1,036,258) (the “**Contract Price**”). Any changes, whether additions or deductions, shall be made in writing and agreed upon by a change order pursuant to Section II, Paragraph F and expressly authorized by EVWC.

**B. Invoices for Partial Completion.**

The Contractor may bill the Watershed Coalition from time to time but no more frequently than on a monthly basis. Billings shall be made by invoice delivered electronically to the Watershed Coalition. Each invoice shall refer to the “**EVEWP-2017**” and specify the task or tasks as set forth in Part 2 of the Scope of Work that have been completed since the last invoice together with the estimated cost of such completed task. The invoice may also include a pro-rata portion of the estimated cost of Task 1 Project Management. The total invoice shall be reduced by five percent (5%) which shall be the retainage amount which will be paid upon Completion.

**C. Invoice for Final Payment upon Completion.**

Upon completion of the Project and acceptance of the work in accordance with this Contract, the Contractor may invoice the Watershed Coalition for the balance of the full Contract Price (as such may have been adjusted by any change orders) including the retainage amount.

**D. Dispute of any Invoice.**

If the Watershed Coalition disputes any invoice for any reason, it shall notify the Contractor as soon as reasonably practicable. The Contractor understands that an invoice may be disputed by the Watershed Coalition after it has been submitted to DOLA for payment pursuant to the terms of the CDBG-DR Grant and a delay notice of a dispute an invoice arising from a delay in DOLA accepting an invoice for payment or a delay in the Watershed Coalition in communicating such a dispute to the Contractor shall not preclude or prevent the Watershed Coalition from disputing the payment of any invoice. No verbal or email communication from the Watershed Coalition shall constitute a waiver of the right to dispute any invoice.

**E. Payment of Invoices.**

Once an invoice from the Contractor has been accepted for payment, payment of each invoice shall be due and payable within three (3) business days after the Watershed Coalition receives reimbursement from DOLA pursuant to the terms of the CDBG-DR Grant. If an invoice is received on or prior to the 1<sup>st</sup> business day of the month, the Watershed Coalition will submit the invoice for reimbursement by DOLA on the 5<sup>th</sup> calendar day of the month. If an invoice is received after the 1<sup>st</sup> business day of the month, the Watershed Coalition will submit the invoice for reimbursement by DOLA on the 5<sup>th</sup> calendar day of the following month. Payment of the final invoice shall be subject to the additional provisions contained in the applicable paragraphs of the General Conditions attached hereto as Exhibit C.

**F. Qualifications on Obligations to Pay.**

Notwithstanding any other terms of this Contract, the Watershed Coalition may withhold any payment (whether a progress payment or final payment) to the Contractor if any one or more of the following conditions exists:

- (i) The Contractor is in default of any of its obligations under this Contract.

- (ii) Any part of such payment is attributable to services which are not performed according to this Contract. (The Watershed Coalition will pay for only the part thereof attributable to services performed according to this Contract.)
- (iii) The Contractor fails to make payments promptly to any third parties used in the services for which the Watershed Coalition has made payment to the Contractor.
- (iv) The Watershed Coalition, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Project or any task according to this Contract. In such case, no additional payments will be due to the Contractor until the Contractor, at its sole cost, performs a sufficient portion of the Project or task so that the Watershed Coalition determines that the compensation then remaining unpaid is sufficient to complete the Project or task.
- (v) No partial payment shall be final acceptance or approval of that part of the Project or task paid for, or shall relieve the Contractor of any of its obligations under this Contract.

**VI. PAYMENT AND PERFORMANCE BOND**

The Contractor shall, within seven (7) calendar days after the execution of this Contract, furnish the Watershed Coalition with a Performance Bond and a Payment Bond each in the penal amount of one-hundred percent (100%) of the Contract Price. Such bonds shall be obtained from a surety licensed to transact such business in the state of Colorado and acceptable to both the Watershed Coalition and DOLA. The expense of such bonds shall be borne by the Contractor. Such bonds shall be maintained until such time as the final payment is made by the Watershed Coalition to the Contractor in accordance with this Contract.

**VII. CONTRACT DOCUMENTS**

The documents that together comprise the entire agreement between the Watershed Coalition and the Contractor concerning the Project (the “**Contract Documents**”) consist of the following:

- A. The terms and conditions of the CDBG-DR Grant Agreement;
- B. This Contract
- C. The Exhibits to this Contract (Exhibit A, Exhibit B and Exhibit C);
- D. The Watershed Coalition’s Request for Proposals dated November 16, 2016;
- E. The Proposal submitted by the Contractor dated December 16<sup>th</sup> 2016;
- F. The Notice of Award dated \_\_\_\_\_;
- G. The Existing Preliminary Plans and Designs referenced in Part 1 of Exhibit A;
- H. Landowner Consent Agreements obtained by the Watershed Coalition from Affected Landowners in accordance with Paragraphs A and B of Section III of this Contract;
- I. The Notice to Contractor to Proceed issued by the Watershed Coalition pursuant to Section IV of this Contract.
- J. The Final Design Plan Drawings and Specifications prepared by the Contractor during the course of performing the work under this Contract;
- K. Any Change Orders prepared and authorized pursuant to Section II, Paragraph H of this Contract;
- L. Any amendments to this Contract provided that any such amendment is in writing, specifically references that it amends this Contract and is executed by the Contractor, in its sole discretion, and by the Watershed Coalition, in its sole discretion.
- M. Wage determination?

The foregoing constitutes the entire agreement between the Watershed Coalition and the Contractor and incorporates all prior verbal and written communications between the parties concerning the subject matter included herein.

In the event of conflicting provisions, requirements or discrepancies among the provisions of the Contract Documents, their provisions shall apply in the following order of priority:

- (i) The CDBG Grant Agreement unless an exception has been granted by DOLA in writing and in its sole discretion;
- (ii) Amendments to this Contract;
- (iii) Change Orders for clarification of drawings, design or work to be performed;
- (iv) This Contract;
- (v) Exhibits to this Contract;
- (vi) Any applicable Landowner Consent Agreement;
- (vii) Final Design Plan Drawings and Specifications;
- (viii) The Request for Proposals;
- (ix) The Existing Preliminary Plans and Designs; and then
- (x) Other documents in a reverse order of chronology (latest documents given priority over older documents).

## VIII. MISCELLANEOUS

### A. Captions.

Each paragraph of this contract has been supplied with a caption to serve only as a guide to the contents. The caption does not control the meaning of any paragraph or in any way determine its interpretation or application.

### B. Amendments in Writing.

No amendment or modification shall be made to this Contract unless it is in writing and signed by both parties.

### C. Governing Law and Venue.

This Contract is governed by the laws of the State of Colorado. Any suit between the parties arising under this Contract shall be brought only in a court of competent jurisdiction in Larimer County, Colorado.

### D. No Third-Party Beneficiaries.

The parties intend no third-party beneficiaries under this Contract. Any person other than the Watershed Coalition or the Contractor receiving services or benefits under this Contract is an incidental beneficiary only.

### E. No Waiver.

No waiver of any breach or default under this Contract shall be a waiver of any other or later breach or default.

### F. Addresses for Notices and Communications.

All notices required or permitted to be given under this Contract shall be in writing, sent by regular mail or by electronic delivery (email), addressed as follows:

Estes Valley Watershed Coalition  
Attn.: Watershed Coordinator  
P.O. Box 4494  
Estes Park, Colorado 80517  
[Molly.Mills@evwatershed.org](mailto:Molly.Mills@evwatershed.org)

\_\_\_\_\_, Principal  
Contractor  
XXX Main Street  
City, Colorado ZIP  
[@YYYY.com](mailto:_____.@YYYY.com)



Either party may, by notice in writing to the other party, change the address to which notices to that party are to be given.

**G. Authority.**

Each party executing this Contract warrants that the individual executing this Contract is properly authorized to bind such party to this Contract.

IN WITNESS WHEREOF, the parties hereto have signed this Contract effective as of the day and year first above written.

**CONTRACTOR *[replace with actual name]***

By: \_\_\_\_\_

Title: \_\_\_\_\_

***ESTES VALLEY WATERSHED COALITION***

\_\_\_\_\_  
\_\_\_\_\_, President

**Exhibit A**  
**General Conditions**

**INDEPENDENT CONTRACTOR**

1. The relationship between the Contractor and the Watershed Coalition is that of an independent contractor. The Contractor shall supply all personnel, equipment, materials and supplies at its own expense, except as specifically set forth herein. The Contractor shall not be deemed to be, nor shall it represent itself as, an employee, partner, or joint venturer of the Watershed Coalition. No employee or officer of the Watershed Coalition shall supervise the Contractor. **The Contractor is not entitled to workers' compensation benefits and is obligated to directly pay federal and state income tax on money earned under this Contract.**

**PERSONNEL**

2. The Contractor represents that it has, or will secure at its own expense, all personnel required in order to perform under this contract. Such personnel shall not be employees of, or have any contractual relationship to, the Watershed Coalition. All services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under federal, state and local law to perform such services. None of the work or services covered by this contract shall be subcontracted without prior written approval of the Watershed Coalition. Any work or services subcontracted hereunder shall be specified in written contract or agreement and shall be subject to each provision of this contract.

**INTELLECTUAL PROPERTY RIGHTS**

3. The Contractor shall hold and save harmless the Watershed Coalition from any and all claims for infringement, by reason of the use of any patented design, device, material, process, or trademark or copyright, and shall indemnify the Watershed Coalition for any costs, expenses, and damages, including court costs and attorney fees, which it might be obligated to pay by reason of infringement at any time during the prosecution or after completion of its work under this Contract.

4. All work notes, reports, documents, computer programs (non-proprietary), computer input and output, analyses, tests, maps, surveys, or any other materials developed specifically for the Project are and shall remain the sole and exclusive property of the Watershed Coalition. The Contractor, upon request by the Watershed Coalition, agrees to provide documents or any other materials developed specifically for the Project in an electronically editable format (for example, Word or Excel). The Contractor shall not, without the prior written consent of EVWC, provide copies of any material prepared under this Contract to any other party other than the Coalition's Representative, the

Watershed Coalition or, in accordance with the instructions of EVWC, to Affected Landowners or persons in attendance at Stakeholder Meetings.

### **CONFLICT OF INTEREST PROVISIONS**

5. The Contractor represents, warrants and covenants that it presently has no interest and shall not acquire interest, direct or indirect, in any of the Affected Properties or any other real property or financial interest which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that in the performance of this contract, no person having such interest shall be employed.

6. The Contractor represents, warrants and covenants that no member of the governing body of the Watershed Coalition, and no other officer, employee, or agent of the Watershed Coalition who exercises any functions or responsibilities in connection with the planning and carrying out of the Project has any interest, direct or indirect, in the Contractor or this Contract; and the Contractor shall take appropriate steps to assure compliance with this provision for the term of the Contract.

### **CONTRACTOR'S DUTIES**

7. Notwithstanding anything to the contrary contained in this Contract, the Watershed Coalition and the Contractor agree and acknowledge that the Watershed Coalition enters into this Contract relying on the special and unique abilities of the Contractor to accomplish the Project. The Contractor accepts the relationship of trust and confidence established between it and the Watershed Coalition by this Contract. The Contractor covenants with the Watershed Coalition to use its best efforts. The Contractor shall further the interests of the Watershed Coalition according to the Watershed Coalition's requirements and procedures, according to the highest professional standards and in compliance with all applicable national, federal, state, municipal laws, regulations, codes, ordinances, and orders and with those of any other body having jurisdiction.

8. The Contractor represents, covenants, and agrees that it has and will undertake no obligations, commitments, or impediments of any kind that will limit or prevent it from the timely completion of the Project, loyally and strictly according to the best interests of the Watershed Coalition. In case of any conflict between interests of the Watershed Coalition and any other entity, the Contractor shall fully and immediately disclose the issue to the Watershed Coalition and shall take no action contrary to the Watershed Coalition's interests.

9. The Contractor has familiarized itself with the nature and extent of the Contract Documents, the geographic area of the Project and its physical characteristics, including without limitation the existing improvements, soil conditions, drainage, topography and all other features of the terrain and the local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect the cost, progress or performance of the work to be performed under this Contract.

10. The Contractor understands that it shall not be allowed any extra compensation by reason of any condition as described in Paragraph 9 above concerning which it might have fully informed itself prior to signing this Contract.

11. The Contractor is retained to perform work for the Watershed Coalition that includes confidential data, work product, and other privileged or confidential information that is protected under pertinent laws and Watershed Coalition policies. In order to maintain the fact and appearance of absolute objectivity, loyalty, and professionalism, the Contractor shall not, without the prior written consent of the Watershed Coalition, do any of the following:

- a. Disclose at any time information obtained as a result of this contractual relationship to any third party;
- b. Make any public statements or appear at any time to give testimony at any public meeting on the subject matters with regard to which the Contractor is or was retained by the Watershed Coalition. To the extent that the Watershed Coalition provides written consent for the disclosure of information or authorizes the making of public statements, the Watershed Coalition may impose such conditions upon such disclosure or communications as it thinks appropriate, and the Contractor agrees to comply with those conditions. This provision shall not preclude the Contractor from providing information to law enforcement officials in connection with any criminal justice investigation.

12. The Contractor represents, covenants, and agrees that all of the services furnished, work performed and materials used by the Contractor under this Contract shall be of at least the standard and quality prevailing among highly competent professionals who perform work of a similar nature to the work described in this Contract and shall be of good quality, free from faults or defects and in conformance with the Contract Documents to the reasonable satisfaction of the Watershed Coalition.

13. The Contractor represents, covenants, and agrees that its work will be accurate and free from any material errors. The Contractor additionally represents, covenants, and agrees that the planning for the Project will conform to all foreseeable uses thereof. Watershed Coalition approval shall not diminish or release the Contractor's duties since the Watershed Coalition is ultimately relying upon the Contractor's skill and knowledge.

14. The Contractor agrees to call to the Watershed Coalition's attention errors in any drawings, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Contractor (by the Watershed Coalition or any other party) that it becomes aware of and believes may be unsuitable, improper, or inaccurate in a material way. However, the Contractor shall not independently verify the validity, completeness, or accuracy of such information unless otherwise expressly engaged to do so by the Watershed Coalition. Nothing shall detract from this obligation unless the Contractor advises the Watershed Coalition in writing that such data may be unsuitable, improper, or inaccurate and the Watershed Coalition nevertheless confirms in writing that it wishes the Contractor to proceed according to the data as originally given.

15. The Contractor represents, covenants, and agrees to furnish efficient business administration and superintendence and perform the services required by this Contract in the best, most expeditious and most economical manner consistent with the interests of the Watershed Coalition.
16. The Contractor shall promptly pay all bills for labor and material performed and furnished by others in performance of the Project.
17. The Contractor is solely responsible for its own review and understanding of the terms and requirements under the CDBG-DR Grant Agreement and shall fully comply with such requirements in performing the services required by this Contract.
18. The Contractor shall comply with the Watershed Best Management Practices, as adopted by the Watershed Coalition from time to time, so as to prevent harm arising to the Affected Properties as a result of the Contractor's performance of work under this Contract.

#### **COMPLIANCE WITH LAWS**

19. This Contract is funded in whole or in part with CDBG-DR funds through the State of Colorado's Community Development Block Grant Program as administered by the Division of Local Government, Department of Local Affairs. Contractors are responsible for complying with those regulations and restrictions normally associated with federally-funded programs and any other requirements that the state may prescribe. The Contractor shall comply with all applicable laws, ordinances and codes of the state and local government and the Contractor shall save the Watershed Coalition harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.
20. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, creed, religion, sex or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance including funds received under the CDBG Grant Agreement.
21. Under Section 109 of the Housing and Community Development Act of 1974, no person in the United States shall, on the grounds of race, color, creed, religion, sex or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title including funds received under the CDBG Grant Agreement.
22. Under the Age Discrimination Act of 1975, as amended, (42 U.S.C. 610 et. seq.), no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance including funds received under the CDBG Grant Agreement.

23. Under Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 794), no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funds including funds received under the CDBG Grant Agreement.
24. Under Public Law 101-336, Americans with Disabilities Act of 1990, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.
25. Under Section 3 of the Housing and Community Development Act of 1968, Compliance in the Provision of Training, Employment, and Business Opportunities.
- a. The work to be performed under this Contract is on a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u, Section 3), requires that, to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the project area; and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.
  - b. The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR 135, and all applicable rules and orders of HUD and CTED issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these provisions.
  - c. If any person is hired either by the Contractor or any subcontractor, the hiring entity will make the opportunity known to potential Section 3 candidates and will document that process. The Contractor will submit an Employee Certification Form, marked as Exhibit VIII-O.X of the CDBG Guidebook, to the Watershed Coordinator.
  - d. The Contractor will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of its commitments under this law and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
  - e. The Contractor will include this Paragraph 22 clause in every subcontract for work in connection with the project and will, at the direction of the applicant or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where it has notice or knowledge

that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract, unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

f. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of HUD and CTED issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant, or recipient, its Contractor and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

26. The Contractor certifies that it shall comply with the provisions of section 8-17.5-101 *et seq.*, C.R.S. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract.

27. Under the Contract Work Hours and Safety Standards Act, as amended, (40 U.S.C. 327-332), workers must be compensated for overtime and be provided safe and healthy working conditions when working on federally assisted (including funds received under the CDBG Grant Agreement) construction projects.

28. The Contractor represents, warrants, and agrees (i) that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either the E-Verify or the Department Program; (ii) that the Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed; and (iii) if the Contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall be required to:

a. Notify the subcontractor and the contracting state agency or political subdivision within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

b. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to 8-17.5-102(2)(b)(III)(A) the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

29. The Contractor further agrees that it shall comply with all reasonable requests made in the course of an investigation under section 8-17.5-102(5), C.R.S. by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision or section 8-17.5-101 *et seq.*, C.R.S., the Watershed Coalition may terminate this contract for breach and the Contractor shall be liable for actual and consequential damages to the Watershed Coalition.

### **COMPLIANCE WITH DAVIS-BACON ACT PROVISIONS**

30. The Project to which the construction work covered by this Contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

- A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor as determined between three (3) and ten (10) days prior to the bid opening which determination is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.



- (ii)** **(a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
- (1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2)** The classification is utilized in the area by the construction industry; and
  - (3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (b)** If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)
- (c)** In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)
- (d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any

laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section I(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

- (ii)**     **(a)** The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The Contractor shall also submit payrolls for those weeks after work begins and where no work is performed for whatever reason with hours and payments marked with zeroes (0) until the final walk through is completed. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime Contractor to require a subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly

submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

**(b)** Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

**(2)** That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

**(3)** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

**(c)** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by subparagraph A.3.(ii)(b).

**(d)** The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

**(iii)** The Contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job and shall not require notice of planned interviews. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

---

#### **4. Apprentices and Trainees.**

**(i) Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(ii) Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be

greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The Contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this Contract.

**6. Subcontracts.** The Contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this Contract the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**1 Overtime requirements.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**2 Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

**3 Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

**4 Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.



**1** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**2** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

**3** The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

#### **INDEMNIFICATION**

31. The Contractor shall comply with the requirements of all applicable laws, rules, and regulations in connection with the services of the Contractor, and shall exonerate, indemnify, and hold harmless the Watershed Coalition, its officers, directors, agents, and all employees from and against it, and local taxes or contributions imposed or required under the Social Security, Workers' Compensation, and Income Tax Laws. Further, the Contractor shall exonerate, indemnify, and hold harmless the Watershed Coalition with respect to any damages, expenses, or claims arising from or in connection with any of the work performed or to be performed under this contract by the Contractor. This shall not be construed as a limitation of the Contractor's liability under this Contract or as otherwise provided by law.

#### **INSURANCE**

32. The Contractor agrees to procure and maintain in force during the terms of this Contract, at its own cost, the following minimum coverages:

- |    |   |             |
|----|---|-------------|
| a. | Workers' Compensation and Employers' Liability          | Statutory   |
|    | Waiver of Subrogation                                   |             |
| b. | Commercial General Liability                            |             |
|    | Bodily Injury & Property Damage General Aggregate Limit | \$1,000,000 |
|    | Personal & Advertising Injury Limit                     | \$1,000,000 |
|    | Each Occurrence Limit                                   | \$1,000,000 |

The policy shall be on an Occurrence Form and include the following coverages: Premises Operations; Personal and Advertising Injury; Medical Payments; Liability Assumed under an

Insured Contract; Independent Contractors; and Broad Form Property Damage. Coverage provided should be at least as broad as found in Insurance Services Office (ISO) form CG0001.

c. Professional Liability (errors and omissions)

Each Claim/Loss: \$1,000,000

Aggregate: \$1,000,000

This coverage shall remain in place for at least two years after the project is complete.

d. Commercial Automobile Liability Limits

Bodily Injury & Property Damage Combined Single Limit \$1,000,000

Medical Payments per person \$ 5,000

Uninsured/Underinsured Motorist \$ 100,000

Coverage is to be provided on Business Auto, Garage, or Truckers form. Coverage provided should be at least as broad as found in ISO form CA0001 (BAP), CA0005 (Garage) or CA0012 (Trucker) including coverage for owned, non-owned, & hired autos.

33. Insurance required by this Contract shall be primary coverage, unless otherwise specified, and shall specify that in the event of payment for any loss under the coverage provided, the insurance company shall have no right of recovery against the Watershed Coalition or its insurers. All policies of insurance under this Contract shall be provided by a reputable insurance company or companies qualified to conduct business in Colorado. The Watershed Coalition reserves the right, but shall not have the duty, to reject any insurer which it finds to be unsatisfactory and insist that the Contractor substitute another insurer that is reasonably satisfactory to the Watershed Coalition. Property and Liability Insurance Companies shall be licensed to do business in Colorado and shall have an AM Best rating of not less than A- VI. This insurance shall be maintained in full force and effect during the term of this Contract and for the additional periods set forth herein and shall protect the Contractor, its agents, employees and representatives from claims for damages for personal injury and wrongful death and for damages to property arising in any manner from negligent or wrongful acts or omissions of the Contractor, its agents, employees, and representatives in the performance of the services covered herein.

34. **All Insurance policies** (except Workers' Compensation and Professional Liability) **shall include Watershed Coalition and its officers, directors, agents and employees as additional insureds as their interests may appear.** The additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for Commercial Auto and Umbrella Liability.

35. Automobile insurance shall, without limitation, cover all automobiles used in performing any services under this Contract.

36. In the case of any claims-made insurance policies, the Contractor shall procure necessary retroactive dates, tail coverage and extended reporting periods to cover a period at least two (2) years

beyond the expiration date of this Contract. This obligation shall survive the termination or expiration of this Contract.

37. The Contractor shall not cancel, materially change, or fail to renew required insurance coverages. The Contractor shall notify EVWC of any material reduction or exhaustion of aggregate limits. Should the Contractor fail to immediately procure other insurance, as specified, to substitute for any policy canceled before final payment to the Contractor, the Watershed Coalition may procure such insurance and deduct its cost from any sum due to the Contractor under this Contract.

38. Certificates showing that the Contractor is carrying the above-described insurance, and the status of the additional insureds, shall be furnished to the Watershed Coalition prior to the execution of this Contract by the Watershed Coalition. Certificates of insurance on all policies shall give the Watershed Coalition written notice of not less than fifteen (15) days prior to cancellation or change in coverage. The Contractor shall forthwith obtain and submit proof of substitute insurance in the event of expiration or cancellation of coverage.

H. ***[Paragraph H is not applicable to this Contract and is intentionally omitted and left blank]***

#### **BOOKS AND RECORDS OF THE CONTRACTOR**

39. The Contractor agrees to maintain such records and follow such procedures as may be required under the state's CDBG-DR Grant Agreement and any such procedures as the Watershed Coalition may prescribe. In general, such records will include information pertaining to the contract, obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate), and performance.

40. All such records and all other records pertinent to this contract and work undertaken under this contract shall be retained by the Contractor for a period of five years after final payment is made by the Watershed Coalition to the Contractor under this Contract project, unless a longer period is required to resolve audit findings or litigation. In such cases, the Watershed Coalition shall request a longer period of record retention.

41. The Watershed Coalition and other authorized representatives of the state and federal government shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to the contract for the purpose of making audit, examination, excerpts, and transcriptions.

42. The Watershed Coalition and duly authorized officials of the state and federal government shall have full access to and the right to examine any pertinent documents, papers, records and books of the Contractor involving transactions related to the CDBG Grant Agreement or this contract.

#### **TIME FOR COMPLETION AND LIQUIDATED DAMAGES**

43. Time is of the essence of each and every portion of this Contract. It is hereby understood and mutually agreed, by and between the Contractor and the Watershed Coalition, that the date of beginning and the time for completion as specified in the Contract of the work to be done hereunder are essential conditions of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall be commenced on a date to be specified in the "Notice to Proceed." The Contractor agrees that the Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed that the time for the completion of the Work set forth in this Contract is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality. Upon becoming aware of any reason why there may be a delay in the completion of any portion of the Work under this Contract, the Contractor shall notify EVWC and the Coalition's Representative of the nature and cause of the delay.

If the Contractor refuses, neglects or fails for any reason to complete the work within the time specified, or any proper extension thereof granted by the Watershed Coalition in its sole discretion, then the Contractor shall pay the Watershed Coalition the amount specified in this Contract, not as a penalty but as liquidated damages for such breach of contract. Such amount is fixed and agreed upon by and between the Contractor and the Watershed Coalition because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Watershed Coalition would in such event sustain.

#### **PROJECT COMPLETION AND FINAL PAYMENT**

44. Upon completion of work on the Project, the Contractor shall, within ten (10) calendar days send the Watershed Coalition notice that the Project has been completed (the "**Contractor's Notice of Completion**"). This Notice of Completion shall be accompanied by an invoice from the Contractor for the balance of the Contract Price increased or decreased by any adjustment of such Contract Price made by any Change Order. It shall also be accompanied by an affidavit from the Contractor stating that all subcontractors, vendors, persons or firms who have supplied labor or materials for the work on the Project have been fully paid or satisfactorily secured and that all taxes, if any, have been paid. The Contractor's Notice of Completion shall also be accompanied by a statement from the surety company that provided the Contractor's payment and performance bonds, as required under Section VI of this Contract, consenting to final payment by the Watershed Coalition under this Contract.

45. Upon receipt of a Contractor's Notice of Completion, the Watershed Coalition shall:
- a. Be entitled to publish a Notice of Final Settlement in accordance with the provisions of Colorado Revised Statutes Section 36-26-107;
  - b. Be entitled to inspect the Affected Properties and provide written notice to the Contractor of either (i) any observed deficiencies in the work to have been performed under this Contract or (ii) the acceptance by the Watershed Coalition of the work performed under this Contract; provided, however, that such written notice shall not waive any claims the Watershed Coalition may otherwise have against the Contractor under this Contract.
46. Upon the expiration of the time allowed for claims to be made under the provisions of Colorado Revised Statutes Section 36-26-107 or within three (3) calendar days after receipt by the Watershed Coalition of reimbursement of the Contractor's final invoice pursuant to the CDBG Grant Agreement, whichever comes later, the Watershed Coalition shall pay the Contractor the balance of the Contract Price increased or decreased by any adjustment of such Contract Price made by any Change Order less the amount of any claims received by the Watershed Coalition in accordance with the provisions of Colorado Revised Statutes Section 36-26-107.
47. By submitting a Contractor's Notice of Completion to the Watershed Coalition, the Contractor, by such act, agrees to indemnify and save the Watershed Coalition, the Affected Landowners and their respective agents harmless from any and all claims growing out of any demand (whether with merit or not) from any subcontractor, laborers, workmen, mechanics, material men and furnishers of machinery, equipment, tools, supplies or materials incurred by the Contractor in the performance of the work under this Contract.
48. The acceptance by the Contractor of final payment shall be and shall operate as a release of the Watershed Coalition of all claims and all liability to the Contractor for all claims for all work performed and materials provided in connection with this Contract.

#### **AUDITS AND INSPECTIONS**

49. The Watershed Coalition, its independent certified public accounts, the State Auditor of the State of Colorado, DOLA and HUD or their delegates shall have the right to review and monitor the financial records, payroll records, records of personnel, invoice of materials and other components of the work and services provided and undertaken as part of the CDBG-DR project and this Contract, by whatever legal and reasonable means are deemed expedient by such persons. Such persons shall also be permitted to inspect all work and worksites at any time deemed appropriate by such persons.

#### **SUSPENSION OF THE CONTRACT**

50. If the Contractor fails to comply with the terms and conditions of this contract, or whenever the Contractor is unable to substantiate full compliance with provisions of this contract, the Watershed

Coalition may suspend the contract pending corrective actions or investigation, effective not less than seven (7) days following written notification to the Contractor or its authorized representative. The suspension will remain in full force and effect until the Contractor has taken corrective action to the satisfaction of the Watershed Coalition and is able to substantiate its full compliance with the terms and conditions of this contract. No obligations incurred by the Contractor or its authorized representative during the period of suspension will be allowable under the contract except:

- a. Reasonable, proper and otherwise allowable costs which the Contractor could not avoid during the period of suspension;
- B. If upon investigation, the Contractor is able to substantiate complete compliance with the terms and conditions of this contract, otherwise allowable costs incurred during the period of suspension will be allowed; and
- C. In the event all or any portion of the work prepared or partially prepared by the Contractor is suspended, abandoned or otherwise terminated, the Watershed Coalition shall pay the Contractor for work performed to the satisfaction of the Watershed Coalition, in accordance with the percentage of the work completed.

#### **TERMINATION OF THE CONTRACT**

51. This Contract may be terminated by either party for a material breach of this Contract by the other party not caused by any action or omission of either the terminating party or DOLA by giving the other party written notice at least three (3) days in advance of the termination date. The termination notice shall specify in reasonable detail each such material breach. In the event of such termination by either party, the Contractor shall promptly deliver to the Watershed Coalition all drawings, computer programs, computer input and output, analysis, plans, photographic images, tests, maps, surveys, and written materials of any kind generated in the performance of services under this Contract up to and including the date of termination. If this Contract is so terminated by the Contractor, it will be paid for all services rendered up to the date of termination, except as set forth in Section VI above. If this Contract is so terminated by the Watershed Coalition, the Contractor will be paid for all services rendered to the date of termination, except those services which, in the Watershed Coalition's judgment, constituted the grounds, in whole or in part, of the notice of termination, and except as set forth in Section VI, above. Upon such payment, all obligations of the Watershed Coalition to the Contractor under this Contract shall cease.

52. In addition to the foregoing, this Contract may be terminated by the Watershed Coalition for its convenience and without cause of any nature by giving the Contractor written notice at least seven days in advance of the termination date. In the event of such termination, the Contractor will be paid for all services rendered to the date of termination, except as set forth in Section VI, above, and upon such payment, all obligations of the Watershed Coalition to the Contractor under this Contract shall cease. Furthermore, in the event of such termination, the Contractor shall promptly deliver to the Watershed Coalition all drawings, computer programs, computer input and output, plans, photographic images, analyses, test, maps, surveys, and written materials of any kind generated in the performance of its services under this Contract up to and including the date of termination.