

**2024 GESC On Call Project
SP 2024-011**

Construction Contract

1. **Parties.** This Contract, made and entered into this ____ day of _____, 2024, between the Board of County Commissioners of the County of Douglas (hereinafter "County") and **OMERTA Storm Water Management Plus, INC.** a Colorado company (hereinafter "Contractor").

2. **Contract Documents.** The entire contract between the Parties shall consist of and include:

- A. This Contract;
- B. Approved Construction Plans (Exhibit A);
- C. Bid Schedule (Exhibit B);
- D. Douglas County Roadway Design and Construction Manual, as amended May 2013;
- E. Douglas County Grading, Erosion and Sediment Control Manual, (GESC), dated 2004, as amended;
- F. Douglas County Storm Drainage Design & Technical Criteria Manual
- G. CDOT, Standard Specifications for Road & Bridge Construction, dated 2017;
- H. CDOT, Standard Plans, M & S Standards, dated 2012;
- I. County's Payment Policies;
- J. Insurance Requirements, Revision of Section 107 of the Standard Special Provisions; and
- K. Payment and Performance Bonds

3. Except as otherwise provided in this Contract, the project shall be constructed in accordance with the Douglas County Roadway Design & Construction Standards, as amended May 2013, Douglas County Grading, Erosion and Sediment Control Manual, (GESC), dated 2004, as amended), the Douglas County Storm Drainage Design & Technical Criteria Manual, the CDOT Standard Specifications for Road and Bridge Construction, dated 2017, and the CDOT M&S Standard, dated 2012. If there is a conflict between these standards the Douglas County standards and manuals shall control.

4. **Scope of Work.** All services described in Exhibit A - (Construction Plans), attached hereto and incorporated herein, shall be performed by Contractor.

The County may, from time to time, request changes to the scope of services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon between the County and Contractor, shall be in writing and shall become part of this Contract upon execution.

The Contractor agrees to diligently and professionally perform all the services described herein in a manner satisfactory to the Authorized Representative. It is also understood and agreed that the Contractor shall not, in performing services hereunder, undertake any action or activity prohibited by the terms of any lease, permit, license or other agreement in effect during

the term hereof between the Contractor and the County for the use and occupancy by the Contractor of any County facilities or space.

5. **Term:** It is mutually agreed by the parties that the term of this Contract shall commence as of 12:01 a.m. on June 15, 2024 and terminate at 12:00 a.m. on June 14, 2026. This Contract and/or any extension of its original term shall be contingent upon annual funding being appropriated, budgeted and otherwise made available for such purposes and subject to the County's satisfaction with all products and services received during the preceding term.

6. **Compensation:** Subject to the maximum contract liability and all other provisions of this Contract, the County agrees to pay to the Contractor, and the Contractor agrees to accept payment as described in Exhibit B, attached hereto and incorporated herein, during the term hereof, in accordance with the terms set forth herein.

7. **Maximum Contract Expenditure:** Any other provision of this Contract notwithstanding and pursuant to Section 29-1-110, C.R.S., the amount of funds appropriated for this Contract is **ONE HUNDRED THIRTY TWO THOUSAND NINE HUNDRED FIFTY FOUR DOLLARS NINETY SIX CENTS (\$132,954.96)** for fiscal year 2024. In no event shall the County be liable for payment under this Contract for any amount in excess thereof. The County is not under obligation to make any future apportionment or allocation to this Contract nor is anything set forth herein a limitation of liability for Contractor. Any potential expenditure for this Contract outside the current fiscal year is subject to future annual appropriation of funds for any such proposed expenditure.

8. **Change Orders.** No change order, or other form of order or directive of the County requiring additional compensable work to be performed, which work is in excess of that specified in Paragraph 4 above, shall be issued unless the Contractor is given written assurance by the County that lawful appropriations to cover the costs of the additional work will be or have been made.

9. **Taxes.** The Contractor shall apply to the State Revenue Department for an exemption certificate in order to exempt it from having to pay sales and use tax.

10. **Indemnification and Insurance.** Contractor agrees to:

A. Indemnification. The Contractor shall defend, release, indemnify and save and hold harmless the County, its officers, agents and employees from and against (1) any and all damages, including but not limited to loss of use, to property, or injuries to or death of any person or persons, including property and officers, agents and employees of the County, and (2) any and all claims, demands, suits, actions, liabilities, costs, expenses (including but not limited to reasonable attorney fees, expert witness fees and all associated defense fees), causes of action, or other legal, equitable or administrative proceedings of any kind or nature whatsoever, of or by anyone whomsoever, regardless of the legal theory(ies) upon which premised, including but not limited to contract, tort, express and/or implied warranty, strict liability, and workers compensation, in any way resulting from, connected with, or arising out of, directly or indirectly,

actions or omissions of the Contractor or those performing under it in connection with its operations or performance herewith or its use or occupancy of real or personal property hereunder, including actions or omissions of Subcontractors and Suppliers, and acts or omissions of officers, employees, agents, representatives, invitees or licensees of the Contractor or its Subcontractors or Suppliers; provided however, that the Contractor need not indemnify the County or its officers, agents and employees from damages proximately caused by and apportioned to the negligence of the County's officers, agents and employees. This indemnification is for an amount represented by the degree or percentage of negligence or fault attributable to the indemnity obligor or the indemnity obligor's agents, representatives, subcontractors, or suppliers. Further, this indemnification is intended to comply with and be subject to § 13-50.5-102(8), C.R.S., as amended from time to time.

This indemnity clause shall also cover the County's defense costs, in the event that the County, in its sole discretion elects to provide its own defense. The County retains the right to disapprove counsel, if any, selected by Contractor to fulfill the forgoing defense indemnity obligation, which right of disapproval shall not be unreasonably exercised.

- B. Procure and maintain commercial general liability insurance including completed operations, contractual liability, products liability and automobile liability, affording coverage for all claims for bodily injury including death and all claims for destruction of or damage to property, arising out of or in connection with any operations under this Contract, whether such operations be by the Contractor, by subcontractors under it or anyone directly or indirectly employed by the Contractor or by subcontractor under it. Required coverage is outlined in **Revision of Section 107 of the Standard Special Provisions and made a part of this Contract.**
- C. Obtain and maintain during the term of this Contract worker's compensation insurance as required by law. This insurance shall cover all of its employees employed under the terms of this Contract. If any of the work on the Project is sublet, the Contractor shall require each of its subcontractors to provide similar coverage for all of the subcontractor's employees to be engaged in such work.
- D. Contractor is an independent contractor under this Contract. Notwithstanding any provision of this Contract, all personnel assigned by the Contractor to perform work under this Contract shall be and remain at all times, employees of the Contractor for all purposes, except as otherwise provided for subcontractors herein.

11. **No Waiver of Governmental Immunity Act.** The parties hereto understand and agree that the County, its commissioners, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Contract, the monetary

limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the County.

12. **Assignment.** The Contractor covenants and agrees that it will not assign or transfer its rights hereunder, or subcontract any work hereunder, either in whole or in part without the prior written approval of the Project Engineer. Any attempt by the Contractor to assign or transfer its rights hereunder shall, at the option of the County, void the assignment or automatically terminate this Contract and all rights of the Contractor hereunder.

13. **Subletting of Contract.** The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of the Contract, or its right, title or interest therein, without the written consent of the County. The Contractor may utilize the services of specialty contractors on those parts of the Project which, under normal contracting practices, are performed by specialty subcontractors. The Contractor shall be fully responsible to the County for the acts and omissions of the subcontractors and of persons directly employed by them, as it is for the acts and omissions of persons directly employed by it. The Contractor shall provide appropriate provisions to be inserted on all subcontracts relative to the Project to bind the subcontractors to the Contractor by the terms of the Contract Documents to give the Contractor the same power in regard to termination of any subcontractor that the County may exercise over the Contractor under any provision of the Contract Documents.

14. **Non-Discrimination and Federal Assurance in Connection with Performance of Work.** The Contractor agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, creed, sex, color, national origin, or ancestry and further agrees to insert the foregoing provision in all subcontracts hereunder. Further, Contractor agrees to comply with the Standard Title VI Non-Discrimination Appendices A and E attached hereto and incorporated herein, and the foregoing shall be a provision in all subcontracts hereunder.

15. **Cancellation of Contract.** Failure of the Contractor to comply with any of the requirements of this Contract may be considered by the County as evidence of the inability on the part of the Contractor to maintain the quality and service standards necessary under this Contract and shall be sufficient cause for termination of the Contract and the County initiating legal action against the Performance Bond of the Contractor.

16. **Patented Devices, Materials and Processes.** If a Contractor is required or desires to use any design, device, invention, product, material or process covered by letters of patent or copyright, it shall provide for such use by suitable legal Contract with the patentee or copyright owner and the County and shall pay all license fees and royalties and assume all costs incident to such use and construction of the Project or incorporation in the Project. The Contractor agrees to defend, indemnify and save harmless the County from any and all claims for infringement by reason of the use of such patented design, device, invention, project, material, or process or any trademark or copyright in connection with the construction of the Project pursuant to the Contract Documents and shall defend and indemnify the County for any costs, expense, and damages, including attorney's fees, which the County may be obliged to pay for any such infringement at any time such claim is made or prosecuted, including, but not limited to, after the completion of the Project. If the County determines, in the reasonable exercise of its

discretion, that a joint defense for the County and the Contractor creates a conflict of interest, the County shall be permitted to select its own counsel, and the Contractor shall pay all reasonable attorneys' fees, expenses (including expert fees and expenses), and costs of the County's defense. The County may, if it so desires, withhold any payment due the Contractor so long as it shall be reasonably necessary to indemnify the County on account of such injuries or damage.

17. **Compliance with Safety and Health.** Contractor agrees, in the performance of this Contract, to comply with all safety orders, rules and regulations imposed pursuant to the Colorado Occupational Safety and Health Program, commonly referred to as COSHA and/or all other safety orders and regulations properly imposed by any other regulatory governmental agency of the State of Colorado or of the United States.

18. **Permits and Licenses.** Unless otherwise provided, the Contractor shall procure all permits and licenses, and, give all notices necessary and incidental to the due and lawful construction of the Project. County may assist Contractor, when necessary, in obtaining such permits and licenses. All County permits will be at no cost to the Contractors.

19. **Venue.** Any and all legal actions pertaining or related to this Contract shall be filed and tried in the District Court in and for the County of Douglas, State of Colorado.

20. **Colorado Labor Preference.** The provisions of Sections 8-17-101 and 102, C.R.S., are applicable to this Contract. Colorado labor must be employed to perform the work to the extent of not less than eighty percent of each type or class of labor in the several classifications of skilled and common labor employed on the Project. "Colorado labor" means any person who is a resident of the State of Colorado, at the time of employment, without discrimination as to race, color, creed, sex, age, or religion except when sex or age is a bona fide occupational qualification. The County may waive the 80% requirement if there is reasonable evidence to demonstrate insufficient Colorado labor to perform the work of the project and if compliance would create an undue burden that could substantially prevent the completion of the project

21. **Conflict of Interest.** The Contractor agrees that no official, officer or employee of the County shall have any personal or beneficial interest whatsoever in the services or property described herein, and the Contractor further agrees not to hire, pay, or contract for services of any official, officer or employee of the County. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interest of any party with whom the Contractor has a contractual arrangement, in conflict with those of County.

22. **Compliance with All Laws and Regulations.** All of the work performed under this Contract by the Contractor shall comply with all applicable laws, rules, regulations and codes of the United States, State of Colorado and County of Douglas.

23. **No Third-Party Beneficiary.** The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement, shall be strictly reserved by the County and the Contractor, and nothing contained in this Contract shall give or allow any such claim or right of action by any other or third person under such Contract.

24. **Force Majeure:** No party shall be liable for failure to perform hereunder if such failure is the result of force majeure. Any time limit shall be extended for the period of any delay resulting from any force majeure, or this Contract may be terminated if such delay makes performance of the Contract impossible or impracticable. Force majeure shall mean causes beyond the reasonable control of a party against which it would have been unreasonable for the affected party to take precautions and which the affected party cannot avoid even by using its best efforts, such as, but not limited to, natural disasters of overwhelming proportions, exceptional adverse weather conditions, acts of God, acts of war, strikes, work stoppages, fire or other catastrophic casualty or action of non-party government authorities.

25. **Bond.** At the time of the execution of this Contract, the Contractor shall furnish a Contract Payment Bond and a Contract Performance Bond. Each bond shall be in the penal sum equal to the nearest integral one hundred dollars in excess of the Contract value or amount, plus all force account items, if any, specified in the project special conditions to be included in the payment and performance bonds. The bonds and the security shall be acceptable to the County.

26. **County Execution of Contract:** This Contract is expressly subject to and shall not be or become effective or binding on the County, until execution by all signatories of the County.

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STANDARD TITLE VI NON-DISCRIMINATION: APPENDIX A

During the performance of this contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. **Compliance with Regulations:** The Contractor shall comply with the Regulation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, national origin, or sex in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, or sex.
4. **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County, the Colorado Department of Transportation or the Federal Highway Administration be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the County, the Colorado Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the County shall impose such contract sanctions as it, the Colorado Department of Transportation or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding of payments to the Contractor under the Contract until the Contractor complies, and/or
 - b. cancellation, termination or suspension of the Contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The Contractor shall take such action with respect to any subcontract. or procurement as the County, the Colorado Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a

result of such direction, the Contractor may request the County to enter into such litigation to protect the interests of the County, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

STANDARD TITLE VI NON-DISCRIMINATION: APPENDIX E

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

DEPARTMENT OF PUBLIC WORKS ENGINEERING:

JANET HERMAN, P. E. **Date**
Director of Public Works Engineering

APPROVED AS TO FISCAL CONTENT:

APPROVED AS TO LEGAL FORM:

ANDREW COPLAND **Date**
Director of Finance

Chris Pratt **Date**
Senior Assistant County Attorney

COUNTY'S PAYMENT POLICIES

The following policies have been formulated to assure timely and accurate payments by Douglas County Government to its Contractors. Invoices submitted which are not in complete accordance with these policies will be returned (mailed) without payment to the Contractor for completion.

1. Each invoice for progress payment and/or final payment must list the description and location of the work being performed. Contractor's invoice for materials being billed must also be attached.

2. All invoices are to be submitted to Douglas County Department of Public Works - Engineering Division, Philip S. Miller Building, 100 Third Street, Suite 220, Castle Rock, CO 80104; Attention: Zachary Humbles.

3. Invoices must be submitted by the 25th of the month to be paid by the 25th of the following month. Under no circumstances will a Contractor be paid more than once a month. Errors will be corrected on the next pay cycle.

4. Checks will be mailed on or about the 25th of each month. When payment dates occur on Saturday or Sunday, payment will be made on the first working day following such date.

ACKNOWLEDGMENT

I have read the above procedures and understand that any deviation therefrom will cause delays in the payment of those invoices involved.

Contractor: _____

Signed by: _____

Print Name: _____

Title: _____

Date: _____

TASK NOTICE TO PROCEED FORM

TO: _____

FROM: **DOUGLAS COUNTY GOVERNMENT**

DATE: _____

REGARDING: **2024 Douglas County Grading, Erosion and Sediment Control (GESC) Notice of GESC On-Call Contract, DOUGLAS COUNTY PROJECT NUMBER SP 2022-001**

You are hereby notified that work associated with this Task Order will commence on _____ . On that date, you are to start performing your obligations under the Contract between you and Douglas County, Colorado, dated _____. The Contract Time of **XX calendar days** will be used to establish the Completion date. Therefore, the work shall be completed and ready for final Acceptance by the Completion Date, which shall be _____. **You are required to return an acknowledged copy of this notice to the County.**

ACCEPTANCE OF NOTICE

Receipt of the above Task Notice to Proceed is hereby acknowledged.

Contractor: _____

By: _____

Print Name: _____

Title: _____

Date: _____

Telephone: _____

**REVISION OF SECTION 107
LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

Section 107 of the Standard Specifications is hereby revised as follows:

107.12 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE

In Subsection 107.12, delete the last paragraph and replace with the following:

Measures to minimize damage to existing trees have been incorporated into the design of this Project. Due to the value of existing trees located within the Project limits, removal of trees has been minimized through the extensive use of ditch adjustments, grade and alignment adjustments and other techniques.

The Contractor shall take all precautions necessary to protect all trees not designated for transplanting and/or removal on the Project. Failure of the Contractor to protect existing trees will result in assessment of liquidated damages as follows:

First occurrence of failure to protect trees - \$5,000

Second occurrence of failure to protect trees - \$10,000

Any Subsequent occurrence of failure to protect trees - Potential Removal of Contractor from Project plus \$10,000 per occurrence

If the Contractor knowingly harms any existing tree(s), he shall immediately notify the Engineer of the tree(s) location and damage. Damage to trees that have been identified in the plans to be protected (or not identified for removal) outside the Project limits (County ROW and / or easements), or on private property, shall be subject to the above liquidated damages, and, potentially, any additional fines pursued by the owner(s) of the private property.

107.15 RESPONSIBILITY FOR DAMAGE CLAIMS, INSURANCE TYPES AND COVERAGE LIMITS

Delete the first paragraph of Subsection 107.15, prior to subparagraph (a), in its entirety and replace with the following:

The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damage to persons or property, either on or off the site, which occur as a result of his prosecution of the work.

The safety provisions of applicable laws and building and construction codes shall be observed, and the Contractor shall take or cause to be taken such additional safety and health measures as deemed necessary.

The Contractor shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work arising out of, and in the course of, employment on the work under this Contract. The Contractor shall promptly furnish the Engineer with reports concerning these matters.

REVISION OF SECTION 107
LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC
- Continued -

The Contractor expressly binds himself to defend, indemnify and save harmless the County, its commissioners, officials, officers, directors and employees, against all third-party suits, actions, claims, costs, fees, and expenses, including but not limited to expert fees and attorneys' fees, of any kind and nature brought, or which may be brought against the County, for or on account of any injuries or damage received or sustained by any person, firm, partnership or corporation, or persons, firms, partnerships or corporations, or by any property, in connection with or on account of the operations of the Contractor; or failure to comply with the provisions of the Contract; or on account of or in consequence of neglect of the Contractor in safeguarding the work; or because of the performance of the work under this Contract or by or in consequence of any negligence in connection with the same; or on account of the use of any improper or defective materials or workmanship; or on account of any act or omission, neglect, or misconduct of the Contractor, or a subcontractor, agents, servants or employees; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright, unless the design, device, material or process involved is specifically required by the Contract; or from any claims or amounts arising or recovered under the Worker's Compensation Act, or other law, ordinance, order or decree; or for any cause arising out of the performance of any subcontractor, agents, servants or employees relating to this Contract. If the County determines, in the reasonable exercise of its discretion, that a joint defense for the County and the Contractor creates a conflict of interest, the County shall be permitted to select its own counsel, and the Contractor shall pay all reasonable attorneys' fees, expenses (including expert fees and expenses), and costs of the County's defense. The County may, if it so desires, withhold any payment due the Contractor so long as it shall be reasonably necessary to indemnify the County on account of such injuries or damage.

Subsection 107.15 (f) is hereby revised to include the following:

- (f) The certificates of insurance shall be provided to Douglas County by the Contractor's insurance agent or carrier as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect. Insurance limits must be on each Certificate of Insurance. Each Certificate of Insurance shall be reviewed and approved by Douglas County prior to commencement of the Contract. No other form of certificate shall be used. The certificates shall identify this Contract.

Subsection 107.15 (g) is hereby revised to include the following:

- (g) Any completed certificates of insurance, including renewals and amendments or modifications, shall be sent to:

Douglas County Project Engineer
Department of Public Works Engineering
100 Third Street, Suite 220
Castle Rock, Colorado 80104

Megan Datwyler
Douglas County Risk Management
100 Third Street, 3rd Floor
Castle Rock, Colorado 80104

Any notices of cancellation, termination, or material change shall be sent to the above addresses within **thirty (30) calendar days** prior to the date upon which the noticed action

**REVISION OF SECTION 107
LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC
- Continued -**

(i.e., cancellation, termination or material change) is to take effect.

Add the following new Subsection 107.15(i) :

- (i) Failure on the part of the Contractor to procure or maintain policies providing the required coverage, conditions and minimum limits shall constitute a material breach of contract upon which the County may immediately terminate this Contract, or, in the County's sole discretion, it may suspend the Contractor's performance and/or procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the County shall be repaid by the Contractor to the County upon demand, or the County may offset the cost of the premiums against any monies due to the Contractor from the County.

107.16 OPENING SECTIONS OF PROJECT TO TRAFFIC

Subsection 107.16 is hereby revised to include the following:

The County has the right, subject to reasonable advance notice to the Contractor, to take possession of and use any completed or partially completed portions of the work. The County has this right even though the entire work or any portions thereof may, or may not, have been completed. Such possession and use shall not be deemed an acceptance of any work until all work has been completed in accordance with the Contract. Possession taken by the County pursuant to this paragraph shall not change the period of warranty requirements pursuant to the Revision of Sections 105 and 107.

107.17 CONTRACTOR'S RESPONSIBILITY FOR WORK

Subsection 107.17 is hereby revised to include the following:

Should an excavation become flooded, by any cause, the Contractor shall remove excess water, excavate the unsuitable material to a depth satisfactory to the Engineer and replace it with other suitable material as approved by the Engineer, at the Contractor's expense.

Until final written acceptance of the Project by the County, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part thereof by the action of the elements, groundwater, surface runoff, floods or from any other cause, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before final acceptance and shall bear the expense thereof.

REVISION OF SECTION 107
LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC
- Continued -

The Contractor shall be responsible for the Project and shall take such precautions as may be necessary to construct the Project in a dry condition, provide for drainage, groundwater, underground water, surface runoff; and shall erect any necessary temporary structures or other facilities (including pumping and all other dewatering costs) at the Contractor's expense that are needed to complete the requirements for this Project.

No separate measurement and payment will be made of the work, equipment and materials, including, but not limited to, any additional shoring, rock stabilization, diversions, cofferdams, sheeting, pumping and well points required to control the surface and subsurface water in the work area throughout the duration of the Project (until the Project is completed and accepted by the Engineer). This work shall be a subsidiary obligation of the Contractor for this Project.

In an emergency affecting the safety of life or property, on or adjoining the Project site, the Contractor shall act, either at his own discretion, or as instructed by the Engineer, to prevent such threatened loss or injury. Any compensation claimed by the Contractor on account of such emergency work will be determined by the Engineer as provided in Subsections 104.03 and 109.04.

107.19 FURNISHING RIGHT OF WAY

Subsection 107.19 is hereby revised to include the following:

The Contractor shall construct this Project within the right-of-way, permanent slope easements, permanent drainage easements, permanent utility easements and temporary construction easements, or as otherwise provided in writing and as shown on the plans. The Contractor, at his expense, shall obtain any additional temporary construction easements that the Contractor wants. The Contractor shall provide the County with a written copy of all third-party agreements pertaining to this contract. Upon written approval by the Engineer, the County may agree to incorporate the adjacent additional temporary construction easements into the Project limits. The Contractor will be responsible for obtaining all applicable Federal, State and Local permits associated with the work outside the Project limits. No time extensions will be granted by the County for the Contractor to obtain these additional easements. When required, temporary fence will be constructed within the limits of the temporary construction easements.

107.25 WATER QUALITY CONTROL

Subsection 107.25 is hereby revised as follows:

Subsection 107.25(a) Definitions 1 through 4 are hereby deleted.

Subsection 107.25(b) Items 2 and 6 are hereby deleted.

Subsection 107.25(c) is hereby deleted.

Exhibit A

Scope of Services

Douglas County uses this on-call grading and erosion control contract in order to maintain compliance with its Colorado Discharge Permit System (CDPS) Permit, as well as Douglas County Permit compliance, state water quality, and similar site stabilization.

Douglas County is required by its CDPS Permit to have a program to address projects that default on their GESC Permit responsibilities. As a result, the on-call GESC contracts are different from typical construction agreements because we request the contractors to provide bid schedules on items related to the installation, removal, and repair of erosion and sediment controls on future projects that may default on their GESC Permit obligations. Having this contracting ability will allow Douglas County to maintain compliance until the surety reimbursement process is fully processed for the future projects that are issued a notice of default. In a development from previous years, this award will include the application of the contractor on internal projects in addition to default events.

For the purposes of the GESC On Call contract, the contractor will be issued task orders to complete related work such as repairing failing or non-compliant projects, maintaining GESC structures on active projects, installing new grading and erosion control measures to include all those detailing in the GESC manual as well as CDOT erosion control and site stabilization measures. Additional works may be ordered to include innovative or pilot type stabilization techniques, or industry best practices in related means and manners, not to exceed the practiced experience of the contractor.

The contractor shall be prepared to respond in a timely and prepared manner to task orders for site stabilization, maintenance, installation, and related work. The contractor will coordinate routinely with DC Special Projects Engineers to ensure task order requirements are achieved as well as anticipating future requirements or on-going maintenance required at known project locations to provide the highest fidelity communication and planning possible.

Task 1 – On Call CDPS Permit compliance work. Repairing failed or neglected erosion control and site stabilization from non-DC projects.

Task 2 – On call site stabilization, erosion control, and related permit compliance for DC internal projects, external or partner projects, or DC infrastructure such as roadsides, ditches, and related that are failing or no longer stable.

Task 3 – Pilot or test project application of innovative practices, methods, means, and related for the advancement of DC GESC program development.

**2024 DOUGLAS COUNTY GRADING, EROSION AND SEDIMENT
CONTROL (GESC) NOTICE OF DEFAULT ON-CALL CONTRACT
DOUGLAS COUNTY PROJECT NUMBER SP2024-011**

BID SCHEDULE - EXHIBIT B-1

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT COST	COST
RECLAMATION					
	DISK, DRILL-SEED, STRAW-MULCH/CRIMP Less than 1	1.0	AC	\$ 1,575.00	\$1,575.00
	DISK, DRILL-SEED, STRAW-MULCH/CRIMP 1-10.99	10	AC	\$ 1,375.00	\$13,750.00
	DISK, DRILL-SEED, STRAW-MULCH/CRIMP 11-100.99	50	AC	\$ 1,275.00	\$63,750.00
	DISK, DRILL-SEED, STRAW-MULCH/CRIMP 101-500.99	250	AC	\$ 1,175.00	\$293,750.00
	DISK, DRILL-SEED, STRAW-MULCH/CRIMP 501 Plus	501	AC	\$ 1,075.00	\$538,575.00
	CLASS I COMPOST	30	CY	\$ 107.00	\$3,210.00
	MOWING TRACTOR WITH OPERATOR	24	HR	\$ 225.00	\$5,400.00
EROSION AND SEDIMENT CONTROLS					
	CHECK DAM	50	LF	\$ 95.00	\$4,750.00
	CONSTRUCTION FENCE - INSTALLATION	200	LF	\$ 2.39	\$478.00
	CONSTRUCTION FENCE - REMOVAL	200	LF	\$ 1.00	\$200.00
	EROSION CONTROL BLANKET - STRAW (USING NORTH AMERICAN GREEN 12" ECOSTAKES)	5,000	SY	\$ 3.52	\$17,600.00
	EROSION CONTROL BLANKET - STRAW/COCONUT (USING NORTH AMERICAN GREEN 12" ECOSTAKES)	5,000	SY	\$ 4.18	\$20,900.00
	EROSION CONTROL BLANKET - COCONUT (USING NORTH AMERICAN GREEN 12" ECOSTAKES)	5,000	SY	\$ 4.33	\$21,650.00
	EROSION CONTROL BLANKET - EXCELSIOR (USING NORTH AMERICAN GREEN 12" ECOSTAKES)	5,000	SY	\$ 4.13	\$20,650.00
	REINFORCED ROCK BERM - INSTALL	100	LF	\$ 91.00	\$9,100.00
	REINFORCED ROCK BERM - REMOVAL	100	LF	\$ 72.00	\$7,200.00
	SEDIMENT CONTROL LOG (12 INCH) INSTALL	1,000	LF	\$ 2.03	\$2,030.00
	SEDIMENT CONTROL LOG (12 INCH) REMOVAL	1,000	LF	\$ 0.65	\$650.00
	SILT FENCE	1,000	LF	\$ 1.26	\$1,260.00
	SILT FENCE (HAND PLACEMENT)	1,000	LF	\$ 1.46	\$1,460.00
	SILT FENCE REMOVAL	1,000	LF	\$ 0.66	\$660.00
	REPAIR SILT FENCE	500	LF	\$ 0.76	\$380.00
	SUMP INLET PROTECTION - INCLUDES DELINEATORS	10	EACH	\$ 395.00	\$3,950.00
	ON-GRADE INLET PROTECTION - INCLUDES DELINEATORS	10	EACH	\$ 395.00	\$3,950.00
	AREA INLET PROTECTION - INCLUDES DELINEATORS	10	EACH	\$ 220.00	\$2,200.00
	SUMP INLET PROTECTION - INCLUDES DELINEATORS - REMOVAL	10	EACH	\$ 100.00	\$1,000.00
	ON-GRADE INLET PROTECTION - INCLUDES DELINEATORS - REMOVAL	10	EACH	\$ 100.00	\$1,000.00
	AREA INLET PROTECTION - INCLUDES DELINEATORS - REMOVAL	10	EACH	\$ 100.00	\$1,000.00
	VEHICLE TRACKING PAD INSTALLATION	3	EACH	\$ 2,172.75	\$6,518.25
	VEHICLE TRACKING PAD REMOVAL	3	EACH	\$ 1,550.00	\$4,650.00

**2024 DOUGLAS COUNTY GRADING, EROSION AND SEDIMENT
CONTROL (GESC) NOTICE OF DEFAULT ON-CALL CONTRACT
DOUGLAS COUNTY PROJECT NUMBER SP2024-011**

BID SCHEDULE - EXHIBIT B-1

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT COST	COST
MISCELLANEOUS					
	LABORER WITH TRUCK AND HAND TOOLS	160	HOUR	\$ 49.00	\$7,840.00
	DUMP TRUCK/TRAILER	160	HOUR	\$ 165.00	\$26,400.00
	BACKHOE WITH OPERATOR	160	HOUR	\$ 160.00	\$25,600.00
	SKID STEER WITH OPERATOR	160	HOUR	\$ 97.00	\$15,520.00
	BLOWER TRACTOR WITH OPERATOR	40	HOUR		\$0.00
	SKID STEER WITH POWER BROOM	80	HOUR	\$ 116.00	\$9,280.00
	VACUUM SWEEPER	24	HOUR	\$ 185.00	\$4,440.00
	POTHOLING	40	HOUR	\$ -	\$0.00
	FORCE ACCOUNT (TBD BY COUNTY)	TBD	TBD	TBD	TBD
	<i>MOBILIZATION - EROSION CONTROL (TBD Measured from Castle Rock)</i>	35	MILE	\$ -	\$0.00
	<i>MOBILIZATION - RECLAMATION (TBD Measured from Castle Rock)</i>	35	MILE	\$ -	\$0.00
	Total				\$1,142,326.25



This Bid is Submitted by:

Company: OMERTA STORM WATER PLUS, INC

Representative: LA SHAWNDA ALDEN

Signature:

Title: DIR OF OPERATIONS

Address: 3320 CHAMBERS RD, AURORA, CO 80011

Phone: 303-280-7115

Fax: