

FORM H

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement") is made and entered into as of this _____, by and among the Colorado Department of Transportation ("CDOT"), _____, ("Proposer"), with reference to the following facts:

- A. CDOT has issued a Request for Proposals (the "RFP") for development of the Eisenhower Johnson Memorial Tunnel Drainage Plumbing and Heat Trace Design-Build Project (the "Project").
- B. Proposer has submitted to CDOT a proposal (the "Proposal") in response to the RFP.
- C. As part of the Proposal, Proposer is submitting one copy of all information regarding the assumptions made in calculating the prices submitted to CDOT with the Proposal, as required in ITP of the RFP, in separately sealed and labeled boxes ("EPDs").
- D. CDOT and Proposer, upon mutual agreement, may employ the services of Escrow Agent to act as the escrow holder for the limited purposes set forth below. The Escrow Agent has agreed to serve as such escrow holder under the terms and conditions provided in this Agreement. The EPDs may be escrowed at a Banking Institution, or at a mutually agreed secure location.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Deposit. Proposer hereby deposits with Escrow Agent the EPDs. Escrow Agent hereby acknowledges receipt of such EPDs, and such EPDs shall be held in escrow under the terms and conditions of this Agreement.
2. Holding of EPDs. Escrow Agent shall hold the EPDs in escrow in a designated area on the premises of Escrow Holder located at _____, on a confidential basis. The EPDs shall be stored in an area that is locked at all times. No third party, including the employees of Escrow Agent, shall be allowed access to any of the EPDs, provided that employees of Escrow Agent shall have access to the locked area for other purposes.
3. Release of EPDs. Escrow Agent shall release the EPDs as follows:
 - A. Escrow Agent shall release the EPDs to Proposer, and Proposer shall pick up the EPDs at Proposer's expense, upon delivery by CDOT of a certificate from the CDOT Project ~~Manager~~ Director certifying that CDOT has determined not to enter into a contract with Proposer.
 - B. Escrow Agent shall release the EPDs to CDOT at such time as CDOT and the selected Proposer are ready to start Contract negotiations (or upon CDOT's

- selection of a Proposer if negotiations are not commenced) upon delivery of mutual instructions to Escrow Agent by CDOT and Proposer.
4. Representation and Warranty. Proposer represents and warrants to CDOT that, prior to delivery of the EPDs to Escrow Agent, the EPDs were personally examined by an authorized representative of Proposer and that they meet the requirements of the RFP and are sufficient to enable a complete understanding and interpretation of how Proposer arrived at its proposal prices.
 5. Rights of Escrow Agent. If conflicting demands are made or notices served upon Escrow Agent with respect to this escrow, the parties hereto expressly agree that Escrow Agent shall have the absolute right at its election to do any of the following:
 - A. withhold and stop all further proceedings in, and performance of this escrow;
 - B. file a suit in interpleader and obtain an order from the court requiring the parties to interplead and litigate in such court their several claims and rights amongst themselves;
 - C. deliver all EPDs with seals intact to another location to be selected by CDOT within 30 days after Escrow Agent delivers notice thereof to CDOT.
 6. Fees. Proposer shall be responsible for any escrow fees.
 7. Notices. All notices, which may or are required to be given or made by either party hereto to the other shall be in writing. Such notices shall be either personally delivered or sent by registered mail, postage prepaid, to:

If to the Proposer:

If to CDOT:

~~David Tedrow~~Neal Retzer, CDOT Project ~~Manager~~Director
Colorado Department of Transportation - Region 1
425B Corporate Circle
Golder, CO 80401

If to the Escrow Agent: (Identify Escrow Agent here if mutually agreed to)

Or to such other addresses and such other places as any party hereto may from time to time designate by written notice to the others.

1. Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall be deemed an original.

2. Headings. The title headings of the respective paragraphs of this Agreement are inserted for convenience only, and shall not be deemed to be part of this Agreement or considered in construing this Agreement.
3. Governing Law. The laws of the State of Colorado shall govern this Agreement.
4. Attorney's Fees. If either CDOT or Proposer commences or engages in any action by or against the other party directly or indirectly arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and other costs incurred in the action and in preparation for said action and any subsequent appeal. All parties agree to indemnify and hold Escrow Agent harmless from and against all costs, expenses, and attorneys' fees in connection with any such action.

IN WITNESS WHEREOF, the parties hereto, each intending to be legally bound by this writing, have caused this Agreement to be executed the date first above written.

"CDOT"

COLORADO DEPARTMENT OF TRANSPORTATION

Signature: _____

Printed Name: _____

Title: _____

"PROPOSER"

Signature: _____

Printed Name: _____

Title: _____

Escrow Agent hereby accepts the escrow provided for in this Agreement, only to the extent of the escrow provisions.

Signature: _____

Printed Name: _____

Title: _____