



**CITY OF COLORADO SPRINGS & EL PASO COUNTY
EMERGENCY SERVICES AGENCY (ESA)**

**ADDENDUM # 3
April 21, 2008**

NAME OF PROJECT: R08-027CD, PROVIDE EMT-PARAMEDIC GROUND EMERGENCY AMBULANCE SERVICES

SUBMITTAL DATE AND TIME: May 9, 2008 Close of Business

This document shall become as fully a part of the above named submittal, as if included, and shall take full and complete precedence over anything stated or shown to the contrary in them. Acknowledgment: Each respondent shall acknowledge receipt of this Addendum. Each and every respondent shall be responsible for reading each and every item in this Addendum to ascertain the extent and manner to which it affects the work in which he or she is interested.

General Information and Corrections:

1. **Note the underscored addition to Item 2.8.13 of the RFP**

2.8.13 LOCAL DISPATCH / COMMUNICATIONS REQUIREMENT

The contractor is required to maintain a local dispatch/communications facility in El Paso County. The contractor is free to contract with an existing 9-1-1 dispatching facility to provide ambulance dispatching services. Details of such an agreement are required to be listed in each proposal.

Additionally, the contractor is required to meet the dispatch and computer-aided dispatching system requirements for the City of Colorado Springs and (add) **computer aided dispatch to El Paso County.**

Each proposer shall demonstrate how its communications staff will meet the dispatcher qualifications and training requirements of the El Paso/Teller County E-9-1-1 Authority.

2. **Refer to the attached Sample Contract included as part of the RFP and as stated in Section V. 5.0.**

Receipt of this Addendum should be acknowledged at the time proposals are received.

Acknowledge receipt of this addendum by signing below, and this addendum shall be returned as part of the proposal.

Signature _____ Date _____

Firm _____

Address _____

SAMPLE GROUND EMERGENCY AMBULANCE SERVICES CONTRACT BETWEEN
EL PASO COUNTY EMERGENCY SERVICES AGENCY and

(Contractor)

THIS GROUND EMERGENCY AMBULANCE SERVICES CONTRACT (“Contract”) is made and entered into this ____ day of _____ (“Effective Date”) by and between the El Paso County Emergency Services Agency (“ESA”), through its Board of Directors, and _____, a _____ (“Contractor”).

RECITALS

Pursuant to the *Intergovernmental Agreement Concerning the El Paso County Emergency Services Agency* dated July 10, 2006, the City of Colorado Springs and El Paso County, State of Colorado created the ESA to oversee an exclusive contract to provide ground emergency ambulance services to the ESA’s service area within the City of Colorado Springs and El Paso County.

Contractor is a _____ experienced in the provision of ground emergency ambulance services.

The ESA desires to use Contractor for the provision of ground emergency ambulance services within the ESA’s service area, and Contractor agrees to provide such ground emergency ambulance services on behalf of the ESA, all in accordance with the terms of this Contract

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. SCOPE OF SERVICES. Contractor shall perform the services required under this Contract in accordance with all terms and conditions of the ESA’s Request for Proposals No. R08-27CD to Provide EMT-Paramedic Ground Emergency Transportation Services dated March 6, 2008, attached hereto as **Exhibit A** and incorporated by reference, and Contractor’s Proposal dated _____ attached hereto as **Exhibit B** and incorporated by reference.

2. TERM OF CONTRACT. The term of this Contract shall commence on _____ and shall terminate on _____ (“Initial Term”), unless earlier terminated under this Contract, or otherwise modified by mutual written agreement of the parties. The ESA shall have the sole discretion to renew this Contract for five (5) annual renewal periods for a period not to exceed ten (10) years total (each annual term a “Renewal Term”). The ESA shall have the unilateral right, upon thirty (30) days written notice to Contractor, to extend this Contract for ninety (90) days beyond the end of the Initial Term without renewing this Contract for an additional annual term.

3. FUNDING OF CONTRACT ADMINISTRATION. In consideration of the ESA allowing Contractor to provide ground emergency ambulance services in the ESA service area pursuant to this Contract, Contractor shall pay the ESA its costs of administration of this Contract in accordance with the Payment Schedule attached hereto as **Exhibit C** and incorporated by reference. During the Initial Term or any Renewal Term, the ESA’s cost of administration of this Contract may include, without limitation, funding for a medical director for the ESA. The ESA will provide no financial subsidy or payment of any kind to Contractor.

4. PERFORMANCE OF SERVICES. Contractor shall perform all services, work, and provide all materials, supplies and equipment, and carry out the provisions of this Contract in a good and workmanlike manner to the satisfaction of the ESA in its sole discretion. If the performance of this Contract involves the services of subcontractors or the furnishing of equipment, supplies or materials provided by others, Contractor agrees to pay for the same in full and to certify in writing to the ESA, upon request, that the payments have been made.

5. INSURANCE. Contractor shall provide insurance coverage during the term of this Contract that will sufficiently protect Contractor, Contractor's agents, employees, and other personnel in connection with the services to be provided by Contractor pursuant to this Contract, all in accordance with the Insurance Schedule attached hereto as **Exhibit D** and incorporated by reference.

6. PERFORMANCE BOND; LIQUIDATED DAMAGES. Contractor shall provide to the ESA an automatically renewable, irrevocable Performance Bond in form and substance acceptable to the ESA. Such bond will expressly provide for the direct draw by the ESA and the restriction of rights of both Contractor and the provider of the bond to object and/or to refuse to honor a demand for payment by the ESA. The Performance Bond certificate is attached hereto as **Exhibit E** and incorporated by reference.

The amount of the Performance Bond will be three million dollars (\$3,000,000). The Performance Bond shall be issued by a federally insured (FDIC) banking institution and/or surety with a substantial presence in the United States and rating acceptable to the ESA.

Contractor shall maintain the Performance Bond and the provider of the Performance Bond will agree to renew the Performance Bond throughout the term(s) of this Contract and for a reasonable time thereafter. Contractor shall ensure that written evidence of the Performance Bond provided to the ESA is regularly updated.

The ESA and Contractor agree that the unique nature of the services which are the subject of this Contract require that in the event of Contractor's non-compliance or material breach leading to cancellation of this Contract by the ESA, liquidated damages be awarded in the amount of the Performance Bond. While costs and damages are not easily calculated, the work and expense to achieve another contractor and to conduct an RFP process is extensive. It may be difficult to distinguish the costs of restoration of service and the recruitment of a new contractor. Costs to the ESA to implement the restoration of services on an interim or permanent basis and award a new contract are estimated to equal the Performance Bond. Upon declaration by the ESA of a material breach by Contractor, the ESA shall take immediate possession of the Performance Bond and all of Contractor's rights and interest relative to the principal from the Performance Bond shall be forfeited.

7. COMPLIANCE WITH FEDERAL, STATE & LOCAL LAWS, REGULATIONS AND RULES. At all times during the performance of this Contract, Contractor shall strictly observe and conform to all applicable federal, state and local laws, rules, regulations and orders that have been or may hereafter be established. Specifically and without limitation, Contractor shall comply with the Immigration Reform and Control Act of 1986 (IRCA), Medicare and Medicaid Regulations, OSHA Regulations, including Title 29, Section 1910.1200 "Hazard Communication", and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Contractor's compliance programs for Medicare/Medicaid and HIPAA are contained in **Exhibit B** attached hereto and incorporated by reference. Further, Contractor shall comply with and perform this Contract in accordance with the provisions of all applicable rules, written guidelines, protocols and written policies established by the ESA.

8. PERMITS, LICENSES & CERTIFICATES. Contractor shall obtain and hold any and all federal, state and local permits, licenses and certificates required to fully perform this Contract. Contractor shall make all necessary payments for such permits, licenses and certificates. Contractor will assure that all necessary renewals of such permits, licenses and certificates are timely made. Contractor shall assure that all of its personnel hold valid federal, state and local permits, licenses and certificates required in order for Contractor to meet its responsibilities under this Contract.

9. INDEPENDENT CONTRACTOR. Contractor understands and agrees that Contractor and Contractor's employees, agents, servants or other personnel are not employees of the ESA, the City of Colorado Springs or El Paso County. Contractor shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefit to Contractor or any of Contractor's employees, agents, servants or other personnel performing the service or work or supplying equipment or materials specified herein, whether it be of a direct or indirect nature. It is expressly understood and agreed that for such purposes neither Contractor nor Contractor's employees, agents, servants or other personnel shall be entitled to any payroll, insurance, unemployment, worker's compensation, retirement or any other benefits whatsoever from the ESA.

10. SUBCONTRACTS. During the term of this Contract, Contractor shall not enter into any agreement or arrangement that provides for or permits the performance of Contractor's obligations under this Contract by any subcontractor without the prior written consent of the ESA.

11. NOTICE OF LITIGATION AND CLAIMS. Contractor shall notify the ESA within twenty-four (24) hours of any litigation or claims, or significant potential for litigation or claims, of which Contractor becomes aware and which arise out of or are related in any way to Contractor's performance of this Contract. Further, Contractor will disclose in writing to the ESA all litigation matters involving Contractor's related organizations or affiliates, owners of Contractor (having a 10% or greater interest in Contractor) and key personnel of Contractor that may have an impact on the Contractor's performance of this Contract. .

12. STANDARDS FOR EQUIPMENT, MATERIALS AND SUPPLIES. Any specifications for equipment, materials and supplies set forth in this Contract must be acceptable in accordance with standards established and/or adopted by the ESA. Equipment, materials and supplies provided by Contractor shall meet or exceed Contract requirements. The ESA may sample and test equipment, materials and supplies. An Equipment Schedule is attached hereto as **Exhibit F** and incorporated by reference.

The ESA reserves the right to require Contractor, at Contractor's expense, to provide additional equipment during the term of this Contract if reasonably necessary. The ESA will give the Contractor ninety (90) days notice of its intent to require such additional equipment. Such request(s) shall not require expenditures of more than three thousand dollars (\$3,000) per ambulance per calendar year.

13. CUSTOMER FEE SCHEDULE AND PATIENT INFORMATION. The approved rates for customer fees and the procedure for adjusting such rates for Contractor's services provided under this Contract is attached hereto as **Exhibit G** and incorporated by reference.

Contractor may solicit information about patients (including payor information). Notwithstanding the foregoing, no attempt will be made to solicit such information or to collect services or fees from a patient, patient's representatives or any other payor until the patient has been accepted at a receiving medical facility (defined in the Request for Proposals), as applicable.

Nothing herein shall be construed to prohibit Contractor from soliciting authorization for transport, so long as the solicitation of such authorization does not compromise or detrimentally affect patient care.

Contractor and the ESA may perform a customer service survey of patients transported pursuant to this Contract. All such survey information shall be shared by the parties.

14. ESA AUDITS & INSPECTIONS. The authorized ESA representatives will be permitted at any time, and without notification, to observe Contractor's operations, including the operators of its offices, communications center and related equipment, maintenance facilities, stations, ambulances and any other facility, location or activity utilized and/or conducted in the performance of this Contract.

Contractor's records (hard copy, as well as computer readable data), and any other material deemed necessary by the ESA to determine compliance with and/or to establish performance of this Contract will be open to inspection and subject to audit and/or reproduction by the ESA's authorized representatives to the extent necessary to adequately permit evaluation and verification of matters.

All of Contractor's records concerning this Contract must be maintained for a period of three (3) years after expiration or termination of this Contract. The ESA's representatives shall be afforded access, at reasonable times and places, to all of Contractor's personnel throughout the term(s) of this Contract.

The ESA representatives and/or medical direction representatives (including but not limited to the ESA's Medical Director and/or the Medical Control Committee) may ride as observers on any Contractor ambulance at any time. The ESA and medical direction representatives shall conduct themselves professionally and shall not interfere with the duties of Contractor's employees, and shall at all times be respectful of Contractor's relationships.

Medical direction representatives shall have the right to audit relevant reports and data that Contractor is required to have, maintain and/or provide to any authority.

Contractor will require each subcontractor(s), insurer, material/equipment and supply provider to permit the ESA to audit and inspect their records, etc., in the same manner as the ESA may proceed with Contractor and Contractor's records. The actual cost of any ESA audit and inspection shall be reimbursed to the ESA by Contractor if substantial failures to perform, deficiencies, etc. (to be defined in this Contract) are established.

15. MODIFICATION OF THE SYSTEM STATUS PLAN (SSP). The ESA may conduct an ongoing geographical analysis to monitor Contractor's adherence to the System Status Plan (SSP) standards and to determine whether changes are needed. If, during the term of this Contract, it is determined that a specific community is not receiving equitable service from Contractor, then Contractor agrees to make adjustments to the SSP. If such modification of the SSP promulgated by the ESA creates an adverse material financial impact upon Contractor, Contractor and the ESA agree to make commercially reasonable efforts to re-negotiate the proposed fee structure accordingly.

16. FORCE MAJEURE. Except as may be otherwise provided in this Contract, neither party shall be liable in damages or have the right to terminate this Contract for any delay or default in performance if such delay or default is proximately caused by conditions beyond its reasonable control and occurs without the party's fault or negligence including, but not limited to Acts of God, fire, storm, flood, war, rebellion, insurrection, riot, strike and/or any other cause beyond the reasonable control of the party whose performance is affected (each, a Force Majeure event").

Neither party shall be liable for any failure or delay in performance under this Contract (other than for delay in the payment of money due hereunder) to the extent such failures or delays are proximately caused by a Force Majeure event, provided that, as a condition to the claim of nonliability, the party claiming nonliability due to a Force Majeure event shall give the other prompt written notice, with full details, following the occurrence of the cause relied upon. Failure to give notice within seven (7) days from the occurrence of the Force Majeure event shall act as a waiver of the party's right to claim nonliability due to the Force Majeure event.

To the extent any dates by which performance obligations under this Contract are scheduled to be met, such dates will be extended for a period of time equal to the time lost due to any delay caused by a Force Majeure event for which timely notice is provided.

17. STANDBY LEASE. Contractor, lenders and any other party in interest with respect to the ambulances used in the performance of this Contract will execute a standby lease, in form and substance acceptable to the ESA, which will provide the ESA with immediate possession of such ambulances and related equipment for the continued operations of the ground emergency ambulance system, should Contractor be unable to perform under this Contract for any reason.

18. DEFAULT. Conditions and circumstances that constitute a default by Contractor pursuant to this Contract include, but are not limited, to the following:

- Failure to operate in a manner which enables the ESA and/or Contractor to remain in compliance with federal, state and local laws, regulations and rules.
- Falsification of information supplied prior or subsequent to Contract award.
- Creating or otherwise falsifying ambulance responses or transports so as to inflate the volume or value of services.
- Failure to provide data to the ESA that is reasonably required to be generated in the course of operations, including by way of example, dispatch data, patient report data, response time data, financial data, training data, billing and collection data, and other performance data and records.
- Excessive and unauthorized scaling down of operations to the detriment of performance at any time and during a "lame duck" period.
- Failure to cause its employees to conduct themselves in a professional and courteous manner and present a professional appearance.

- Failure to maintain ambulances and equipment in accordance with manufacturer recommended maintenance procedures as required by applicable laws, regulations and rules.
- Failure to cooperate with and assist the ESA if a default(s) warranting termination of this Contract is asserted by the ESA.
- Acceptance by Contractor and Contractor's employees, agents, etc., of any bribe, kickback or consideration of any kind that could be reasonably construed as a violation of federal, state or local law.
- Payment by Contractor and any of Contractor's employees of any bribe, kickback or consideration of any kind that could be reasonably construed as a violation of any federal, state or local law.
- Failure to meet the standards of care established by the ESA.
- Failure to meet the standards of care required under federal, state or local law.
- Failure to maintain insurance required by this Contract.
- Failure to meet response time requirements as set forth in this Contract.
- Failure to maintain the Performance Bond required by this Contract.
- Failure to submit reports and information and cooperate fully with audits and inspections in accordance with this Contract.
- Any other failure of performance required by this Contract which is determined by the ESA to be a material default and/or to be a failure in performance that could or does endanger public health and safety.

19. REMEDIES IN THE EVENT OF DEFAULT. The ESA shall have all rights and remedies available at law or in equity. The ESA's remedies shall be cumulative and the exercise of any rights and remedies shall be in addition to the exercise of any other rights and remedies available to the ESA (including liquidated damages).

20. NOTICE OF DEFAULT AND TERMINATION. The ESA, consistent with its primary obligation to protect the public health and welfare, which may, with or without notice of any kind, require immediate action, will give Contractor reasonable written notice setting forth the nature of the default.

Contractor will be permitted to submit a written plan to cure such default. Contractor will be afforded the opportunity to cure such default within a reasonable amount of time as determined by the ESA in its sole discretion. Failure to cure (such failure to be determined in the sole discretion of the ESA), or failure to timely deliver an acceptable cure plan or provide updates with respect to cure may permit the ESA to terminate this Contract.

Contractor will cooperate fully and immediately with the ESA to effect a prompt and orderly transfer of all responsibilities. Contractor may dispute a default asserted by the ESA; however, such dispute will not delay, in any way, the transfer of operations as required by the ESA (immediate if the interests of the public health and safety require as determined by the ESA in its sole discretion). Such dispute by Contractor as to whether a default has occurred will not delay or in any way interfere with the ESA's demand for payment of the Performance Bond.

Contractor agrees that all rights and remedies (including drawing against the Performance Bond) afforded to the ESA in the event of default and termination are reasonable and necessary for the protection of the public health and safety.

Contractor's cooperation with and support of the ESA's termination of this Contract, as well as the ESA's draw against the Performance Bond, will not be construed as acceptance by Contractor of the finding of a default.

21. CONTINUOUS SERVICE DELIVERY. In the event of default by Contractor, Contractor will use its best efforts to assure continuous delivery of services required under this Contract regardless of the underlying cause or consequence of such default.

Contractor agrees that there is a public health and safety obligation that requires that the ESA provide uninterrupted service delivery in the event of default, even if Contractor disagrees with the determination of default.

Assuring continuation of services may require the ESA to deliver the services and/or arrange for the delivery of services by another contractor. Further, Contractor agrees that if it is notified by the ESA of termination due to Contractor's default, the ESA will have the right to execute an emergency takeover of Contractor's system. Contractor will be required to cooperate fully with such takeover and will challenge or appeal the matter only after such takeover has been completed. This cooperation will include allowing the ESA to directly operate Contractor's system for a period of up to twelve (12) months following the termination of Contractor following the ESA's determination of default.

If for any reason during the life of this Contract, Contractor is unable to fulfill its responsibilities under this Contract due to financial or other catastrophic failure, Contractor agrees to surrender its ambulances, equipment, support vehicles and communications facilities to the ESA for a period of at least twelve (12) months. Contractor further agrees to make available to the ESA all means to contact its employees working in Contractor's El Paso County operations so that they may be retained on an emergency basis by the ESA for operating the ambulance system.

The ESA will negotiate a fair market price for the use of all ambulances and equipment with Contractor or its financial successor or controller should the ESA retain the use of the equipment or facilities longer than twelve (12) months.

22. "LAME DUCK" PROVISIONS. Should Contractor be unsuccessful in being awarded a contract for the provision of subsequent ground emergency ambulance services upon the termination or expiration of this Contract, Contractor shall continue to provide services required under this Contract until a new contractor is selected and is performing such services. Under these circumstances, Contractor will serve as a "lame duck" contractor for a reasonable period of time. To assure continued performance consistent with the requirements of this Contract for such period, the following will apply:

Contractor will continue all services at the same level of effort and performance that were provided under this Contract prior to the beginning of a new contract award process.

The ESA recognizes that if a new contractor prevails in a future award process, Contractor may reasonably begin to transition the performance of services to the new contractor. The ESA will not unreasonably withhold its approval of Contractor's orderly transition process, including reasonable plans to relocate staff, relocate equipment, etc., but only to the extent that such transitioning does not impair the performance of services during the period.

During any future contract award process conducted by the ESA, Contractor will permit its non-management personnel to discuss with competing organizations issues related to employment, if Contractor is not a proposer. Contractor may, however, require that its non-management personnel refrain from providing information to a competing organization regarding Contractor's then current operations and Contractor may also prohibit its management personnel from communicating with representatives of competing organizations during such Contract award process. However, once the ESA has made its decision regarding award, and in the event a new Contractor is selected, Contractor will permit free discussion between its El Paso County based employees and the new contractor without restriction and without consequence to any employee.

23. END TERM PROVISIONS. Contractor shall have ninety (90) days after termination or expiration of this Contract in which to provide to the ESA all requested audited financial statements and all other documentation necessary to facilitate close out of this Contract.

24. INDEMNIFICATION. Contractor shall indemnify, defend and hold harmless the ESA, the City of Colorado Springs, El Paso County and their officers, agents and employees from and against any and all loss, damages, injuries, claims, cause or causes of action, or any liability of any kind whatsoever resulting from, or arising out of or in connection with the services, equipment, materials and supplies provided by Contractor pursuant to this Contract.

Contractor will assume full responsibility for its own defense and the defense and indemnity of the ESA with respect to any claims for infringement of patents, copyrights or trademarks, or claims of unfair competition, that may arise from Contractor's performance of this Contract. The ESA may be represented by and actively participate through its own attorneys, with all such costs and reasonable attorneys fees to be paid by Contractor.

This indemnification obligation will survive the expiration or termination of this Contract.

25. APPROPRIATION OF FUNDS. Performance of the ESA's obligations under this Contract are expressly subject to appropriation of funds. All funds paid by Contractor to the ESA will be available to the ESA to meet its obligations under this Contract. Further, in the event funds are not appropriated in whole or in part sufficient for performance of the ESA's obligations under this Contract, or appropriated funds may not be expended due to constitutional or local legal limitations, then the ESA may terminate this Contract without compensation to Contractor.

26. CONFIDENTIALITY OF RECORDS. Subject to federal and state confidentiality and privacy laws, Contractor will establish and maintain procedures and controls that are acceptable to the ESA, including the ESA's designated HIPAA officer, for the purpose of assuring that no information contained in its records or obtained from the ESA or from others used in carrying out its functions under this Contract will be used by or disclosed by Contractor, its agents, officers, or employees, except as required to perform duties under this Contract. Persons requesting such information should be referred to the ESA. Contractor will ensure that the ESA's representatives are properly authorized as "Business Associates" of Contractor and are in all respects in compliance with HIPAA laws and regulations.

27. PROHIBITED INTEREST / REFERRALS. No official, employee or agent of the ESA shall have any financial interest or benefit, direct or indirect, arising from the negotiation, execution or implementation of this Contract and any of its provisions, or any amendments thereto. It is not the intent of either party to this Contract that any remuneration, benefit, or privilege provided for in this Contract shall influence or in any way be based on the referral or recommended referral by either party or the purchasing, leasing, or ordering of any services other than the specific services described in this Contract. Any payments specified in this Contract are consistent with what the parties reasonably believe to be a fair market value for the services provided.

28. NO SECURITY INTEREST IN CONTRACT ASSETS. Contractor agrees that it will not allow any liens or registered security interests to be placed against the assets used in the performance of this Contract.

29. FIREARMS. No firearms (including concealed weapons) shall be used by Contractor in the provision of services contemplated by this Contract. No Contractor personnel while on duty in the performance of this Contract shall carry a firearm within the ESA service area. A violation of this provision will cause the violator to be subject to police and legal action and will constitute a default under this Contract.

30. EQUAL EMPLOYMENT OPPORTUNITY MATTERS. Contractor shall follow applicable affirmative action guidelines and laws, regulations and rules in order to assure that employees and applicants applying for employment with Contractor will not be discriminated against because of race, color, religion, sex, sexual orientation or national origin. Contractor shall comply with the Americans with Disabilities Act (ADA) and similar state and local laws and will not discriminate against disabled persons in accordance with applicable laws, regulations and rules.

31. NON-DISCRIMINATION. Contractor will not discriminate against any employee or applicant for employment because of race, color, sex, national origin, religion, age, handicap or veteran status. Contractor will, where appropriate or required, take affirmative action to ensure that applicants and employees are treated without regard to their race, color, sex, or national origin.

32. DRUG FREE WORKPLACE.

- A. Contractor shall, within 30 days after the Effective Date of this Contract:
- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - (2) Establish an ongoing drug-free awareness program to inform such employees about --
 - (i) The dangers of drug abuse in the workplace,
 - (ii) Contractor's policy of maintaining a drug free workplace,
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs, and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 - (3) Provide all employees engaged in performance of this Contract with a copy of the statement required by paragraph 1 of this section.
 - (4) Notify such employees in writing in the statement required by paragraph 1 of this section that, as a condition of continued employment on this Contract, the employee will --
 - (i) Abide by the terms of the statement
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.
 - (5) Notify the ESA in writing within 10 days after receiving notice under Paragraph 4 (ii) of this section, from an employee of otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
 - (6) Within 30 days after receiving notice under Paragraph 4 (ii) of this section of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace;
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency; and
 - (7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs 1 through 6 of this section.
- B. In addition to other remedies available to the ESA, Contractor's failure to comply with the requirements of this section will constitute a default under this Contract.

33. COMPLIANCE WITH IMMIGRATION AND CONTROL ACT. Pursuant to C.R.S. § 8-17.5-102, Contractor acknowledges, understands and agrees that:

- A. In the performance of any work or the provision of any services by Contractor under this Contract, Contractor shall not knowingly employ or contract with an illegal alien to perform work or provide services under this Contract; or
- B. Enter into a Contract with any subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or Contract with an illegal alien to perform work under this Contract or under a subcontract to this Contract;
- C. Contractor has verified or attempted to verify through participation in the basic pilot program that Contractor does not employ any illegal aliens and, if Contractor is not accepted into the basic pilot program prior to entering into a public contract for services, that Contractor shall apply to participate in the basic pilot program every three months until Contractor is accepted or the public contract for services has been completed, whichever is earlier. This provision shall not be required or effective in this Contract if the basic pilot program is discontinued. "Basic pilot program" means the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security.
- C. Contractor is expressly prohibited from using basic pilot program procedures to undertake pre-employment screening of job applicants while this Contract and any services under this Contract are being performed.

- D. If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, Contractor shall:
 - (1) Notify the subcontractor and the ESA within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - (2) Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate this 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.
- F. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the department may undertake pursuant to the authority established in C.R.S. § 8-17.5-102.
- G. If Contractor violates or fails to comply with any provision of C.R.S. § 8-17-101, *et seq.*, the ESA may terminate this Contract for breach of contract. If this Contract is so terminated, Contractor shall be liable for any actual and consequential damages to the ESA.

34. PRODUCT ENDORSEMENT / ADVERTISING. Contractor (and any supplier, subcontractor, etc.) may not use the name of the ESA for any endorsement without the prior written consent of the ESA.

35. RELATIONSHIP OF THE PARTIES. Nothing in this Contract will be construed to create a relationship between the ESA and Contractor of employer and employee, principal and agent, partnership, joint venture, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of this Contract. Nothing in this Contract will create any rights or remedies in any third party, it being solely for the benefit of the ESA and Contractor.

36. ASSIGNMENT / AFFILIATED RELATIONSHIPS. Contractor shall not assign or transfer any portion of this Contract without the prior written consent of the ESA. Any purported assignment or transfer without such consent will terminate this Contract at the option of the ESA, and will not convey any rights to the assignee/transferee.

Any significant change in Contractor's ownership will, for the purposes of this Contract, be considered a form of assignment or transfer that is prohibited under this Contract. The ESA may not unreasonably withhold its approval of a requested change in ownership so long as the transferee is of known financial and business integrity.

Contractor may not enter into any agreement or arrangement of any kind for the direct or indirect performance of this Contract by an affiliate of Contractor without the prior written consent of the ESA.

37. TAXES. Contractor shall be responsible for complying with all federal, state and local tax laws, regulations and rules applicable to its performance of this Contract.

38. NOTICE. Any notice to the parties required under this Contract shall be in writing delivered to the person designated below as Contract Coordinator at the indicated address unless otherwise designated in writing. Notices shall be personally delivered, sent by certified mail return receipt requested or sent for next day delivery by a nationally recognized next day courier service

FOR THE ESA		FOR CONTRACTOR	
Contact:		Contact:	
Address:		Address:	
City/State:		City/State:	
Zip:		Zip:	

39. APPLICATION OF COLORADO LAW. This Contract, and the application and interpretation hereof, shall be governed exclusively by the laws of the State of Colorado. This Contract will also be governed by and interpreted in accordance with applicable ordinances, regulations, rules, written guidelines and written policies. Exclusive venue for any disputes or legal proceedings arising out of this Contract shall be in El Paso County, Colorado.

40. CAPTIONS. The captions used in this Contract will be for the convenience of the parties, will not constitute a part of this Contract and will not to be used to construe or interpret this Contract.

41. COUNTERPARTS / SEVERABILITY. This Contract will permit execution in one or more counterparts. If any term or provision of this Contract is found to be illegal or unenforceable by judgment or court order, then, notwithstanding such illegality or unenforceability, this Contract shall remain in full force and effect and such term or provision shall be deemed to be deleted.

42. CONTRACT MODIFICATION. Any amendments or modifications of the terms of this Contract shall be in writing and will be effective only after the approval and signing of the parties to this Contract.

43. CONTRACT CHANGES. The ESA may, at any time, order changes within the scope of this Contract without invalidating this Contract. In such event(s), equitable adjustment of Contract provisions may be authorized by the ESA.

44. INTEGRATION. This is a completely integrated Contract and contains the entire agreement of the parties. Any prior written or oral agreements which are different from the terms, conditions and provisions of this Contract shall be of no effect and shall not be binding upon either party.

45. ENTIRE AGREEMENT. This Contract, along with all exhibits, addenda, and attachments, constitutes the entire understanding of the ESA and Contractor with respect to the subject matter hereof, and supersedes all previous representations, written or oral.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

EXHIBITS

- A Request for Proposals
- B Contractor's Proposal
- C Payment Schedule
- D Insurance Schedule
- E Performance Bond
- F Equipment Schedule
- G Customer Charges and Rate Adjustment Procedure