

CITY OF FORT COLLINS

BID PROPOSAL

**BID #5263**  
**HAULING**

**BID OPENING MARCH 20, 1998, 3 00 p m. (our clock)**

WE HEREBY ENTER OUR BID FOR THE CITY OF FORT COLLINS' REQUIREMENTS FOR HAULING PER THE BID INVITATION AND ANY REFERENCED SPECIFICATIONS

**ATTENTION SPECIAL INSTRUCTIONS**

The City is changing procedures for signing of the Service Agreement and acquiring the insurance certificate. The Service Agreement that is included with the bid documents will become your contract. Please sign it. If any vendor wants a copy of their service agreement after the bid is awarded and signed by the City, please check below. The City is requiring the following to be included **with your bid**

- 1) Copy of your insurance naming the City of Fort Collins as an additional insured
- 2) Your bid amount in the bid schedule. This will become your Exhibit "C" in the Service Agreement
- 3) Please sign the Service Agreement and date it
- 4) All questions should be directed to John Stephen at (970) 221-6777

\_\_\_\_ Please send my company a copy of the Service Agreement

- 1 Vendor must be able to provide the equipment bid and a qualified driver Sunday through Saturday at any time, within one hour of being called by the City Representative. Phone contact with a company representative, qualified to dispatch equipment, must be available at all times. The City Representative will try to schedule night/weekend work in advance, if possible.
- 2 The equipment and the driver shall be used primarily to haul asphalt from various asphalt plants to the job site as directed by the City Representative. Material from the job site may also be hauled to various other job sites, or dump sites located around the City, as directed by the City Representative. Other City departments may use this bid for hauling.
- 3 All Drivers must have a valid CDL license, and be qualified to operate the equipment.
- 4 All equipment must comply with all DOT, CDL, and any other local/State/Federal requirements. Trucks must be equipped with an *effective* load covering tarp and asphalt apron (asphalt lip).

- 5 All work shall be done in a professional, SAFE, courteous and efficient manner. The driver shall exercise the utmost courtesy to other drivers and pedestrians.
- 6 The City shall not be responsible for any equipment failures, damage to equipment, or maintenance required on the equipment. The vendor is responsible for all fuel required.
- 7 Any damage caused by the vendor's equipment or driver shall be the sole responsibility of the vendor. The vendor shall indemnify and hold harmless the City for any damage done by the vendor's equipment/driver to any member of the public, private property, and any part of the right-of-way. If City-owned equipment, or City employees directly cause any damage, the City will assume responsibility for the damage.
- 8 At no time whatsoever shall the driver be considered or become a City employee.
- 9 The City will not guarantee hours. Vendors will be used on an as-needed basis, depending on job site, availability and type of equipment.
- 10 Hours worked must be approved at the end of each day by the City Representative. Hours will be counted from the time of arrival on the job site (not from the time of notification), and will end after the last load is unloaded.
- 11 The City shall have the option to proceed with calling the next available vendor if the lowest vendor is not available. In case of a tie, the City Representative will alternate calling the tied vendors. Vendors who want to work for the City, but were not included in the original bid, will be added to the end of the list, regardless of price, upon approval by the City. When special conditions arise, the City shall have the option to choose the vendor to fit any special equipment needs.
- 12 At the option of the City, the Agreement may be extended for additional one year periods not to exceed two (2) additional one year periods. Pricing changes shall be negotiated by and agreed to by both parties and may not exceed the Denver - Boulder CPI-U as published by the Colorado State Planning and Budget Office. Written notice of renewal shall be provided to the Service Provider and mailed no later than 90 days prior to contract end.
- 13 The City does not intend to award to one vendor, but will issue multiple awards.

#5263

QUOTE

EQUIPMENT	YR	MAKE	MODEL	CU YDS	HP	\$/HR
TRACTOR/TRL	___	_____	_____	_____	___	\$ _____
TRUCKS	___	_____	_____	_____	___	\$ _____
	___	_____	_____	_____	___	\$ _____
	___	_____	_____	_____	___	\$ _____
TANDEM	___	_____	_____	_____	___	\$ _____
DUMP						
TRUCKS	___	_____	_____	_____	___	\$ _____
	___	_____	_____	_____	___	\$ _____
	___	_____	_____	_____	___	\$ _____
TANDEM	___	_____	_____	_____	___	\$ _____
DUMP						
TRUCKS	___	_____	_____	_____	___	\$ _____
WITH						
PUP	___	_____	_____	_____	___	\$ _____
	___	_____	_____	_____	___	\$ _____
OTHER	___	_____	_____	_____	___	\$ _____
EQUIPT						
(LIST TYPE)	___	_____	_____	_____	___	\$ _____
	___	_____	_____	_____	___	\$ _____
	___	_____	_____	_____	___	\$ _____

Failure to provide said equipment with qualified drivers as listed in the bid submitted may result in the removal of the vendor's name from the City's bidding list for a period of three years

FIRM NAME \_\_\_\_\_

SERVICES AGREEMENT

THIS AGREEMENT made and entered into the day and year set forth below by and between THE CITY OF FORT COLLINS, COLORADO, a Municipal Corporation, hereinafter referred to as the "City" and \_\_\_\_\_, hereinafter referred to as "Service Provider"

WITNESSETH

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows

1           Scope of Services The Service Provider agrees to provide services in accordance with the scope of services attached hereto as Exhibit "A", consisting of two (2) pages, and incorporated herein by this reference

2           Contract Period This Agreement shall commence April 1, 1998, and shall continue in full force and effect until March 31, 1999, unless sooner terminated as herein provided. In addition, at the option of the City, the Agreement may be extended for additional one year periods not to exceed two (2) additional one year periods. Pricing changes shall be negotiated by and agreed to by both parties and may not exceed the Denver - Boulder CPI-U as published by the Colorado State Planning and Budget Office. Written notice of renewal shall be provided to the Service Provider and mailed no later than ninety (90) days prior to contract end.

3           Delay If either party is prevented in whole or in part from performing its obligations by unforeseeable causes beyond its reasonable control and without its fault or negligence, then the party so prevented shall be excused from whatever performance is prevented by such cause. To the extent that the performance is actually prevented, the Service Provider must provide written notice to the City of such condition within fifteen (15) days from the onset of such condition.

4           Early Termination by City/Notice Notwithstanding the time periods contained

herein, the City may terminate this Agreement at any time without cause by providing written notice of termination to the Service Provider. Such notice shall be delivered at least fifteen (15) days prior to the termination date contained in said notice unless otherwise agreed in writing by the parties. All notices provided under this Agreement shall be effective when mailed, postage prepaid and sent to the following addresses:

City  
City of Fort Collins, Purchasing  
256 W Mountain Ave  
Ft Collins, CO 80522

Service Provider

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In the event of early termination by the City, the Service Provider shall be paid for services rendered to the date of termination, subject only to the satisfactory performance of the Service Provider's obligations under this Agreement. Such payment shall be the Service Provider's sole right and remedy for such termination.

5 Contract Sum. The City shall pay the Service provider for the performance of this Contract, subject to additions and deletions provided herein, as stated in the bid schedule identified as Exhibit C.

6 City Representative. The City will designate, prior to commencement of the work, its representative who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the services provided under this agreement. All requests concerning this agreement shall be directed to the City Representative.

7 Independent Service provider. The services to be performed by Service Provider are those of an independent service provider and not of an employee of the City of Fort Collins. The City shall not be responsible for withholding any portion of Service Provider's compensation hereunder for the payment of FICA, Workmen's Compensation or other taxes or benefits or for any other purpose.

8 Personal Services. It is understood that the City enters into the Agreement based

on the special abilities of the Service Provider and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Service Provider shall neither assign any responsibilities nor delegate any duties arising under the Agreement without the prior written consent of the City.

9            Acceptance Not Waiver. The City's approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights or benefits provided to the City under this Agreement or cause of action arising out of performance of this Agreement.

10           Warranty

- (a) Service Provider warrants that all work performed hereunder shall be performed with the highest degree of competence and care in accordance with accepted standards for work of a similar nature.
- (b) Unless otherwise provided in the Agreement, all materials and equipment incorporated into any work shall be new and, where not specified, of the most suitable grade of their respective kinds for their intended use, and all workmanship shall be acceptable to City.
- (c) Service Provider warrants all equipment, materials, labor and other work, provided under this Agreement, except City-furnished materials, equipment and labor, against defects and nonconformances in design, materials and workmanship/workwomanship for a period beginning with the start of the work and ending twelve (12) months from and after final acceptance under the Agreement, regardless whether the same were furnished or performed by Service Provider or by any of its subcontractors of any tier. Upon receipt of written notice from City of any such defect or nonconformances, the affected item or part thereof shall be redesigned, repaired or replaced by Service Provider in a manner and at a time acceptable to City.

11           Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this agreement, such party may be declared in default thereof.

12           Remedies. In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek

damages, (b) treat the Agreement as continuing and require specific performance, or (c) avail himself of any other remedy at law or equity. If the non-defaulting party commences legal or equitable actions against the defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred because of the default.

13        Binding Effect. This writing, together with the exhibits hereto, constitutes the entire agreement between the parties and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties.

14        Indemnity/Insurance. a. The Service Provider agrees to indemnify and save harmless the City, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever brought or asserted for injuries to or death of any person or persons, or damages to property arising out of, result from or occurring in connection with the performance of any service hereunder.

b. The Service Provider shall take all necessary precautions in performing the work hereunder to prevent injury to persons and property.

c. Without limiting any of the Service Provider's obligations hereunder, the Service Provider shall provide and maintain insurance coverage naming the City as an additional insured under this Agreement of the type and with the limits specified within Exhibit B, consisting of one (1) page, attached hereto and incorporated herein by this reference. The Service Provider before commencing services hereunder, shall deliver to the City's Director of Purchasing and Risk Management, 256 West Mountain Avenue, Fort Collins, Colorado 80521 one copy of a certificate evidencing the insurance coverage required from an insurance company acceptable to the City.

15        Entire Agreement. This Agreement, along with all Exhibits and other documents incorporated herein, shall constitute the entire Agreement of the parties. Covenants or

representations not contained in this Agreement shall not be binding on the parties

16        Law/Severability The laws of the State of Colorado shall govern the construction interpretation, execution and enforcement of this Agreement. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

THE CITY OF FORT COLLINS, COLORADO

BY \_\_\_\_\_  
James B. O'Neill, II, CPPO  
Director of Purchasing and Risk Management

Date \_\_\_\_\_

\_\_\_\_\_  
Business name (please indicate if you are a corporation or sole owner (DBA))

By \_\_\_\_\_  
(Your signature)

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
TITLE (owner, president of corp , etc )

Date \_\_\_\_\_



## EXHIBIT B

### INSURANCE REQUIREMENTS

1 The Service Provider will provide, from insurance companies acceptable to the City, the insurance coverage designated hereinafter and pay all costs. Before commencing work under this bid, the Service Provider shall furnish the City with certificates of insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies, and containing substantially the following statement"

\* "The insurance evidenced by this Certificate will not be cancelled or materially altered, except after ten (10) days written notice has been received by the City of Fort Collins "

In case of the breach of any provision of the Insurance Requirements, the City, at its option, may take out and maintain, at the expense of the Service Provider, such insurance as the City may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Service Provider under this Agreement. The City, its officers, agents and employees shall be named as additional insureds on the Service Provider's general liability and automobile liability insurance policies for any claims arising out of work performed under this Agreement.

2 Insurance coverages shall be as follows

A Workers' Compensation & Employer's Liability. The Service Provider shall maintain during the life of this Agreement for all of the Service Provider's employees engaged in work performed under this agreement

1 Workers' Compensation insurance with statutory limits as required by Colorado law

2 Employer's Liability insurance with limits of \$100,000 per accident, \$500,000 disease aggregate, and \$100,000 disease each employee

B Commercial General & Vehicle Liability. The Service Provider shall maintain during the life of this Agreement such commercial general liability and automobile liability insurance as will provide coverage for damage claims of personal injury, including accidental death, as well as for claims for property damage, which may arise directly or indirectly from the performance of work under this Agreement. Coverage for property damage shall be on a "broad form" basis. The amount of insurance for each coverage, Commercial General and Vehicle, shall not be less than \$500,000 combined single limits for bodily injury and property damage.

In the event any work is performed by a subcontractor, the Service Provider shall be responsible for any liability directly or indirectly arising out of the work performed under this Agreement by a subcontractor, which liability is not covered by the subcontractor's insurance.

Purchase Order Terms and Conditions

**COMMERCIAL DETAILS**

voice Address To ensure prompt Payment mail invoices in duplicate to  
City of Fort Collins Accounting Division  
P O Box 580  
Fort Collins, CO 80522

ax exemptions By statute the City of Fort Collins is exempt from state and  
ocal taxes Our Exemption Number is 98-04502 Federal Excise Tax Exemption  
ertificate of Registry 84-6000587 is registered with the Collector of Internal  
evenue, Denver, Colorado (Ref Colorado Revised Statutes 1973, Chapter  
9-26, 114 (a))

Goods Rejected GOODS REJECTED due to failure to meet specifications, either  
when shipped or due to defects of damage in transit, may be returned to you  
or credit and are not to be replaced except upon receipt of written instructions  
from the City of Fort Collins

Inspection GOODS are subject to the City of Fort Collins inspection on arrival

Final Acceptance Receipt of the merchandise, services or equipment in  
response to this order can result in authorized payment on the part of the City  
of Fort Collins However, it is to be understood that FINAL ACCEPTANCE is  
dependent upon completion of all applicable required inspection procedures

Freight Terms Shipments must be F O B , City of Fort Collins, 700 Wood St ,  
Fort Collins, CO 80522, unless otherwise specified on this order If permission  
is given to prepay freight and charge separately, the original freight bill must  
accompany invoice Additional charges for packing will not be accepted

Shipment Distance Where manufacturers have distributing points in various  
parts of the country, shipment is expected from the nearest distribution point  
to destination, and excess freight will be deducted from invoice when  
shipments are made from greater distance

Permits Seller shall procure at sellers sole cost all necessary permits,  
certificates and licenses required by all applicable laws, regulations, ordinances  
and rules of the state, municipality, territory or political subdivision where the  
work is performed, or required by any other duly constituted public authority  
having jurisdiction over the work of vendor Seller further agrees to hold the  
City of Fort Collins harmless from and against all liability and loss incurred by  
them by reason of an asserted or established violation of any such laws,  
regulations, ordinances, rules and requirements

Authorization All parties to this contract agree that the representatives are, in  
fact, bona fide and possess full and complete authority to bind said parties  
LIMITATION OF TERMS This Purchase Order expressly limits acceptance to  
the terms and conditions stated herein set forth and any supplementary or  
additional terms and conditions annexed hereto or incorporated herein by  
reference Any additional or different terms and conditions proposed by seller  
are objected to and hereby rejected

**2 DELIVERY**

PLEASE ADVISE PURCHASING AGENT immediately if you cannot make  
complete shipment to arrive on your promised delivery date as noted. Time is  
of the essence Delivery and performance must be effected within the time  
stated on the purchase order and the documents attached hereto No acts of  
the Purchasers including, without limitation, acceptance of partial late  
deliveries, shall operate as a waiver of this provision In the event of any delay,  
the Purchaser shall have, in addition to other legal and equitable remedies, the  
option of placing this order elsewhere and holding the Seller liable for damages  
However, the Seller shall not be liable for damages as a result of delays due to  
causes not reasonably foreseeable which are beyond its reasonable control and  
without its fault of negligence, such acts of God, acts of civil or military  
authorities, governmental priorities, fires, strikes, flood, epidemics, wars or  
nots provided that notice of the conditions causing such delay is given to the  
Purchaser within five (5) days of the time when the Seller first received  
knowledge thereof In the event of any such delay, the date of delivery shall  
be extended for the period equal to the time actually lost by reason of the  
delay

**3 WARRANTY**

The Seller warrants that all goods, articles, materials and work covered by this  
order will conform with applicable drawings, specifications, samples and/or  
other descriptions given, will be fit for the purposes intended, and performed  
with the highest degree of care and competence in accordance with accepted  
standards for work of a similar nature The Seller agrees to hold the purchaser  
harmless from any loss, damage or expense which the Purchaser may suffer  
or incur on account of the Sellers breach of warranty The Seller shall replace,  
repair or make good, without cost to the purchaser, any defects or faults  
arising within one (1) year or within such longer period of time as may be

prescribed by law or by the terms of any applicable warranty provided by the  
Seller after the date of acceptance of the goods furnished hereunder (acceptance  
not to be unreasonably delayed), resulting from imperfect or defective work  
done or materials furnished by the Seller Acceptance or use of goods by the  
Purchaser shall not constitute a waiver of any claim under this warranty Except  
as otherwise provided in this purchase order, the Sellers liability hereunder shall  
extend to all damages proximately caused by the breach of any of the foregoing  
warranties or guarantees, but such liability shall in no event include loss of  
profits or loss of use NO IMPLIED WARRANTY OR MERCHANTABILITY OR OF  
FITNESS FOR PURPOSE SHALL APPLY

**4 CHANGES IN LEGAL TERMS**

The Purchaser may make changes to legal terms by written change order

**5 CHANGES IN COMMERCIAL TERMS**

The Purchaser may make any changes to the terms, other than legal terms,  
including additions to or deletions from the quantities originally ordered in the  
specifications or drawings, by verbal or written change order If any such  
change affects the amount due or the time of performance hereunder, an  
equitable adjustment shall be made

**6 TERMINATIONS**

The Purchaser may at any time by written change order, terminate this  
agreement as to any or all portions of the goods then not shipped, subject to  
any equitable adjustment between the parties as to any work or materials then  
in progress provided that the Purchaser shall not be liable for any claims for  
anticipated profits on the uncompleted portion of the goods and/or work, for  
incidental or consequential damages, and that no such adjustment be made in  
favor of the Seller with respect to any goods which are the Sellers standard  
stock No such termination shall relieve the Purchaser or the Seller of any of  
their obligations as to any goods delivered hereunder

**7 CLAIMS FOR ADJUSTMENT**

Any claim for adjustment must be asserted within thirty (30) days from the date  
the change or termination is ordered

**8 COMPLIANCE WITH LAW**

The Seller warrants that all goods sold hereunder shall have been produced,  
sold, delivered and furnished in strict compliance with all applicable laws and  
regulations to which the goods are subject The Seller shall execute and deliver  
such documents as may be required to effect or evidence compliance All laws  
and regulations required to be incorporated in agreements of this character are  
hereby incorporated herein by this reference The Seller agrees to indemnify and  
hold the Purchaser harmless from all costs and damages suffered by the  
Purchaser as a result of the Sellers failure to comply with such law

**9 ASSIGNMENT**

Neither party shall assign, transfer, or convey this order, or any monies due or  
to become due hereunder without the prior written consent of the other party

**10 TITLE**

The Seller warrants full, clear and unrestricted title to the Purchaser for all  
equipment, materials, and items furnished in performance of this agreement  
free and clear of any and all liens, restrictions, reservations, security interests,  
encumbrances and claims of others

**11 NONWAIVER**

Failure of the Purchaser to insist upon strict performance of the terms and  
conditions hereof, failure or delay to exercise any rights or remedies provided  
herein or by law, failure to promptly notify the Seller in the event of a breach  
the acceptance of or payment for goods hereunder or approval of the design  
shall not release the Seller of any of the warranties or obligations of this  
purchase order and shall not be deemed a waiver of any right of the purchase  
to insist upon strict performance hereof or any of its rights or remedies as to any  
such goods, regardless of when shipped, received or accepted, as to any prior  
or subsequent default hereunder, nor shall any purported oral modification or  
rescission of this purchase order by the Purchaser operate as a waiver of any of  
the terms hereof

### ASSIGNMENT OF ANTITRUST CLAIMS

Seller and the Purchaser recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact borne by the Purchaser. Therefore, for good cause and as consideration for executing this purchase order, the Seller hereby assigns to the Purchaser any and all claims that Seller may now have or hereafter acquire under federal or state antitrust laws for such overcharges relating to the particular goods or services purchased or required by the Purchaser pursuant to this purchase order.

### 3 PURCHASERS PERFORMANCE OF SELLERS OBLIGATIONS

The Purchaser directs the Seller to correct nonconforming or defective goods by a date to be agreed upon by the Purchaser and the Seller, and the Seller hereafter indicates its inability or unwillingness to comply, the Purchaser may cause the work to be performed by the most expeditious means available to it, and the Seller shall pay all costs associated with such work.

The Seller shall release the Purchaser and its contractors of any tier from all liability and claims of any nature resulting from the performance of such work.

This release shall apply even in the event of fault or negligence of the party released and shall extend to the directors, officers and employees of such party.

The Seller's contractual obligations, including warranty, shall not be deemed to be reduced, in any way, because such work is performed or caused to be performed by the Purchaser.

### 14 PATENTS

Whenever the Seller is required to use any design, device, material or process covered by letter, patent, trademark or copyright, the Seller shall indemnify and save harmless the Purchaser from any and all claims for infringement by reason of the use of such patented design, device, material or process in connection with the contract, and shall indemnify the Purchaser for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution or after the completion of the work. In case said equipment, or any part thereof or the intended use of the goods, is in such suit held to constitute infringement and the use of said equipment or part is enjoined, the Seller shall, at its own expense and at its option, either procure for the Purchaser the right to continue using said equipment or parts, replace the same with substantially equal but non-infringing equipment, or modify it so that it becomes non-infringing.

### 15 INSOLVENCY

If the Seller shall become insolvent or bankrupt, make an assignment for the benefit of creditors, appoint a receiver or trustee for any of the Seller's property or business, this order may forthwith be canceled by the Purchaser without liability.

### 16. GOVERNING LAW

The definitions of terms used or the interpretation of the agreement and the rights of all parties hereunder shall be construed under and governed by the laws of the State of Colorado, USA.

The following Additional Conditions apply only in cases where the Seller is to perform work hereunder, including the services of Seller's Representative(s), on the premises of others:

### 17 SELLERS RESPONSIBILITY

The Seller shall carry on said work at Seller's own risk until the same is fully completed and accepted, and shall, in case of any accident, destruction or injury to the work and/or materials before Seller's final completion and acceptance, complete the work at Seller's own expense and to the satisfaction of the Purchaser. When materials and equipment are furnished by others for installation or erection by the Seller, the Seller shall receive, unload, store and handle same at the site and become responsible therefor as though such materials and/or equipment were being furnished by the Seller under the order.

### 18 INSURANCE

The Seller shall, at his own expense, provide for the payment of workers compensation, including occupational disease benefits, to its employees employed on or in connection with the work covered by this purchase order, and/or to their dependents in accordance with the laws of the state in which the work is to be done. The Seller shall also carry comprehensive general liability including, but not limited to, contractual and automobile public liability insurance with bodily injury and death limits of at least \$300,000 for any one person, \$500,000 for any one accident and property damage limit per accident of \$400,000. The Seller shall likewise require his contractors, if any, to provide for such compensation and insurance. Before any of the Seller's or his contractors' employees shall do any work upon the premises of others, the Seller shall furnish the Purchaser with a certificate that such compensation and insurance have been provided. Such certificates shall specify the date when such compensation and insurance have been provided. Such certificates shall

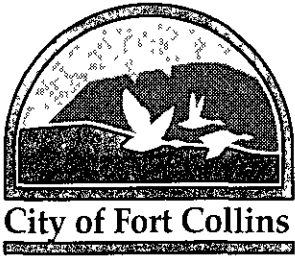
specify the date when such compensation and insurance expires. The Seller agrees that such compensation and insurance shall be maintained until after the entire work is completed and accepted.

### 19 PROTECTION AGAINST ACCIDENTS AND DAMAGES

The Seller hereby assumes the entire responsibility and liability for any and all damage, loss or injury of any kind or nature whatsoever to persons or property caused by or resulting from the execution of the work provided for in this purchase order or in connection herewith. The Seller will indemnify and hold harmless the Purchaser and any or all of the Purchaser's officers, agents and employees from and against any and all claims, losses, damages, charges or expenses, whether direct or indirect, and whether to persons or property to which the Purchaser may be put or subject by reason of any act, action, neglect, omission or default on the part of the Seller, any of his contractors, or any of the Seller's or contractors' officers, agents or employees. In case any suit or other proceedings shall be brought against the Purchaser, or its officers, agents or employees at any time on account or by reason of any act, action, neglect, omission or default of the Seller or any of his contractors or any of its or their officers, agents or employees as aforesaid, the Seller hereby agrees to assume the defense thereof and to defend the same at the Seller's own expense, to pay any and all costs, charges, attorneys fees and other expenses, any and all judgments that may be incurred by or obtained against the Purchaser or any of its or their officers, agents or employees in such suits or other proceedings, and in case judgment or other lien be placed upon or obtained against the property of the Purchaser, or said parties in or as a result of such suits or other proceedings, the Seller will at once cause the same to be dissolved and discharged by giving bond or otherwise. The Seller and his contractors shall take all safety precautions, furnish and install all guards necessary for the prevention of accidents, comply with all laws and regulations with regard to safety including, but without limitation, the Occupational Safety and Health Act of 1970 and all rules and regulations issued pursuant thereto.

9/90

Revised 11/91



INVITATION TO BID

Sealed bids will be received and publicly opened at the office of The Director of Purchasing and Risk Management, 256 West Mountain Avenue, Fort Collins, Colorado 80521, ( P O Box 580, 80522) at the time and date noted on the bid proposal and/or contract documents

Bids must be received at the Office of the Director prior to the opening time (our clock)

SPECIAL INSTRUCTIONS

All bids must be signed by an authorized representative of the company with the legal capacity to bind the company to the agreement. Bids may be withdrawn up to the date and hour set for opening. Once bids have been accepted by the City and opening time has passed, failure to enter into contract or honor the purchase order will be cause for removal of supplier's name from the city of Fort Collins' bidders list for a period of twelve months from the date of the opening. The City may also pursue any remedies available at law or in equity. Bid prices must be held firm for a period of forty-five days after bid openings.

Submission of a bid is deemed as acceptance of all terms, conditions and specifications contained in the City's specifications initially provided to the bidder. Any proposed modification must be accepted in writing by the City prior to award of the bid.

Only bids properly received by the Purchasing Department will be accepted.

No proposal will be accepted from, or any purchase order awarded, to any person, firm or corporation in default on any obligation to the City.

All bids must be labeled with both the project name and bid number indicated on the bid proposal.

Bids must be furnished exclusive of any federal excise tax, wherever applicable.

Bidders must be properly licensed and secure necessary permits wherever applicable.

Vendors not responding to requests for bid shall be removed from our automated listing for the requested commodities/services.

The City may elect where applicable, to award bids on an individual item/group basis or on a total bid basis, whichever is most beneficial to the City. The City reserves the right to accept or reject any and all bids, and to waive any irregularities or informalities.

**Sales Prohibited/Conflict of Interest** No officer, employee, or member of City Council, shall have a financial interest in the sale to the City of any real or personal property, equipment, material, supplies or services where such officer or employee exercises directly or indirectly any decision-making authority concerning such sale or any supervisory authority over the services to be rendered. This rule also applies to subcontracts with the City. Soliciting or accepting any gift, gratuity favor, entertainment, kickback or any items of monetary value from any person who has or is seeking to do business with the City of Fort Collins is prohibited.

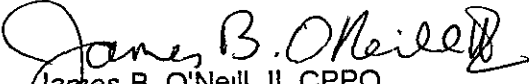
**Freight Terms** Unless otherwise noted, all freight is F O B destination, freight prepaid All freight charges must be included in prices submitted on proposal

**Discounts** Any discounts allowed for prompt payment, etc , must be reflected in bid figures and not entered as separate pricing on the proposal form

**Purchasing Restrictions** Your authorized signature of this bid assures your firm's compliance with the City's purchasing restrictions on cement A copy of the Resolution 91-121 is available for review in the Purchasing Division or the City Clerk's office

**Collusive or Sham Bids** Any bid deemed to be collusive or a sham bid will be rejected and reported to authorities as such Your authorized signature of this bid assures that such bid is genuine and is not a collusive or sham bid

**Bid Results** For information regarding results for individual bids send a self-addressed, self-stamped envelope and a bid tally will be mailed to you

  
James B O'Neill, II, CPPO  
Director of Purchasing & Risk Management

CITY OF FORT COLLINS

BID PROPOSAL

**BID #5263**  
**HAULING**

**BID OPENING: MARCH 20, 1998, 3 00 p m (our clock)**

WE HEREBY ENTER OUR BID FOR THE CITY OF FORT COLLINS' REQUIREMENTS FOR **HAULING** PER THE BID INVITATION AND ANY REFERENCED SPECIFICATIONS

**ATTENTION SPECIAL INSTRUCTIONS**

The City is changing procedures for signing of the Service Agreement and acquiring the insurance certificate. The Service Agreement that is included with the bid documents will become your contract. Please sign it. If any vendor wants a copy of their service agreement after the bid is awarded and signed by the City, please check below. The City is requiring the following to be included **with your bid**

- 1) Copy of you insurance naming the City of Fort Collins as an additional insured
- 2) Your bid amount in the bid schedule. This will become your Exhibit "C" in the Service Agreement
- 3) Please sign the Service Agreement and date it
- 4) All questions should be directed to John Stephen at (970) 221-6777

\_\_\_\_ Please send my company a copy of the Service Agreement

1 Vendor must be able to provide the equipment bid and a qualified driver Sunday through Saturday at any time, within one hour of being called by the City Representative. Phone contact with a company representative, qualified to dispatch equipment, must be available at all times. The City Representative will try to schedule night/weekend work in advance, if possible.

2 The equipment and the driver shall be used primarily to haul asphalt from various asphalt plants to the job site as directed by the City Representative. Material from the job site may also be hauled to various other job sites, or dump sites located around the City, as directed by the City Representative. Other City departments may use this bid for hauling.

3 All Drivers must have a valid CDL license, and be qualified to operate the equipment.

4 All equipment must comply with all DOT, CDL, and any other local/State/Federal requirements. Trucks must be equipped with an *effective* load covering tarp and asphalt apron (asphalt lip).

- 5 All work shall be done in a professional, SAFE, courteous and efficient manner. The driver shall exercise the utmost courtesy to other drivers and pedestrians.
- 6 The City shall not be responsible for any equipment failures, damage to equipment, or maintenance required on the equipment. The vendor is responsible for all fuel required.
- 7 Any damage caused by the vendor's equipment or driver shall be the sole responsibility of the vendor. The vendor shall indemnify and hold harmless the City for any damage done by the vendor's equipment/driver to any member of the public, private property, and any part of the right-of-way. If City-owned equipment, or City employees directly cause any damage, the City will assume responsibility for the damage.
- 8 At no time whatsoever shall the driver be considered or become a City employee.
- 9 The City will not guarantee hours. Vendors will be used on an as-needed basis, depending on job site, availability and type of equipment.
- 10 Hours worked must be approved at the end of each day by the City Representative. Hours will be counted from the time of arrival on the job site (not from the time of notification), and will end after the last load is unloaded.
- 11 The City shall have the option to proceed with calling the next available vendor if the lowest vendor is not available. In case of a tie, the City Representative will alternate calling the tied vendors. Vendors who want to work for the City, but were not included in the original bid, will be added to the end of the list, regardless of price, upon approval by the City. When special conditions arise, the City shall have the option to choose the vendor to fit any special equipment needs.
- 12 At the option of the City, the Agreement may be extended for additional one year periods not to exceed two (2) additional one year periods. Pricing changes shall be negotiated by and agreed to by both parties and may not exceed the Denver - Boulder CPI-U as published by the Colorado State Planning and Budget Office. Written notice of renewal shall be provided to the Service Provider and mailed no later than 90 days prior to contract end.
- 13 The City does not intend to award to one vendor, but will issue multiple awards.

#5263

QUOTE

EQUIPMENT	YR	MAKE	MODEL	CU YDS	HP	\$/HR
TRACTOR/TRL	_____	_____	_____	_____	_____	\$ _____
TRUCKS	_____	_____	_____	_____	_____	\$ _____
	_____	_____	_____	_____	_____	\$ _____
	_____	_____	_____	_____	_____	\$ _____
TANDEM	_____	_____	_____	_____	_____	\$ _____
DUMP TRUCKS	_____	_____	_____	_____	_____	\$ _____
	_____	_____	_____	_____	_____	\$ _____
	_____	_____	_____	_____	_____	\$ _____
TANDEM	_____	_____	_____	_____	_____	\$ _____
DUMP TRUCKS	_____	_____	_____	_____	_____	\$ _____
WITH PUP	_____	_____	_____	_____	_____	\$ _____
	_____	_____	_____	_____	_____	\$ _____
OTHER	_____	_____	_____	_____	_____	\$ _____
EQUIPT (LIST TYPE)	_____	_____	_____	_____	_____	\$ _____
	_____	_____	_____	_____	_____	\$ _____
	_____	_____	_____	_____	_____	\$ _____

Failure to provide said equipment with qualified drivers as listed in the bid submitted may result in the removal of the vendor's name from the City's bidding list for a period of three years

FIRM NAME \_\_\_\_\_



SERVICES AGREEMENT

THIS AGREEMENT made and entered into the day and year set forth below by and between THE CITY OF FORT COLLINS, COLORADO, a Municipal Corporation, hereinafter referred to as the "City" and \_\_\_\_\_, hereinafter referred to as "Service Provider"

WITNESSETH

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows

1           Scope of Services The Service Provider agrees to provide services in accordance with the scope of services attached hereto as Exhibit "A", consisting of two (2) pages, and incorporated herein by this reference

2           Contract Period This Agreement shall commence April 1, 1998, and shall continue in full force and effect until March 31, 1999, unless sooner terminated as herein provided In addition, at the option of the City, the Agreement may be extended for additional one year periods not to exceed two (2) additional one year periods Pricing changes shall be negotiated by and agreed to by both parties and may not exceed the Denver - Boulder CPI-U as published by the Colorado State Planning and Budget Office Written notice of renewal shall be provided to the Service Provider and mailed no later than ninety (90) days prior to contract end

3           Delay If either party is prevented in whole or in part from performing its obligations by unforeseeable causes beyond its reasonable control and without its fault or negligence, then the party so prevented shall be excused from whatever performance is prevented by such cause To the extent that the performance is actually prevented, the Service Provider must provide written notice to the City of such condition within fifteen (15) days from the onset of such condition

4           Early Termination by City/Notice Notwithstanding the time periods contained

herein, the City may terminate this Agreement at any time without cause by providing written notice of termination to the Service Provider. Such notice shall be delivered at least fifteen (15) days prior to the termination date contained in said notice unless otherwise agreed in writing by the parties. All notices provided under this Agreement shall be effective when mailed, postage prepaid and sent to the following addresses:

City  
City of Fort Collins, Purchasing  
256 W Mountain Ave  
Ft Collins, CO 80522

Service Provider

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In the event of early termination by the City, the Service Provider shall be paid for services rendered to the date of termination, subject only to the satisfactory performance of the Service Provider's obligations under this Agreement. Such payment shall be the Service Provider's sole right and remedy for such termination.

5 Contract Sum. The City shall pay the Service provider for the performance of this Contract, subject to additions and deletions provided herein, as stated in the bid schedule identified as Exhibit C.

6 City Representative. The City will designate, prior to commencement of the work, its representative who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the services provided under this agreement. All requests concerning this agreement shall be directed to the City Representative.

7 Independent Service provider. The services to be performed by Service Provider are those of an independent service provider and not of an employee of the City of Fort Collins. The City shall not be responsible for withholding any portion of Service Provider's compensation hereunder for the payment of FICA, Workmen's Compensation or other taxes or benefits or for any other purpose.

8 Personal Services. It is understood that the City enters into the Agreement based

on the special abilities of the Service Provider and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Service Provider shall neither assign any responsibilities nor delegate any duties arising under the Agreement without the prior written consent of the City.

9            Acceptance Not Waiver. The City's approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights or benefits provided to the City under this Agreement or cause of action arising out of performance of this Agreement.

10           Warranty

- (a) Service Provider warrants that all work performed hereunder shall be performed with the highest degree of competence and care in accordance with accepted standards for work of a similar nature.
- (b) Unless otherwise provided in the Agreement, all materials and equipment incorporated into any work shall be new and, where not specified, of the most suitable grade of their respective kinds for their intended use, and all workmanship shall be acceptable to City.
- (c) Service Provider warrants all equipment, materials, labor and other work, provided under this Agreement, except City-furnished materials, equipment and labor, against defects and nonconformances in design, materials and workmanship/workwomanship for a period beginning with the start of the work and ending twelve (12) months from and after final acceptance under the Agreement, regardless whether the same were furnished or performed by Service Provider or by any of its subcontractors of any tier. Upon receipt of written notice from City of any such defect or nonconformances, the affected item or part thereof shall be redesigned, repaired or replaced by Service Provider in a manner and at a time acceptable to City.

11           Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this agreement, such party may be declared in default thereof.

12           Remedies. In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek

damages, (b) treat the Agreement as continuing and require specific performance, or (c) avail himself of any other remedy at law or equity. If the non-defaulting party commences legal or equitable actions against the defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred because of the default.

13           Binding Effect. This writing, together with the exhibits hereto, constitutes the entire agreement between the parties and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties.

14           Indemnity/Insurance. a. The Service Provider agrees to indemnify and save harmless the City, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever brought or asserted for injuries to or death of any person or persons, or damages to property arising out of, result from or occurring in connection with the performance of any service hereunder.

b. The Service Provider shall take all necessary precautions in performing the work hereunder to prevent injury to persons and property.

c. Without limiting any of the Service Provider's obligations hereunder, the Service Provider shall provide and maintain insurance coverage naming the City as an additional insured under this Agreement of the type and with the limits specified within Exhibit B, consisting of one (1) page, attached hereto and incorporated herein by this reference. The Service Provider before commencing services hereunder, shall deliver to the City's Director of Purchasing and Risk Management, 256 West Mountain Avenue, Fort Collins, Colorado 80521 one copy of a certificate evidencing the insurance coverage required from an insurance company acceptable to the City.

15           Entire Agreement. This Agreement, along with all Exhibits and other documents incorporated herein, shall constitute the entire Agreement of the parties. Covenants or

representations not contained in this Agreement shall not be binding on the parties

16        Law/Severability The laws of the State of Colorado shall govern the construction interpretation, execution and enforcement of this Agreement In the event any provision of this Agreement shall be held *invalid* or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement

THE CITY OF FORT COLLINS, COLORADO

BY \_\_\_\_\_  
James B O'Neill, II, CPPO  
Director of Purchasing and Risk Management

Date \_\_\_\_\_

\_\_\_\_\_  
Business name (please indicate if you are  
a corporation or sole owner (DBA))

By \_\_\_\_\_  
(Your signature)

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
TITLE (owner, president of corp , etc )

Date \_\_\_\_\_

EXHIBIT B

INSURANCE REQUIREMENTS

1 The Service Provider will provide, from insurance companies acceptable to the City, the insurance coverage designated hereinafter and pay all costs. Before commencing work under this bid, the Service Provider shall furnish the City with certificates of insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies, and containing substantially the following statement"

\* "The insurance evidenced by this Certificate will not be cancelled or materially altered, except after ten (10) days written notice has been received by the City of Fort Collins "

In case of the breach of any provision of the Insurance Requirements, the City, at its option, may take out and maintain, at the expense of the Service Provider, such insurance as the City may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Service Provider under this Agreement. The City, its officers, agents and employees shall be named as additional insureds on the Service Provider's general liability and automobile liability insurance policies for any claims arising out of work performed under this Agreement.

2 Insurance coverages shall be as follows

A Workers' Compensation & Employer's Liability The Service Provider shall maintain during the life of this Agreement for all of the Service Provider's employees engaged in work performed under this agreement

1 Workers' Compensation insurance with statutory limits as required by Colorado law

2 Employer's Liability insurance with limits of \$100,000 per accident, \$500,000 disease aggregate, and \$100,000 disease each employee

B Commercial General & Vehicle Liability The Service Provider shall maintain during the life of this Agreement such commercial general liability and automobile liability insurance as will provide coverage for damage claims of personal injury, including accidental death, as well as for claims for property damage, which may arise directly or indirectly from the performance of work under this Agreement. Coverage for property damage shall be on a "broad form" basis. The amount of insurance for each coverage, Commercial General and Vehicle shall not be less than \$500,000 combined single limits for bodily injury and property damage.

In the event any work is performed by a subcontractor, the Service Provider shall be responsible for any liability directly or indirectly arising out of the work performed under this Agreement by a subcontractor, which liability is not covered by the subcontractor's insurance.

Purchase Order Terms and Conditions

**1 COMMERCIAL DETAILS**

Invoice Address To ensure prompt Payment mail invoices in duplicate to  
City of Fort Collins Accounting Division  
P O Box 580  
Fort Collins, CO 80522

Tax exemptions By statute the City of Fort Collins is exempt from state and local taxes Our Exemption Number is 98-04502 Federal Excise Tax Exemption Certificate of Registry 84-6000587 is registered with the Collector of Internal Revenue, Denver, Colorado (Ref Colorado Revised Statutes 1973, Chapter 39-26, 114 (a))

Goods Rejected **GOODS REJECTED** due to failure to meet specifications, either when shipped or due to defects of damage in transit, may be returned to you for credit and are not to be replaced except upon receipt of written instructions from the City of Fort Collins

Inspection **GOODS** are subject to the City of Fort Collins inspection on arrival

Final Acceptance Receipt of the merchandise, services or equipment in response to this order can result in authorized payment on the part of the City of Fort Collins However, it is to be understood that **FINAL ACCEPTANCE** is dependent upon completion of all applicable required inspection procedures

Freight Terms Shipments must be **F O B**, City of Fort Collins, 700 Wood St, Fort Collins, CO 80522, unless otherwise specified on this order If permission is given to prepay freight and charge separately, the original freight bill must accompany invoice Additional charges for packing will not be accepted

Shipment Distance Where manufacturers have distributing points in various parts of the country, shipment is expected from the nearest distribution point to destination, and excess freight will be deducted from Invoice when shipments are made from greater distance

Permits Seller shall procure at sellers sole cost all necessary permits, certificates and licenses required by all applicable laws, regulations, ordinances and rules of the state, municipality, territory or political subdivision where the work is performed, or required by any other duly constituted public authority having jurisdiction over the work of vendor Seller further agrees to hold the City of Fort Collins harmless from and against all liability and loss incurred by them by reason of an asserted or established violation of any such laws, regulations, ordinances, rules and requirements

Authorization All parties to this contract agree that the representatives are, in fact, bona fide and possess full and complete authority to bind said parties

**LIMITATION OF TERMS** This Purchase Order expressly limits acceptance to the terms and conditions stated herein set forth and any supplementary or additional terms and conditions annexed hereto or incorporated herein by reference Any additional or different terms and conditions proposed by seller are objected to and hereby rejected

**2 DELIVERY**

**PLEASE ADVISE PURCHASING AGENT** immediately if you cannot make complete shipment to arrive on your promised delivery date as noted Time is of the essence Delivery and performance must be effected within the time stated on the purchase order and the documents attached hereto No acts of the Purchasers including, without limitation, acceptance of partial late deliveries, shall operate as a waiver of this provision In the event of any delay, the Purchaser shall have, in addition to other legal and equitable remedies, the option of placing this order elsewhere and holding the Seller liable for damages However, the Seller shall not be liable for damages as a result of delays due to causes not reasonably foreseeable which are beyond its reasonable control and without its fault of negligence, such acts of God, acts of civil or military authorities, governmental priorities, fires, strikes, flood, epidemics, wars or riots provided that notice of the conditions causing such delay is given to the Purchaser within five (5) days of the time when the Seller first received knowledge thereof In the event of any such delay, the date of delivery shall be extended for the period equal to the time actually lost by reason of the delay

**3 WARRANTY**

The Seller warrants that all goods, articles, materials and work covered by this order will conform with applicable drawings, specifications, samples and/or other descriptions given, will be fit for the purposes intended, and performed with the highest degree of care and competence in accordance with accepted standards for work of a similar nature The Seller agrees to hold the purchaser harmless from any loss, damage or expense which the Purchaser may suffer or incur on account of the Sellers breach of warranty The Seller shall replace, repair or make good, without cost to the purchaser, any defects or faults arising within one

prescribed by law or by the terms of any applicable warranty provided by the Seller after the date of acceptance of the goods furnished hereunder (acceptance not to be unreasonably delayed), resulting from imperfect or defective work done or materials furnished by the Seller Acceptance or use of goods by the Purchaser shall not constitute a waiver of any claim under this warranty Except as otherwise provided in this purchase order, the Sellers liability hereunder shall extend to all damages proximately caused by the breach of any of the foregoing warranties or guarantees, but such liability shall in no event include loss of profits or loss of use **NO IMPLIED WARRANTY OR MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY**

**4 CHANGES IN LEGAL TERMS**

The Purchaser may make changes to legal terms by written change order

**5 CHANGES IN COMMERCIAL TERMS**

The Purchaser may make any changes to the terms, other than legal terms, including additions to or deletions from the quantities originally ordered in the specifications or drawings, by verbal or written change order If any such change affects the amount due or the time of performance hereunder, an equitable adjustment shall be made

**6 TERMINATIONS**

The Purchaser may at any time by written change order, terminate this agreement as to any or all portions of the goods then not shipped, subject to any equitable adjustment between the parties as to any work or materials then in progress provided that the Purchaser shall not be liable for any claims for anticipated profits on the uncompleted portion of the goods and/or work, for incidental or consequential damages, and that no such adjustment be made in favor of the Seller with respect to any goods which are the Sellers standard stock No such termination shall relieve the Purchaser or the Seller of any of their obligations as to any goods delivered hereunder

**7 CLAIMS FOR ADJUSTMENT**

Any claim for adjustment must be asserted within thirty (30) days from the date the change or termination is ordered

**8 COMPLIANCE WITH LAW**

The Seller warrants that all goods sold hereunder shall have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations to which the goods are subject The Seller shall execute and deliver such documents as may be required to effect or evidence compliance All laws and regulations required to be incorporated in agreements of this character are hereby incorporated herein by this reference The Seller agrees to indemnify and hold the Purchaser harmless from all costs and damages suffered by the Purchaser as a result of the Sellers failure to comply with such law

**9 ASSIGNMENT**

Neither party shall assign, transfer, or convey this order, or any monies due or to become due hereunder without the prior written consent of the other party

**10 TITLE**

The Seller warrants full, clear and unrestricted title to the Purchaser for all equipment, materials, and items furnished in performance of this agreement free and clear of any and all liens, restrictions, reservations, security interest encumbrances and claims of others

**11 NONWAIVER**

Failure of the Purchaser to insist upon strict performance of the terms and conditions hereof, failure or delay to exercise any rights or remedies provided herein or by law, failure to promptly notify the Seller in the event of a breach the acceptance of or payment for goods hereunder or approval of the design shall not release the Seller of any of the warranties or obligations of this purchase order and shall not be deemed a waiver of any right of the purchase to insist upon strict performance hereof or any of its rights or remedies as to any such goods, regardless of when shipped, received or accepted, as to any prior or subsequent default hereunder, nor shall any purported oral modification or rescission of this purchase order by the Purchaser operate as a waiver of any of the terms hereof

## 12 ASSIGNMENT OF ANTITRUST CLAIMS

Seller and the Purchaser recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact borne by the Purchaser. Therefore, for good cause and as consideration for executing this purchase order, the Seller hereby assigns to the Purchaser any and all claims it may now have or hereafter acquire under federal or state antitrust laws for such overcharges relating to the particular goods or services purchased or acquired by the Purchaser pursuant to this purchase order.

## 13 PURCHASERS PERFORMANCE OF SELLERS OBLIGATIONS

If the Purchaser directs the Seller to correct nonconforming or defective goods by a date to be agreed upon by the Purchaser and the Seller, and the Seller thereafter indicates its inability or unwillingness to comply, the Purchaser may cause the work to be performed by the most expeditious means available to it, and the Seller shall pay all costs associated with such work.

The Seller shall release the Purchaser and its contractors of any tier from all liability and claims of any nature resulting from the performance of such work.

This release shall apply even in the event of fault of negligence of the party released and shall extend to the directors, officers and employees of such party.

The Seller's contractual obligations, including warranty, shall not be deemed to be reduced, in any way, because such work is performed or caused to be performed by the Purchaser.

## 14 PATENTS

Whenever the Seller is required to use any design, device, material or process covered by letter, patent, trademark or copyright, the Seller shall indemnify and save harmless the Purchaser from any and all claims for infringement by reason of the use of such patented design, device, material or process in connection with the contract, and shall indemnify the Purchaser for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution or after the completion of the work. In case said equipment, or any part thereof or the intended use of the goods, is in such suit held to constitute infringement and the use of said equipment or part is enjoined, the Seller shall, at its own expense and at its option, either procure for the Purchaser the right to continue using said equipment or parts, replace the same with substantially equal but non-infringing equipment, or modify it so it becomes non-infringing.

## 15 INSOLVENCY

If the Seller shall become insolvent or bankrupt, make an assignment for the benefit of creditors, appoint a receiver or trustee for any of the Seller's property or business, this order may forthwith be canceled by the Purchaser without liability.

## 16 GOVERNING LAW

The definitions of terms used or the interpretation of the agreement and the rights of all parties hereunder shall be construed under and governed by the laws of the State of Colorado, USA.

The following Additional Conditions apply only in cases where the Seller is to perform work hereunder, including the services of Seller's Representative(s), on the premises of others:

## 17 SELLERS RESPONSIBILITY

The Seller shall carry on said work at Seller's own risk until the same is fully completed and accepted, and shall, in case of any accident, destruction or injury to the work and/or materials before Seller's final completion and acceptance, complete the work at Seller's own expense and to the satisfaction of the Purchaser. When materials and equipment are furnished by others for installation or erection by the Seller, the Seller shall receive, unload, store and handle same at the site and become responsible therefor as though such materials and/or equipment were being furnished by the Seller under the order.

## 18 INSURANCE

The Seller shall, at his own expense, provide for the payment of workers compensation, including occupational disease benefits, to its employees employed on or in connection with the work covered by this purchase order, and/or to their dependents in accordance with the laws of the state in which the work is to be done. The Seller shall also carry comprehensive general liability including, but not limited to, contractual and automobile public liability insurance with bodily injury and death limits of at least \$300,000 for any one person, \$500,000 for any one accident and property damage limit per accident of \$400,000. The Seller shall likewise require his contractors, if any, to provide for such compensation and insurance. Before any of the Seller's or his contractors' employees shall do any work upon the premises of others, the Seller shall furnish the Purchaser with a certificate that such compensation and insurance have been provided. Such certificates shall specify the date when such compensation

specify the date when such compensation and insurance expires. The Seller agrees that such compensation and insurance shall be maintained until after the entire work is completed and accepted.

## 19 PROTECTION AGAINST ACCIDENTS AND DAMAGES

The Seller hereby assumes the entire responsibility and liability for any and all damage, loss or injury of any kind or nature whatsoever to persons or property caused by or resulting from the execution of the work provided for in this purchase order or in connection herewith. The Seller will indemnify and hold harmless the Purchaser and any or all of the Purchaser's officers, agents and employees from and against any and all claims, losses, damages, charges or expenses, whether direct or indirect, and whether to persons or property to which the Purchaser may be put or subject by reason of any act, action, neglect, omission or default on the part of the Seller, any of his contractors, or any of the Seller's or contractors' officers, agents or employees. In case any suit or other proceedings shall be brought against the Purchaser, or its officers, agents or employees at any time on account or by reason of any act, action, neglect, omission or default of the Seller or any of his contractors or any of its or their officers, agents or employees as aforesaid, the Seller hereby agrees to assume the defense thereof and to defend the same at the Seller's own expense, to pay any and all costs, charges, attorneys' fees and other expenses, any and all judgments that may be incurred by or obtained against the Purchaser or any of its or their officers, agents or employees in such suits or other proceedings, and in case judgment or other lien be placed upon or obtained against the property of the Purchaser, or said parties in or as a result of such suits or other proceedings, the Seller will at once cause the same to be dissolved and discharged by giving bond or otherwise. The Seller and his contractors shall take all safety precautions, furnish and install all guards necessary for the prevention of accidents, comply with all laws and regulations with regard to safety including, but without limitation, the Occupational Safety and Health Act of 1970 and all rules and regulations issued pursuant thereto.

9/90  
Revised 11/91