

AGREEMENT 504422
FOR
DENVER WATER'S
PLANNED WATER MAIN REPLACEMENTS

DEFINITIONS

Wherever used in the Contract Documents, the following terms have the meanings indicated, which are applicable to both the singular and plural thereof:

Addenda--Written or graphic instruments issued prior to the opening of Proposals, which clarify, correct or change the Contract Documents.

Agreement--The written Agreement between Denver Water and Contractor covering the Work to be performed; other Contract Documents are attached to and made a part of the Agreement. Has the same meaning as Contract.

Proposal--The offer or proposal of the Proposer submitted on the prescribed form setting forth the prices for the Work to be performed.

Proposer--Any person, firm or corporation submitting a Proposal for the Work.

Board--Has the same meaning as Denver Water.

Bonds--Performance and payment bonds and other instruments of security.

Business Day--Working hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, not including Denver Water holidays. Denver Water holidays can be found on the website at <https://www.denverwater.org/contact> under Customer Care.

Change Order--An agreement between Denver Water and Contractor that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Time or Contract Price, which is issued on or after the Effective Date of the Agreement.

Contract--Has the same meaning as Agreement.

Construction Inspector--The authorized representative of the Board assigned to the Project site, or any part thereof, to observe the Work and to perform certain other obligations of the Board.

Contract Administrator--The authorized Denver Water representative who is assigned to be responsible for the Contract in accordance with the Contract Documents.

Contractor Customer Liaison--The person the Contractor has designated as the representative to handle the customer communication and relations for the duration of the project.

Contract Documents--The Agreement, Addenda, Contractor's Proposal (including documentation accompanying the Proposal and any post-Proposal documentation submitted prior to the Notice of Award), the Bonds, Request for Proposals, General Conditions, Specifications, Scope of Work, Form W-9, Work Package Drawings and Tap Papers, Insurance, Statement of Intent to Use Small Business Enterprises and/or Minority and Women-Owned Business Enterprises, and Work Packages, together with all written amendments, modifications and supplements incorporated into the Contract Documents on or after the Effective Date of the Agreement, and any other documents that are designated "Contract Documents" by Denver Water. No one part of the Contract Documents shall constitute the Contract or Agreement, but the whole taken together shall be the Agreement between the parties.

Contract Price--The moneys payable by Denver Water to Contractor for completion of the Work in accordance with the Contract Documents.

Contract Times--The number of Days or the dates stated in the Contract Documents for the completion of the Work.

Contractor--The person, firm or corporation with whom Denver Water has entered into the Contract to perform the Work.

Day--Calendar day.

Defective--An adjective that, when modifying the word Work, refers to Work that is unsatisfactory, faulty or deficient, does not conform to the Contract Documents, does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to

final payment (unless responsibility for the protection thereof has been assumed by Denver Water in accordance with this Agreement).

Denver Water--The property and personnel under the control of the City and County of Denver, acting by and through its Board of Water Commissioners. Has the same meaning as Board.

Drawings--The Drawings that show the scope, extent and character of the Work to be furnished and performed by Contractor, which have been prepared or approved by Denver Water and are referred to in the Contract Documents.

Effective Date--The date indicated in the Agreement on which it becomes effective. If no such date is indicated, it means the first Day of the Contract Period indicated in the Special Conditions.

Engineering Standards--Standards promulgated by the CEO/Manager of Denver Water and administered by the Chief Engineering Officer, as amended from time to time, that provide uniform requirements for the installation, operation, and maintenance of water facilities and the materials and equipment used for such facilities.

Hazardous Substances--Hazardous Materials and Hazardous Wastes, as defined by the Occupational Health and Safety Administration (OSHA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that include, but are not be limited to, Asbestos, PCBs, Petroleum, Hazardous Waste, and Radioactive Material.

Hazardous Waste--The term shall have the meaning provided in § 1004 of the Solid Waste Disposal Act (42 U.S.C. § 6903).

Laws or Regulations--Any applicable laws, rules, regulations, ordinances, codes, and orders of any governmental bodies, agencies, authorities, and courts having jurisdiction.

Notice of Award--The written notice by Denver Water to the apparent successful Proposer stating that upon compliance by the apparent successful Proposer with the conditions precedent enumerated therein, within the time specified, Denver Water will sign and deliver the Agreement and the Contractor will be eligible for subsequent Work Packages.

Owner--The Board of Water Commissioners of the City and County of Denver, which is formally designated as the City and County of Denver, a municipal corporation of the State of Colorado, acting by and through its Board of Water Commissioners that is at times referred to as "Board" or "Denver Water."

Project Plans--Have the same meaning as Drawings when used in Contract Documents.

RFP—The Request for Proposals issued by Denver Water on April 1, 2020.

Specifications--Those portions of the Engineering Standards that are written technical descriptions of materials, equipment, construction systems, standards and workmanship and administrative details relevant to the Work.

Subcontractor--An individual, firm or corporation having a contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

Substantial Completion--The Work (or a specified part thereof) has progressed to the point where it is sufficiently complete in the opinion of the Owner as evidenced by the Owner's definitive letter certifying "substantial completion." It is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended.

Supplier--A manufacturer, fabricator, supplier, distributor, materialman or vendor having a contract with Contractor or any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

Surety--A corporate entity authorized to do business in the State of Colorado, which executes as Surety thereon any Bond filed with Denver Water pursuant to the Contract Documents by Proposer or Contractor.

Underground Facilities--Pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities that have been installed underground to furnish any of the following services or materials: Electricity, gases, steam, liquid

petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

Work--The entire completed construction, or the various separately identifiable parts thereof, that are required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and/or services; furnishing and/or incorporating materials and/or equipment; or furnishing documents, all as required by the Contract Documents.

Work Package--The Contract Documents that establish the Work, Contract Times, Contract Price, and Liquidated Damages for delay.

GENERAL CONDITIONS

1. **PERFORMANCE:** The Contractor shall furnish the Work and materials covered by this Contract subject to all the terms and conditions contained in the documents comprising this Contract, including these General Conditions. No other terms or conditions shall be binding upon the parties unless agreed to in writing or issued by written order of the Board as described in paragraph 2. The Contractor's written acceptance of this Contract or the performance of any portion of the Work covered by this Contract shall constitute unqualified acceptance of all of its terms and conditions. The Specifications, Work Package Drawings and Tap Papers, Work Packages, and General Conditions shall supersede any inconsistent provisions in Contractor's Proposal.
2. **CHANGES IN SCOPE:** Upon issuance of a written order, the Board may change the amount or nature of material to be furnished and Work to be performed under this Contract. If the amount of material or Work is increased or decreased, the Contractor will be paid for the actual amount of Work and material furnished.
3. **WARRANTY:** The Contractor warrants the Work covered by this Contract to be of the kind and quality set forth in the Specifications. The Contractor warrants that the Work shall, at the time of acceptance by the Board, and for a period of one (1) year thereafter, be free of all defects in workmanship, material or installation. For a period of one (1) year from the date the Board accepts any Work required under this Agreement, the Contractor shall be responsible for the satisfactory repair or replacement of any Work that becomes Defective as a direct or indirect result of Contractor's workmanship, Work or negligence or from Contractor's improper handling, furnishing, installation, or use of faulty material or equipment.
4. **COMPLIANCE WITH SPECIFICATIONS:** The Board's Specifications establish the minimum acceptable requirements for the Work. The Board shall determine at its sole discretion whether any Work complies with the Specifications. Any provisions in the Specifications requiring specific ratings, capacities, weights, dimensions or other designations for any materials or equipment refer to the original manufacturer's specifications. The Board shall not be obligated to accept as meeting the Specifications any equipment assigned ratings, capacities, weights, dimensions or designations by any subsequent manufacturer, assembler or dealer. The Board requires any materials and equipment that come in direct contact with treated water to have ANSI/NSF 61 Certification or its equivalent as determined by the Board. Materials or equipment that, upon delivery at the Board's site, do not meet the Specifications or have been damaged in transit may be rejected by the Board and returned to the Contractor at the Contractor's risk and expense.
5. **FAILURE TO COMPLY WITH SPECIFICATIONS:** If any Work provided or performed by the Contractor does not meet Specifications or performance requirements, the Board reserves the right to delay payment until the problem is corrected or to terminate this Contract for default pursuant to General Condition 18.b. below.
6. **INSPECTION AND TESTING:** The Board's Construction Inspector and other authorized representatives of the Board, including testing agencies and governmental agencies with jurisdictional interests, shall have access to the Work for their observation, inspection and testing. The Contractor shall provide proper and safe conditions for such access. The Board may, at its discretion, inspect and test any Work or any delivery of materials or equipment to ensure compliance with the Specifications. The Board will pay the costs of tests it conducts and will make test results available to the Contractor upon request. The Board's findings shall be binding and conclusive. The Board's acceptance of material or equipment or Work, or waiver of any inspection or test, shall in no way relieve the Contractor of the responsibility to furnish material or equipment or complete Work meeting the requirements of the Specifications. The Board also may, at its discretion, allow its agents and contractors and industry organizations to observe Contractor's performance of this Contract for safety purposes. If any Work (including the Work of others) that is to be inspected, tested, or approved is covered without the written authorization of

the Construction Inspector, it must be uncovered for observation if requested by the Construction Inspector. Such uncovering and subsequent replacement shall be at the Contractor's expense unless the Contractor has given the Construction Project Manager timely notice of the Contractor's intention to cover the Work and the Construction Inspector has failed to act with reasonable promptness in response to such notice.

7. **FAILURE TO PASS INSPECTION OR TESTING:** The Board will not accept Work, materials, equipment, or field results that are damaged, do not meet the Engineering Standards or, in the Board's discretion, are unsuitable for use in the Board's potable water system. Should any material or the results of any Work fail to meet test criteria, in addition to the Board's exercise of its rights in Paragraph 18 below, the Contractor may be required to take the following actions at its sole cost:
 - a. Promptly remove all material or equipment to which the unacceptable material or equipment has been added or with which it has been in contact.
 - b. Promptly replace the material or equipment removed with like material or equipment meeting the Specifications.
 - c. Promptly correct the Defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by the Construction Inspector, remove it from the site and replace it with non-Defective Work.
 - d. Promptly mitigate any issues leading to unacceptable test results and retest as directed by the Construction Inspector and Jurisdiction Having Authority (JHA).

8. **PAYMENT:** Payment will be made in conformity with the terms and conditions of this Contract. The Board will not make advance or progress payments for Work unless provided for in the Contract. The Contractor must submit documentation supporting the charges in the invoice, which must be consistent with this Contract, and must include the Contract number of this Contract on each invoice. Payments shall be based upon Contractor's verified progress in completing the Work. The Board shall have the right to refuse to pay all or a portion of an invoice that is inconsistent with this Contract; all undisputed portions of the invoice shall be paid. The Board may delay payment until it can verify the accuracy of the invoice, obtain releases or waivers with respect to Work covered in the invoice, or resolve a dispute with the Contractor regarding an invoice. Payment shall be made payable to the trade or business of Contractor.

9. **SALES, EXCISE AND USE TAXES:**
 - a. **STATE:** The State of Colorado will not impose sales and use taxes upon construction and building materials purchased by the Contractors and Subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned and used by the City and County of Denver. In order to qualify for this exemption, an application for a certificate of exemption must be filed with the Colorado Department of Revenue by each Contractor and Subcontractor engaged in the construction project. The Board will not reimburse the Contractor for any such taxes paid as a result of a failure to file a request for exemption. Proposals shall not include any such taxes in the computation of Proposals.
 - b. **LOCAL:** The Contractor and all Subcontractors are required to pay the sales and use taxes imposed by a political subdivision of the State of Colorado on purchases of any tangible personal property to be built into the Work produced under this Contract. The Board will not adjust payments for any refund of such taxes that the Board might receive.
 - c. **FEDERAL:** As a political subdivision of the State of Colorado, the Board is exempt from the payment of most federal excise taxes. The Contractor will be reimbursed for payment of any federal excise tax for which the Board is unable to provide an exemption certificate.

10. **DELIVERY DATES:** All items purchased shall be delivered F.O.B. Destination, Freight prepaid as required by the Specifications. The Contractor shall make delivery as set forth in the Contract Documents. When a date is set for delivery of materials, delivery must occur on or before that date. If timely delivery does not occur, or it appears timely delivery will not occur, the Board will have the

right to terminate this Contract for default, the right to purchase equivalent property at market prices for immediate delivery without termination of this Contract and without liability to the Contractor, and a right against the Contractor for any increase in the price over the prices established in this Contract and for any other damages, including but not limited to consequential damages, that arise from the delay or are associated with deliveries to the Board.

11. WARRANTY OF TITLE: The Contractor warrants that title to all Work, materials and equipment covered by an application for payment will pass to the Board no later than the time of payment, free and clear of all liens.
12. RISK OF LOSS: The Contractor shall assume the risk of loss or damage to materials or equipment sold to the Board until the material or equipment has been delivered to and accepted by the Board.
13. PATENTS: The Contractor will provide a defense and hold harmless the Board against any costs, damages or demand for payment arising out of the Contractor's use of any patented or otherwise protected material, process, device or article in performing the Work under this Contract.
14. LIABILITY: The Contractor will provide a defense to the Board and pay any costs and damages for any liability or claim of whatever nature arising in any way out of this Contract, caused by any negligent act or omission or willful misconduct of the Contractor or the Contractor's officers, agents or employees.
15. INSURANCE: PLEASE READ THIS CAREFULLY. THE CONTRACTOR WILL NOT BE PAID UNLESS THE FOLLOWING INSURANCE REQUIREMENTS ARE MET.

The Contractor shall maintain insurance in full force and effect during the full term of this Contract. The insurance requirements may be modified further at the discretion of the Board. The Contractor shall provide to the Board certificates of insurance (and renewals thereof) demonstrating that the following insurance requirements have been met. The renewals of the certificates of insurance shall be provided to Denver Water via e-mail to the Contract Administrator.

 - a. Commercial General Liability Insurance:
Commercial general liability insurance with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Such insurance shall include the City and County of Denver, acting by and through its Board of Water Commissioners, as additional insured and shall be primary and non-contributing with respect to any insurance or self-insurance program of the Board.
 - b. Automobile Liability Insurance: Contractor shall maintain automobile liability insurance as required by Colorado law. In addition to the statutory requirements, Contractor shall maintain automobile liability insurance with limits not less than \$1,000,000 per occurrence for owned, non-owned and hired vehicles used in the performance of Work under this Agreement.
 - c. Workers' Compensation Insurance: The Contractor is located in Colorado and therefore shall maintain workers' compensation insurance, as required under the laws of the State of Colorado.
 - d. Other Requirements:
 - 1) The Contractor's insurers shall maintain an A.M. Best rating of A-, VII or better.
 - 2) All self-insured retentions or deductibles must be declared and acceptable to the Board.
 - 3) Thirty (30) Days' advance written notice of cancellation shall be provided to the Board, except for ten (10) Days' advance written notice in the event of cancellation due to non-payment of premium.
 - 4) The Contractor shall provide copies of insurance policies upon request of the Board and in redacted form if necessary to protect confidential information.
 - 5) The Board reserves the sole discretion to accept alternative types of insurance.

16. PERFORMANCE AND OTHER BONDS: At the time Work is commenced pursuant to a Work Package, the Contractor shall furnish Performance and Payment Bonds, each in an amount at least equal to the value of the Work, as security for the faithful performance and payment of the Contractor's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as otherwise provided by Laws or Regulations or by any and all requirements imposed by the Contract Documents. Bonds shall be in the forms prescribed by Laws or Regulations or by the Contract Documents, executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and rated "A-" or better by A. M. Best Company. Bonds signed by an agent shall be accompanied by a certified copy of the authority to act. The Proposal package shall include proof of A. M. Best ratings. The Contractor shall use the latest versions of forms EJCDC C-610 and EJCDC C-615 for the Contract. If the Surety on any Bond furnished by the Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in any state where any part of the Work is located, or it ceases to meet the requirements of Paragraph 16, the Contractor shall, within five (5) days thereafter, substitute another Bond and Surety, both of which must be acceptable to the Board.
17. RECORDS AND AUDITS: The Contractor shall at all times maintain a system of accounting records in accordance with its normal procedures, together with supporting documentation for all Work, purchases, and billings under this Contract. The Contractor shall make available for audit and reproduction by the Board, at the Board's administrative offices, all records, in whatever form, related to this Contract. The Contractor shall provide such availability during the term of this Contract and for two (2) years after final payment. The Contractor shall refund to the Board any charges determined by the Board's audit to be inconsistent with this Contract.
18. TERMINATION: Contractor shall not have the right of termination. The Board at any time may terminate this Contract in whole or in part upon written notice stating the type of termination and the effective date of the termination. The Board may terminate for convenience or for default, as described in this paragraph. As used in this paragraph, the word "Contractor" includes the Contractor and its Subcontractors at any tier.
- a. Termination for Convenience. If the Board terminates for convenience, it shall pay to the Contractor, as full compensation:(1) the unit or prorated Contract Price for the performed and accepted portion of the Work; and (2) a reasonable amount, as determined by the Board, not otherwise recoverable from other sources, with respect to the unperformed or unaccepted portion of the Work. Compensation for termination for convenience shall not exceed the dollar amount of the Contractor's sales to the Board under this Contract for the month prior to the termination.
 - b. Termination for Default. The Board may terminate this Contract for default if the Board in its sole discretion determines that Contractor has failed to comply with the Contract Documents; fails to make progress, so as to endanger performance; acts or fails to act so that it reasonably appears Contractor's future performance is uncertain; or fails to perform the Work within the time specified or any written extension; and does not cure such failure within a reasonable period of time after written notice. In the event of termination for default, the Board may purchase replacement Work, and the Contractor shall reimburse the Board for any excess costs incurred by the Board. The Board shall pay to the Contractor, as full compensation, the unit or prorated Contract Price for the performed and accepted portion of the Work. Termination for default will result in the removal of the Contractor's name from the approved Proposal list for two (2) years or a different period of time, at the Board's discretion.
If, after notice of termination for default, the Board determines that the Contractor was not in default or that the Contractor's failure to perform was due to causes beyond the control and without the fault or negligence of the Contractor, the termination shall be deemed for the convenience of the Board per Paragraph 18.a. above.

- c. Materials. In any event of termination, the Board may immediately possess and control materials purchased by the Board for the performance of the Work by the Contractor including any pipe and appurtenances.
19. ASSIGNMENT AND SUBCONTRACTS: The Contractor may not assign this Contract or any right or liability of this Contract or enter into any subcontract or amend any subcontract without prior written consent of the Board's Representative. If the Contractor subcontracts or assigns any part of this Contract, the Contractor shall be as fully responsible to the Board for acts and omissions of a Subcontractor as the Contractor is for the acts and omissions of Contractor's own employees. Any subcontract must include language similar to the Records and Audits paragraph of this Contract, requiring records to be adequate and available for Board audit. Any unapproved subcontract or assignment shall be deemed void without any further action required on the part of the Board.
20. NO THIRD-PARTY BENEFICIARIES: Subject to Paragraph 19 above, this Contract shall bind and inure to the benefit of the parties and their respective successors and assigns. This Contract is intended to benefit only the parties, and neither Subcontractors nor Suppliers of Contractor nor any other person or entity is intended by the parties to be a third-party beneficiary of this Contract.
21. CHARTER OF THE CITY AND COUNTY OF DENVER: This Contract is made under and conformable to Article X of the Charter of the City and County of Denver, which controls the operation of the Denver Municipal Water System. Insofar as applicable, the Charter provisions are incorporated by this reference and shall supersede any apparently conflicting provisions otherwise contained in this Contract.
22. COMPLIANCE WITH LAWS: In performing this Contract, the Contractor shall comply with all applicable laws, rules, and regulations, including, but not limited to, the Colorado Workers' Compensation Act and all federal and state tax laws. The Contractor certifies that it has complied, and during the term of this Contract will continue to comply, with the Immigration Reform and Control Act of 1986. The Contractor shall provide to the Board any certification the Board reasonably requests in order to demonstrate the Contractor's compliance with applicable legal requirements. Because the Contractor will be acting as an independent contractor, the Board assumes no responsibility for the Contractor's compliance.
23. VENUE AND GOVERNING LAW: This Contract shall be deemed performable in the City and County of Denver, notwithstanding that the parties may find it necessary to take some action outside the City and County of Denver. This Contract shall be governed by and construed under the laws of the State of Colorado. Any disputes arising hereunder shall comply with the hearing and appeal procedures set forth at Chapter 17 of the Board's Operating Rules, available at www.denverwater.org. If a question arises concerning whether an issue or claim is within the scope of these dispute resolution provisions, such question shall be decided by the hearing officer assigned to the administrative hearing. All disputes of any nature whatsoever, including without limitation claims for additional compensation or extensions of time, and disputes involving claimed breach of or default under the Contract, shall be resolved by this process. The determination of the hearing officer shall be considered a final order and action of the Board and may be reviewed under Rule 106(a)(4) of the Colorado Rules of Civil Procedure in the Denver District Court only.
24. COLORADO GOVERNMENTAL IMMUNITY ACT: The parties understand and agree that the Board is relying upon, and has not waived, the monetary limitations and all other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as it may be amended from time to time.
25. DELAY: If a delay is caused by the Board, without contribution by the Contractor, the Contract Time and Contract Price may be adjusted equitably except that the sole remedy of the Contractor shall be limited to any expenditure actually and necessarily caused solely by the delay. The Contractor is not entitled to recover anticipated profits. The Board reserves the right to assess liquidated damages for

delay in the amount of \$500 per day or as may be otherwise set forth in a Work Package if the Contractor does not achieve Substantial Completion of the Work on or before the date stated in the Work Package or Contract Documents.

26. EXTENSIONS OF TIME: Where the Contractor is prevented from completing any part of the Work within the Contract Time due to delay beyond the control of the Contractor, the Contract Time will be extended in an amount equal to the time lost due to such delay if the Contractor requests an extension. Delays beyond the control of the Contractor include, but are not limited to, acts or neglect by the Board or other contractors performing other Work, fires, floods, epidemics including the current COVID-19 pandemic, unusually severe weather conditions, or acts of God. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of the Contractor. An extension of Contract Time shall be the Contractor's sole and exclusive remedy for delay unless acts or omissions of the Board caused said delay. In no event shall the Board be liable to the Contractor, any Subcontractor, any Supplier, any other person or organization, or to any Surety for or employee or agent of any of them, for damages not actually incurred or for damages arising out of or resulting from (i) delays not caused by the Board or (ii) delays beyond the control of both parties including, but not limited to, fires, floods, epidemics including the current COVID-19 pandemic, unusually severe weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other Work.
27. IMMIGRATION LAWS: The signature of Contractor on this Contract: (1) certifies that the Contractor is not a natural person unlawfully present in the United States; and (2) also certifies the statements below *if this is a public contract for services as defined in Colo. Rev. Stat. § 8-17.5-101, et seq.*, and Contractor utilizes Subcontractors or employees in Contractor's business.
- a. The Contractor shall not:
 - i. Knowingly employ or contract with an illegal alien to perform Work under this Contract; or
 - ii. 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.
 - b. The Contractor 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 program or the department program (as defined in Colo. Rev. Stat. § 8-17.5-101, *et seq.*). The Contractor may not use either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.
 - c. If the Contractor obtains actual knowledge that a Subcontractor performing Work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall:
 - i. Notify the Subcontractor and the Board within three (3) Days that the Contractor has actual knowledge that the Subcontractor is employing or contracting with an illegal alien; and
 - ii. Terminate the subcontract with the Subcontractor if within three (3) Days of receiving the notice required pursuant to sub-subparagraph (1) of this subparagraph 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 (3) Days the Subcontractor provides information to establish that the Subcontractor has not knowingly employed or contracted with an illegal alien.
 - d. The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to state law.
 - e. The Contractor acknowledges that in the event the Contractor violates any of the provisions of the foregoing subparagraphs a. – d., the Board may terminate this Contract for breach of contract. If this Contract is so terminated, the Contractor shall be liable for

actual and consequential damages to the Board.

28. **REMEDIES:** The rights and remedies of the Board provided under this Contract shall not be exclusive and shall be in addition to any other rights and remedies provided by law or equity.
29. **INDEPENDENT CONTRACTOR:** In the performance of Work under this Contract, the Contractor shall be, for all purposes, an independent contractor and not an employee or agent of the Board. The Contractor and its employees and Subcontractors shall in no way represent themselves to third parties as agents or employees of the Board.
30. **NO UNEMPLOYMENT INSURANCE OR WORKERS' COMPENSATION BENEFITS:** The Contractor is not entitled to unemployment insurance or workers' compensation benefits as a result of performance of the Work for the Board. The Contractor is required to provide workers' compensation and unemployment insurance benefits for its employees and Subcontractors as required by law.
31. **CONTRACTOR'S RESPONSIBILITIES:** The Contractor shall consider Board contracts to be a priority responsibility and shall not allow other work to interfere with Board Work or Contractor's ability to respond to Board needs. The Contractor must provide a responsible person to respond immediately to Board communications. The Contractor's equipment must not be stored permanently on Board property. The Contractor will be responsible for all damage to Board or others' equipment, materials and property caused by the Contractor, its employees, or agents.
32. **PAYMENT OF TAXES:** The Contractor is solely liable for any federal and state income and withholding taxes, unemployment taxes, F.I.C.A. taxes and workers' compensation payments and premiums applicable to payments from the Board under this Contract. The Contractor shall indemnify the Board for any liability resulting from nonpayment of such taxes and sums.
33. **SAFETY AND PROTECTION:**
 - a. The Contractor shall be responsible for, at its own expense, initiating, maintaining, and supervising safety precautions and programs in connection with the Work. The Contractor shall take necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to: employees engaged in the Work and other persons and organizations who may be affected thereby; work, materials, and equipment to be incorporated therein, either in storage on-site or off-site; and other property at the site or adjacent thereunto including residences and businesses, trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.
 - b. The Contractor shall provide and maintain proper protection to all material and equipment, including material and equipment furnished to the Contractor by the Board.
 - c. The Contractor shall protect exterior surfaces of Board property against any defacement that would detract from its appearance.
 - d. The Contractor shall provide all necessary safeguards to protect persons and property generally, and particularly the Board's operating property, and ensure there is no interruption of water service, except as expressly authorized by the Board.
 - e. The Contractor shall, upon completion of the Work, make good all damages, leaving the site in a clean and orderly condition.
 - f. The Contractor shall maintain safe conditions in the various Work areas at all times and install barricades and warning devices where required.
 - g. The Contractor shall comply with applicable Laws or Regulations of the JHA for the safety of persons or property or to protect them from damage, injury, or loss and shall erect and maintain necessary safeguards for such safety and protection.
 - h. The Contractor shall notify the owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

Damage, injury, or loss to any property, that is caused, either directly or indirectly, in whole or in part, by the Contractor, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by them to perform or furnish Work or anyone for whose acts they may be liable, shall be the liability of and remedied by the Contractor (except as arising from acts or omissions of the Board).

- i. The Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as the Work is completed and the Construction Inspector has issued a notice to the Contractor that the Work is complete as defined in Project Closeout of the Special Conditions.
34. **NONDISCRIMINATION:** The Contractor expressly agrees not to discriminate against any employee, applicant for employment, or potential Subcontractor or Supplier because of race, color, religion, age, national origin, gender, sexual orientation, military status, marital status, or disability. The Contractor shall comply with all applicable state and federal laws with regard to equal employment opportunity.
 35. **WORKFORCE:** The Contractor shall employ only competent, skillful workers to provide Work under this Contract. Whenever any person shall appear to be incompetent or to act in a disorderly or improper manner, such person shall be removed from the Work.
 36. **ACCESS AND SECURITY:** The Board shall provide reasonable means of access to all Board locations covered under this Contract. The Contractor shall comply with all the Board's access and building security policies.
 37. **ENTIRE CONTRACT:** This Contract, including all Contract Documents and Work Packages, constitutes the entire contract between the Board and Contractor, replaces all prior written or oral contracts and understandings as to its subject matter, and may not be altered or amended by bills of lading or the like. Any amendment to this Contract must be executed with the same degree of formality as the Contract itself.

SCOPE OF WORK

1. PURPOSE:
Denver Water is seeking Proposals from qualified contractor(s) for on-call construction services for replacing potable water distribution main pipe, 6-inch through 12-inch diameter, within the City and County of Denver, in 2020 pursuant to Work Packages that will be issued to one or more Contractors.
2. CONTRACT PERIOD:
The Contract shall become effective on the day it is fully signed by the Board (“Effective Date”) and terminate on June 25, 2021. The Board and Contractors may extend the Contract period by a written amendment to the Contract.
3. BUSINESS ENVIRONMENT:
Typical Work hours are Monday through Friday 8:00AM – 3:30PM MT, but are dictated by the applicable Street Cut, Occupancy and Stormwater permits for each job. Typical Denver Water working hours are 7:30AM – 4:00PM MT, however the Contractor is responsible to coordinate all Denver Water services directly with the Denver Water Construction Inspector.
4. AWARD:
The Proposers selected for an award will be the Proposers whose Proposals are the most advantageous to the Board. The Board is not bound to accept the lowest-priced Proposals if the Proposals are not in the best interest of the Board as determined by the Board. The Board reserves the right to accept or reject any and/or all offers, to waive any and/or all formalities, to clarify any discrepancies in the Proposal, and to award a contract in the best interest of the Board, including making multiple awards.

Proposals may be evaluated using “best value” criteria that may include the following:

- Contract Price
- Proposer’s past relationships, if any, with the Board and the City and County of Denver
- Proposer’s response to additional questions, including Proposer’s status as general contractor whose discipline is performing potable water pipe installation and repair work
- Ability to secure required bonding in amounts up to and including \$4,000,000, as evidenced by a letter from a surety provided to Denver Water with the Proposal
- Proposer’s qualifications and experience, including key staff resumes and business references from other municipal entities and private water districts
- Proposer’s use of Small Business Enterprises (SBEs) and Minority- and Women-Owned Business Enterprises (MWBES)
- Early payment discounts offered with the Proposal
- Proposer’s exceptions to the terms and conditions of the Agreement
- Any other relevant and appropriate factors

This list does not reflect or imply any weighting or relative importance of criteria.

5. STATEMENT OF WORK:
Refer to the RFP for the Statement of Work.
6. CONTRACTOR’S RESPONSIBILITIES:
The Contractor shall furnish all superintendence; labor; equipment; tools and transportation; and execute, construct, and finish, in an expeditious, substantial and workmanlike manner, satisfactory to the Construction Inspector, all Work detailed in the Work Packages and Contract Documents. The Contractor shall perform installation of all Work, including water main pipe, valve, fitting and related appurtenances required for the replacement of the distribution main identified on the Work Packages, in compliance with all JHA requirements and Denver Water’s Engineering Standards – available at www.denverwater.org. The Contract Prices shall cover all

Work required by the Contract Documents. All costs in connection with the proper and successful completion of the Work, including furnishing all equipment, supplies, and appurtenances; providing all construction equipment and tools; procuring all permits and licenses; and performing all necessary labor and supervision to fully complete the Work, shall be included in the prices submitted for each Work Package. All Work not specifically set forth as a pay item in the Schedule of Values shall be considered a subsidiary obligation of Contractor and all costs in connection therewith shall be included in the prices submitted.

A. SUPERINTENDENCE

1. The Contractor shall give constant and efficient attention to the faithful and diligent prosecution of the Work and during its progress shall be represented at all times at the site of the Work by a competent superintendent acceptable to the Construction Inspector. The Contractor shall, at the pre-construction conference, provide to Denver Water a telephone number and/or paging number at which the Superintendent or his authorized representative may be reached twenty-four (24) hours a day, seven (7) days a week throughout the duration of each job. Contractor shall designate a Contractor's Customer Liaison who shall be responsible for resolving and responding to customer complaints and issues.

B. CONTRACTOR'S RISKS

The Work covered by the Contract shall be at the risk of the Contractor in every respect, and Contractor shall be responsible therefore until it is completed and accepted. This responsibility shall include damages to, and loss of any material furnished by Denver Water for incorporation in the Work. By receipt of such materials, the Contractor acknowledges that it has inspected the materials and that any damages evident after receipt are Contractor's responsibility.

C. LICENSED PLUMBER

Contractor must provide a licensed plumber to perform lead service line (LSL) replacements as required by applicable regulations.

D. INSPECTIONS REQUIRED BY PERMIT

Contractor is responsible to obtain all inspections and approvals as required by permits under the JHA.

E. COORDINATION WITH DENVER WATER

Contractor shall coordinate all Denver Water services through Denver Water's Construction Inspector.

F. COMPLIANCE WITH WORK PACKAGES

Contractor is responsible for compliance with all JHA permit requirements and JHA Notes as shown on the plans in the Work Packages.

G. WARRANTY

The Contractor shall provide a one-year warranty of workmanship for all Work, including but not limited to all Denver Water, CCD and customer owned installation and restorations, starting upon the Construction Complete date shown on the Distribution Field Inspection Checklist form.

H. HAZARDOUS SUBSTANCES

As soon as reasonably possible, the Contractor shall stop work and contact Denver Water's Construction Inspector to coordinate remediation and/or disposal of any Hazardous Substances encountered while performing the Work.

7. DENVER WATER RESPONSIBILITIES:

- A. **PRELIMINARY PROJECT APPROVAL**
Denver Water will submit applicable projects through review and provide evidence of preliminary approval from the City and County of Denver's Engineering, Regulatory & Analytics (ERA) department, or applicable JHA.
 - B. **WORK PACKAGES**
Denver Water will provide all Work Packages to selected Contractors. Work Package No. 1 is included in the RFP as Exhibit B. The content of each Work Package shall include the following items:
 - a. Drawings showing beginning and end points for pipeline replacement and known interferences.
 - b. Tap papers: Customer service line "tap papers" for properties requiring service line changes following replacement. Denver Water will complete a Tap & Meter report for all LSL replacements and any service line relocations.
 - C. **PRE-CONSTRUCTION MEETING AGENDA**
Denver Water will provide the Contractor with the relevant Pre-Construction Meeting Agenda for each Work Package.
 - D. **CUSTOMER OUTREACH**
Customer outreach shall be a joint effort between Denver Water and the Contractor. A clear understanding of the roles and responsibilities is essential to executing the customer outreach tasks. Refer to Exhibit C for a detailed roles and responsibilities matrix.
 - E. **DISINFECTION, WATER QUALITY, AND HYDROSTATIC TESTING**
Denver Water will perform all disinfection, water quality, and hydrostatic testing. Contractor shall coordinate this testing with Denver Water's Construction Inspector at least 48 hours in advance.
 - F. **SURVEY STAKING**
Survey staking at 50-foot intervals and at approximate fitting locations in intersections.
 - G. **WATER FILTERS**
Furnish Contractor with Water filters for homeowners/tenants affected during LSL replacement work.
 - H. **HAZARDOUS SUBSTANCES MANAGEMENT**
Denver Water will manage the remediation and/or disposal of any Hazardous Substances found by Contractor while performing the Work.
8. **WORK PACKAGE SCHEDULE AND COMPLETION:**
The Contractor shall achieve Substantial Completion for each Work Package within the time established in the respective Work Package. If the Contractor fails to achieve Substantial Completion within the time set forth in any Work Package, Denver Water will suffer substantial damages, and the Contractor is subject to liquidated damages for delay as established in the Work Package.
9. **SUBCONTRACTORS:**
Upon contract or Work Package award, as requested by Denver Water, the Contractor shall submit a list of Subcontractors to Denver Water's Contract Administrator showing the Work assigned to each. Such submission shall not release or relieve the Contractor from any of its obligations and liabilities under this Contract. Upon written request of the Contract Administrator, the Contractor shall terminate the employment on this Work of any Subcontractor who shall, in the opinion of the Contract Administrator, fail to perform the Work undertaken by him in a

satisfactory manner. Appropriate provisions of this Contract shall be incorporated, by reference, in all subcontracts, and, if so required by the Contract Administrator, the Contractor shall furnish to the Contract Administrator written compliance statements properly endorsed by the Subcontractor(s) in question before any Subcontractor begins work.

10. PRICE ADJUSTMENTS, CLAIMS AND DISPUTES:

Regardless of any other provision herein, any potential price adjustments, claims, or disputes shall be initially addressed to the contact identified herein and resolved according to Article 16 of the General Conditions applicable to the Board's construction projects, which may be found at the following link: <https://www.denverwater.org/contractors/construction-information/design-standards/capital-projects-construction-standards>.

11. SALVAGE:

Any material not salvaged by Denver Water shall be disposed of, at the expense of the Contractor, or salvaged by the Contractor in a safe and legal manner.

12. MINORITY- AND WOMAN-OWNED BUSINESS ENTERPRISE (MWBE) REQUIREMENTS:

A. MWBE INCLUSION

Denver Water's MWBE Program seeks to provide small businesses and businesses owned by minorities and women an opportunity to work for Denver Water as consultants, contractors, subcontractors and suppliers. The Contractor will have significant influence over the magnitude of MWBE participation in performing the Work. It is vital that the Contractor engage the MWBE community to maximize participation throughout the performance of the Work by making a good faith effort to contract with minority contractors, subcontractors and suppliers for services and supplies.

B. CERTIFIED MWBE UTILIZATION

Contractor shall make a good faith effort to comply with the provisions of the Board's MWBE Program. It is the intent of the MWBE Program that qualified subcontractors and suppliers be utilized to the fullest extent possible, to perform Work to enhance the utilization of MWBEs. Contractor's utilization effort is described in Exhibit B.

13. DENVER WATER CONTRACT ADMINISTRATOR:

Denver Water's Contract Administrator is Devin Shable, Senior Engineer, Water Distribution, and can be contacted at Devin.Shable@denverwater.org.

14. PERSONNEL SCREENING:

Due to the nature of the Work, Contractor and any of its Subcontractors performing lead service line replacement work will be subject to the following screening procedure.

At least five (5) working days before assigning an employee or agent to perform duties under this Agreement that require the employee or agent to work under circumstances presenting security concerns or to have access to the Board's sensitive information, proprietary computer programs, software or servers, the Contractor will submit the employee's or agent's name to the Board and certify on the Board-provided Certification of Personnel Screening form that no more than one (1) year prior to the assignment it performed a background check on the employee or agent, including a review of criminal history, and determined that the employee or agent does not pose a risk to persons or property. Contractor's determination should be based on guidance provided by the U.S. Equal Employment Opportunity Commission regarding the use of arrest and conviction history in employment decisions, which requires a weighing of (1) the nature and gravity of the offense or conduct, (2) the time that has passed since the offense, conduct or the employee's completion of any sentence given as a result of the offense, and (3) the nature of the job held or sought. Background checks must include a Colorado Bureau of Investigation (CBI) Criminal History Check, and, if the employee or agent has lived outside the State of Colorado or the United States during the last five (5) years, a criminal history check from each state or country of residence. For employees or agents who will have access to the Board's financial records and/or

accounting processes, including purchasing, payables, receivables, and treasury or cash management, the Contractor also will conduct a credit history check on the employee or agent and certify on the Board-provided Certification of Personnel Screening form that the Contractor has determined that the employee or agent does not pose a risk to the Board. The Board reserves the right to direct the Contractor to assign another employee or agent, meeting the requirements of this paragraph, to perform the Work if the Board has reason to believe that during the term of the Agreement the assigned employee or agent engaged in criminal activity or was involved in financial improprieties, to be determined by the Board in its sole discretion. Contractor shall submit the Certification of Personnel Screening form for any employee or Subcontractor who will be entering residences to perform Work.

15. INVOICING AND PAYMENT:

On or before the seventh Day of each calendar month, the Contractor shall submit to the Contract Administrator one (1) itemized invoice. The invoice shall be based upon the quantity of Work completed during the payment period, which is defined as the previous calendar month. The Contractor shall submit the following documentation with its monthly invoice: MWBE Report for month prior to that which Contractor is applying for payment.

All invoices shall be submitted via e-mail to Devin.Shable@denverwater.org with copy to dldwap@denverwater.org.

If Contractor submits an invoice that does not meet the requirements of this Contract, Denver Water will not make payment until Contractor provides an undisputed invoice meeting the requirements of this Contract. Contractor shall not charge, nor will Denver Water incur any late fees as a result of non-payment of invoices not meeting the requirements of the Contract. Progress payments shall be due and payable by Denver Water fourteen (14) Days after receipt of an approved statement by the Contract Administrator. By executing the Contract, the Contractor expressly waives its right to any entitlement to the benefits of the provisions of Colorado Revised Statutes, § 24-91-101, et seq.

16. RETAINAGE:

Denver Water reserves the right to withhold a five (5) percent retainage from progress payments. Such retainage shall be withheld until such time that this Contract or a defined project phase is satisfactorily completed and accepted by the Board. Any such funds so retained shall not be subject to substitution by the Contractor with securities or any arrangements involving an escrow or custodianship, except as allowed by Colorado Revised Statutes, § 38-26-108, et seq. The Board further reserves the right to apply retainage not subject to verified claims of Subcontractors and Suppliers to any liquidated damages due to the Board.

THEREFORE, the parties have executed this Agreement. This Agreement must have the signature of an authorized representative of the Contractor.

**CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS**

ATTESTED:

By: _____
Secretary

By: _____
President

DATE: _____

APPROVED:

REGISTERED AND COUNTERSIGNED:
CITY AND COUNTY OF DENVER

By: _____
Chief Operations Maintenance
Officer

By: _____
Timothy M. O'Brien, CPA
Auditor

APPROVED AS TO FORM:

By: _____
Office of General Counsel

THIS AGREEMENT IS ACCEPTED BY:

CONTRACTOR:

Insert Contractor's name

By execution, signer certifies that s/he is authorized to accept and bind Contractor to the terms of this Agreement.

By: _____

DATE: _____

TITLE: _____

[for other than individual]

CERTIFICATION OF PERSONNEL SCREENING BY CONSULTANT/CONTRACTOR

To be completed by the Board's Contract Administrator:

Contract No: _____ Consultant/Contractor: _____

The work under the Agreement involves:

(Check one or more and describe the duties in the spaces provided, and check the corresponding numbered box in the Consultant/Contractor section below.)

- 1. Operating a Board vehicle *(driving record and license check required)*
 - 2. Performing work involving security concerns. Describe duties: _____

(criminal background check required)
 - 3. Accessing Board's financial records or accounting processes *(credit check required)*
 - 4. Performing safety-sensitive work. Describe duties: _____

(criminal background check and drug and alcohol screening required)
-

To be completed by the representative of Consultant/Contractor:

Name of Employee/Agent: _____ Start Date of Work for Board: _____

I, _____, as a representative of the Consultant/Contractor, certify that the above-named employee or agent of the Consultant/Contractor is assigned to complete the work described above and (check the applicable options below):

- 1. Has a valid Colorado driver's license and a satisfactory driving record, defined as having no more than six (6) points on his/her driving record in the three (3) years prior to the assignment. *(Applies if work involves operating a Board vehicle.)*
- 2. Has been the subject of a background check no more than one (1) year prior to the assignment, and I have determined that he/she does not pose a risk to persons or property. Background checks must include a Colorado Bureau of Investigation (CBI) Criminal History Check, and, if the employee or agent has lived outside the State of Colorado or the United States during the last five (5) years, a criminal history check from each state or country of residence. *(Applies if work involves security concerns or safety-sensitive duties.)*
- 3. Has been the subject of a credit history check, and I have determined that he/she does not pose a risk to the Board. *(Applies if work involves accessing the Board's financial records or accounting processes.)*
- 4. No more than one (1) month prior to the assignment under this contract, he/she passed a drug and alcohol screening performed at a certified testing facility using a Rapid Screen test (negative results only will be accepted) or by a federally certified laboratory using a Federal (HHS, FMCSA or DOT) 5-Panel Drug Test. *(Applies if work involves safety-sensitive duties.)*

Under penalty of perjury, I swear the above statements are true and correct.

Signature: _____ Date: _____

Phone: _____ E-mail: _____

Approval by the Board's Contract Administrator:

Print Name: _____

Signature: _____ Date: _____