

REQUEST FOR PROPOSAL
OWNER'S REPRESENTATIVE/CONSTRUCTION MANAGEMENT SERVICES
May 3, 2011

Colorado Mountain College, the City of Glenwood Springs, the Glenwood Springs Downtown Development Authority, and the Garfield County Public Library District (OWNERS) are soliciting proposals for the selection of an Owner's Representative/Construction Management firm for managing the construction of a new Glenwood Springs Library Branch, a second floor core and shell for future CMC classroom and meeting space, two level parking structure and a Community Plaza, in accordance with the terms, conditions, and requirements set forth in this Request for Proposals.

This Request for Proposals ("RFP") provides the information necessary to prepare and submit a response including fee proposals and general conditions prices. The OWNERS will rank the Proposals in the order that provides the "best value" for the OWNERS based on the published selection criteria and the ranking evaluations. Interviews will be conducted with the OWNERS to confirm the Proposals and answer additional questions.

A. Background

The OWNERS are seeking proposals for professional services for an Owner's Representative / Construction Manager (CM) to assist the OWNERS with the design and construction of a new library facility in Glenwood Springs, CO at approximately 14,000 square feet, a second floor core and shell for future CMC classroom and meeting space (possibly shared with the library) of approximately 12,000 square feet, two levels of underground parking structure of approximately 160 spaces and a 2500 square foot plaza. The property is located on the corner of 8th and Cooper Ave. and currently consists of parking and one existing building that will need to be demolished. There are existing utilities that will need to be relocated. The selected individual/firm will report to the OWNERS team with representatives from each party. The projects will begin this fall and occupancy of the new facility is estimated to occur mid-2013.

Selection of the successful individual/firm will take place by **June 1, 2011**.

B. Scope of Services

The OWNERS will retain an Owner's Representative/Construction Manager (CM) or Construction Management Team. The CM shall work with the selected Architect and the OWNERS to complete site design consistent with the building design. The CM, with the Architect's assistance, will be responsible for determining the process and obtaining the necessary approvals of the site improvements. The CM employed by the OWNERS shall be responsible for the performance of the following services/activities in general conformance with AIA Document B801 CMA - 1992, Standard Form of Agreement Between Owner and CM (where the CM is NOT a Constructor), as modified below and with final project scope subject to negotiation and determination by the Architect and the OWNERS.

1. Preliminary phase

- a. Assist the OWNERS in determining the appropriate real estate ownership & operational structures and provide the risks and benefits of each to the group.

- b. Assist the OWNERS in determining the appropriate project delivery methods, with options to include but not be limited to design-build, design-bid-build and negotiated, and provide the risks and benefits of each to the group, as well as the appropriateness of each for this project.
- c. Assist the OWNERS in determining the process that the OWNERS will need to complete for approvals of the Project as well as synthesize the design and construction standards, criteria and regulations for the four parties.
- d. Advise on schedule and sequence of construction projects for the OWNERS. Develop and maintain a comprehensive program schedule of construction projects which documents the sequence and time frame for each project and/or bid package.
- e. Participate in the selection of a Design/Architectural Team and General Contractor, including preparation of RFP and subsequent negotiation of an agreement with the Design / Architectural Team and General Contractor.
- f. Draft, review and refine budget information for the project, with assistance of OWNERS, advise as to reallocation of funds as necessary.
- g. Assist the OWNERS with overall coordination and administration of the program, interfacing with internal staff in various departments and facilities as well as representatives of outside organizations.
- h. Develop a criteria and a process to identify priorities for various work items.
- i. Prepare monthly status reports for the OWNERS and attend OWNER meetings as necessary.
- j. Provide to the OWNERS sufficient information in order to allow the OWNERS to decide whether or not they will move forward with the construction and completion of the Project (go/no go decision). Such information shall include, but not be limited to, feasibility of project, conceptual design work, agreement between the OWNERS on structure of ownership, and the ability to stay within budget.

2. Design Phase

- a. Review and monitor architect's design schedule.
- b. Review and refine project budgets.
- c. Provide technical design review and oversight for mechanical and electrical engineering as directed.
- d. Provide review of design specifications to ensure compliance with required standards. Include the OWNERS in the process.
- e. Conduct meetings to ensure coordination of all interested parties.
- f. Conduct formal value engineering sessions as necessary.

- g. Provide periodic reports summarizing design progress, schedule and cost status changes and other significant information.
- h. Recommend alternative design solutions whenever details affect construction feasibility or schedules.
- i. Review payment requests, verify progress and process payment requests for approval.

3. Pre-construction phase – Bid and Award

- a. Developing the program, schedule and construction budget to ascertain the requirements of the Project and arrive at a mutual understanding of these requirements.
- b. Prepare preliminary estimates of construction cost for program requirements, based on early schematic designs.
- c. Prepare and update construction cost estimates of increasing detail and refinement as the architect progresses with the preparation of Schematic, Design Development and Construction documents.
- d. Provide cost evaluations of alternative materials and systems.
- e. Conduct pre-bid conference and site visit.
- f. Assist OWNERS in evaluating bids and in processing contracts for winning bids.
- g. Ensure winning bidder obtains bonds and insurance certificates as required. Performance bonds will be required for all contracts.
- h. Monitor and alert the OWNERS if the construction costs may exceed the approved project budget and make recommendations for corrective action.
- i. Prepare and periodically update a project schedule for the design team's review and acceptance.
- j. Attend pre-construction meetings as agreed upon by the OWNERS.

4. Construction Phase – Administration of the Construction Contract

- a. Provide administration of the construction contracts in cooperation with the Architect.
- b. Provide cost and schedule updates and forecasts to the OWNERS and the Architect.
- c. Coordinate schedule of work with principal or site building administrator.
- d. Administer and manage construction contracts, including change orders, payments and submittals, and monitoring of construction.
- e. Maintain communication with various local, county, state and federal agencies, as required.

- f. Evaluate and/or recommend change orders.
- g. Provide project site quality control inspection, including coordination with the OWNERS to ensure compliance with the design.
- h. Tabulate, compile, and check correctness of all expenditures related to the project.
- i. Attend jobsite O/A/C meetings to discuss and resolve field and administrative issues.
- j. Review contractor payment requests and verify progress when required. Process payment requests for approval. Report potential budget and schedule variances and prepare recovery plans.
- k. Reconcile payment requests with quarterly updates to the OWNERS.
- l. Prepare progress reports.
- m. Tour the jobsite with or without the architect and/or general contractor on a schedule approved by the OWNERS. Take note of any workmanship that is below quality standards or that does not conform to contract documents or specifications.

5. Post-construction Phase

- a. Prepare punch lists and coordinate work completion.
- b. Coordinate the occupancy schedule to minimize disruption of activities.
- c. Schedule instruction sessions with major material and equipment suppliers to orient and train OWNERS staff for operation.
- d. Ensure all as-built drawings, operation manuals, warranties, and closeout documents are delivered to the OWNERS in a timely manner.
- e. Negotiate all warranties on equipment on the OWNERS'S behalf for maximum coverage.
- f. Coordinate and conduct nine and seventeen month post-occupancy evaluations.
- g. Ensure all warranty work is completed to OWNERS's satisfaction by contractors.
- h. Conduct complete evaluations on designers and contractors.
- i. Complete final accounting results and close-outs for final approval.
- j. Coordinate final settlement and release of claims.

C. Project Budget and Construction Cost

The estimated project budget is as follows:

\$5 million	1 st floor , portion of second floor and roof of library
\$1 million	Library's share of site work and foundation
\$2 million	2 nd floor (CMC/Library)
\$7.3 million	Parking structure, plaza and remaining site improvements (CMC/City/DDA)

\$15.3 million Total project budget

A portion of these funds will be specified for architectural design, site design and construction management services, with completion of construction in 2013. Project costs include all professional fees; construction costs; support services (utilities, fixed equipment, and all necessary furnishings); site work; soil testing (if applicable); and all other costs not listed.

D. BID Schedule*

Request for Proposal Released	Tuesday, May 3, 2011
Pre-Proposal meeting with Construction Managers	Tuesday, May 10, 2011
Request for Proposal Due	Tuesday, May 17, 2011
Interviews	Tuesday, May 24, 2011
Contract Awarded	Wednesday, June 1, 2011
RFQ/RFP for Architect	Wednesday, June 8, 2011

E. Submission Requirements

Interested firms should submit a proposal for the project. **The proposer shall provide one (1) original proposal, unbound, clearly marked and identified as such, and six (6) bound copies of their proposal and one electronic copy on CD or thumb drive.** Proposals shall contain a minimum of the following in the prescribed order:

1. CM Personnel

- a. Personnel interviewed during the selection process will be the personnel assigned to work with the OWNERS.
- b. Personnel assigned by the firm to the program will be expected to remain in the assignment until their function is no longer required, they are separated from the firm, they are removed from the assignment at the request of the OWNERS or the OWNERS approves reassignment.
- c. Provide a project team organization chart with firm's assigned staff and sub-consultants.

2. CM Team and Staff Experience

For each phase of the project, list the name, title, experience and qualifications (including resume) of the individual(s) who will actually be involved in this project, their individual hourly rates (hourly rates to be submitted with cost proposal--do not submit within the technical proposal), and the amount of time to be allocated to this project. Indicate the individual(s) role on similar projects (multi-party construction and intergovernmental projects) and in what capacity they would serve on this project. Identify those staff licensed to practice in Colorado. Also include any LEED certifications, experience or projects completed.

Please submit a list of at least three references for the team, with contact person, phone number and project(s) completed for this client.

Explain why your team will be the right fit for this project and these OWNERS.

3. Consultants/Sub-Consultants

For any consultants/sub-consultants or associates to be used on the project indicate the names, addresses and telephone numbers to be used to complete the project. State the capacity they would be used in and the approximate percentage of total services they would provide. State hourly rates of those individuals who will actually be involved in this project (include hourly rates with cost proposal and do not submit within the technical proposal). Briefly describe their experience. The CM will be fully responsible for the acts, errors, and omissions of any sub-consultants. The successful respondent shall cause appropriate provision of its proposal to be inserted in all subcontracts to ensure fulfillment of all contractual provisions by sub-consultants.

4. Proposed Methodology and Work Plan

For the Project describe in detail how you propose to accomplish the tasks outlined in the scope of services. Each key point of the process should be addressed.

- a. Indicate the length of time in days required to complete each component of service and an overall project timetable.
- b. Include milestones of completion and approvals.
- c. Through narrative means, state the reasons why your firm believes it is qualified to undertake the project.

5. Cost

For the Project, prepare a separate budget and submit:

- a. The total proposal cost, indicated as a "not to exceed" fixed fee, shall delineate the cost for each phase as detailed under the Scope of Services. Fees for each phase to include costs for all personnel whether on the job site, in the home office, or as a consultant hired by the CM. Show as basis for calculating the fee, including anticipated staff time, by hours per week, devoted to this project, broken out by individual.
- b. The cost proposal shall include description and listing of any anticipated reimbursable expenses.
- c. The total of all fees for Phases 1-5 including reimbursable costs will be used in evaluating the fee portion of this proposal.
- d. Provide itemized list and your proposed cost (either lump sum or hourly rate) for optional services that may be of a benefit to the OWNERS but are not identified in the Scope of Services of this RFP. Any additional work beyond the Scope of Services **must** be authorized in writing by the OWNERS before additional costs may be incurred.
- e. The OWNERS will retain a portion of the fees until work is satisfactorily completed in each respective phase of Project to be negotiated within the contract.
- f. Any of the OWNERS may terminate the Contract for convenience upon written notice to the CM. Therefore, please include in the proposal a basis for determining the fee in the event any of the OWNERS determine not to go forward with the project.

F. Proposal Guidelines

1. All Responses must be addressed to, and mailed or delivered to: Sam Skramstad, Colorado Mountain College, 831 Grand Ave., Glenwood Springs, CO 81601.

2. A Pre-proposal meeting and Job Site tour will be held on May 10, 2011 at 9am with firms

meeting at 802 Grand Ave. All Firms are encouraged to attend. There will be a job site tour following the pre-proposal meeting. Additional written material and reports may be available at this meeting.

3. The OWNERS will accept written questions from Firms as long as such questions are received prior to the close of business (5:00 P.M. MST) on **May 12, 2011**. Questions should be addressed to Sam Skramstad at sskramstad@coloradomtn.edu or by calling 970-945-8691 Ext. 8406.

4. All proposals must be in writing, must be in a sealed envelope and clearly marked: "Construction Manager Proposal for the Glenwood Springs Library/Parking/Plaza Project". Similarly, all fee proposals must be in writing, must be in a sealed envelope and clearly marked: "Fee Proposal for the Construction Manager Proposal for the Glenwood Springs Library/Parking/Plaza Project". No faxes or electronic submissions will be accepted.

5. All proposals must be received by 5pm, May 17, 2011

Proposals received after that date and time may be rejected. Proposals will be opened publicly. All proposals received in response to this request shall remain the property of the OWNERS.

6. This RFP does not commit the OWNERS to award a contract, to pay any costs incurred in the preparation of a response to this request or to procure or contract for services or supplies. The OWNERS reserve the right to accept or reject any or all proposals received as a result of this request, to waive minor irregularities in the procedure, to negotiate with any qualified source, or to cancel in part or in its entirety, this RFP, if it is in the best interest of the OWNERS to do so. The OWNERS may require the CM selected to participate in negotiations, and to submit such price, technical or other revisions in their proposal as may result from negotiations.

7. All attachments, additional pages, addenda or explanations supplied by the prospective firm with this proposal will be considered as part of the proposal response. If an oral presentation/ interview is required of selected finalists, it shall be at the respondent's expense. An award may be made without discussion with the respondents. Therefore, respondents are cautioned that proposals should be submitted initially on the most favorable terms, from both a technical and cost standpoint.

8. Amendment of proposals may be done as follows:

- a. By the OWNERS: Proposals may be amended by the OWNERS in response to the need for further clarification, specifications and/or requirements, changes, new opening date, etc. Copies of the amendment will be mailed to prospective vendors and must be signed and returned by the vendor as specified in the amendment.
- b. By Firm: After receipt by the OWNERS, proposals may only be amended by submitting a later dated proposal that specifically states that it is amending an earlier proposal. No proposal may be amended after the opening date unless requested by the OWNERS.

9. Proposals may be withdrawn only in total, and only by a written request to the OWNERS prior to the time and date scheduled for opening of proposals.

10. Public Information – All submitted proposals become the property of the OWNERS and information included therein or attached thereto shall become public record after recommendation for endorsement of contract is made.

11. Selection Process and Criteria - The selection process will consist of a review of proposals by OWNERS staff and the CM Selection Committee, and on site interviews, which will be at the consultant's expense.

The OWNERS intend to use the following criteria to choose the CM:

- a. Relevant qualifications and experience of the firm and proposed personnel in the performance of similar Owner's Representative/Project Management Services.
- b. Availability of resources to meet the schedule and program requirements.
- c. The quality of the proposal and the approach used to ensure the success of the project.
- d. Information supplied by references.
- e. Financial stability of firm.
- f. Cost effective delivery of services.
- g. Previous experience with public improvements.

G. Assistance Available to Selected Firm

The primary contacts during the engagement will be the OWNERS.

H. Terms and Conditions (the following general provisions and conditions will be inserted in the final agreement)

1. Agreement with Construction Manager: THE OWNERS anticipate the use of the AIA Document B801 CMA - 1992, Standard Form of Agreement Between Owner and CM as the basis for the agreement between the OWNERS and the CM. The OWNERS reserve the right to modify the Contract as best serves the interest of the OWNERS.

2. Insurance: All proposals must include either a description of the CM'S insurance or a certificate of insurance outlining the CM'S insurance policies, which evidence compliance with the requirements contained herein. The successful CM shall agree that it will, at all times during the term of the agreement, keep in force and effect insurance policies required by the contract, issued by a company or companies authorized to do business in the State of Colorado and satisfactory to the OWNERS. Such insurance shall be primary. The certificate shall reference the contract and provide for thirty (30) days advance notice of cancellation or nonrenewal during the term of the agreement. Failure to submit an insurance certificate, as required, can make the contract voidable at the OWNERS' discretion. CM shall maintain throughout the term of the agreement insurance as specified below. Before commencing any work under the agreement, CM shall furnish the OWNERS a certificate of insurance in form satisfactory to the OWNERS. The OWNERS shall be named as an additional insured, except as to the CM'S professional errors and omissions policy.

General Liability \$2,000,000 / \$2,000,000
Automobile \$2,000,000 / \$2,000,000
Workers Comp \$1,000,000 / \$1,000,000 / \$1,000,000
Excess Liability \$3,000,000
Errors & Omission \$2,000,000 / \$2,000,000

3. Applicable Law: Any disputes under the agreement shall be mediated between the OWNERS and the CM. The agreement shall be governed by Colorado law and venue shall be proper in Garfield County.

4. Independent Contractor Status: The CM agrees that it is an independent contractor with respect to the services provided pursuant to the agreement. Nothing in the agreement shall be considered to create the relationship of employer and employee between the parties.

5. Amendments to the Contract: The contract may be modified only by written amendment to the contract, signed by both parties.

6. Waiver: One or more waivers by any party of any term of the contract will not be construed as a waiver of a subsequent breach of the same of any other term. The consent or approval given by any party with respect to any act by the other party requiring such consent or approval shall not be deemed to waive the need for further consent or approval of any subsequent similar act by such party.

7. Indemnification and Defense of Suits: The CM agrees to indemnify, hold harmless, and defend the OWNERS, its officers, agents and employees from any and all liability including claims, demands, damages, actions or causes of action, together with any and all losses, costs, or expense, including attorney fees, where such liability is founded upon or grows out of the acts, errors, or omissions of the CM, its employees, agents or subcontractors.

8. Termination of Contract for Cause: If through any cause, the CM shall fail to fulfill in a timely and proper manner its obligations under this contract, or if the CM shall violate any of the covenants, agreements or stipulations of this contract, the OWNERS shall thereupon have the right to terminate the Contract by giving written notice to the CM specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other materials related to the services prepared by the contractor under this contract shall, at the option of the OWNERS, become the property of the OWNERS. Notwithstanding the above, the CM shall not be relieved of liability to the OWNERS for damages sustained by the OWNERS by virtue of any breach of the contract by the CM, and the OWNERS may withhold any payments to the CM for the purpose of set off until such time as the exact amount of damages due to the OWNERS from the CM is determined.

9. Termination of contract due to OWNERS' decision to not proceed: Any of the OWNERS may terminate the Contract for convenience upon written notice to the CM. Upon receipt of such notice, CM shall immediately stop all work. CM shall be paid for services satisfactorily provided or performed through the date of receipt of such notice in accordance with the proposal outlined in Section 5.f. above. In no event shall Contractor be paid for costs incurred or services performed after receipt of notice of termination.

10. Other Public Contract Provisions: The Contract shall include and be subject to all other provisions required of public entities by the laws of the State of Colorado.

I. Right to Reject

This request does not commit the OWNERS to award any contract nor to pay any costs incurred in the submission of a proposal, or costs incurred in making necessary studies or designs for preparation thereof. The OWNERS reserves the right, in its sole discretion, to reject any or all responses, issue addenda, request clarification, alter the nature and/or scope of the proposed study, enter into various states of procurement, and/or discontinue this process.

NOTE: This is a request for proposal for professional services, not a bid for contracting. Therefore, the OWNERS are not bound to accept the lowest cost for professional services.

J. Professional Services Contract

1. If your proposal is accepted and a contract is issued, then this Request for Proposal and all documents attached hereto including any amendments, the CM'S technical and price proposals, and any other written offers / clarifications made by the CM and accepted by the OWNERS, will be incorporated into a contract between the OWNERS and the CM, containing all the terms and conditions agreed on by the parties hereto, and no other agreement regarding the subject matter of this proposal shall be determined to exist or bind any of the parties hereto. Any agreement or contract resulting from the acceptance of a proposal shall be on forms either supplied or approved by the OWNERS. The OWNERS reserve the right to reject or modify any agreement which does not conform to the request for proposal and any OWNERS' requirements for agreements and contracts.

- a. Agreement with Construction Manager. The OWNERS anticipate the use of the AIA Document B801 CMa - 1992, Standard Form of Agreement Between Owner and Construction Manager as the basis for the agreement between the OWNERS and the CM. The OWNERS reserve the right to modify the agreement as best serves the interest of the OWNERS.

2. The submission of a proposal shall be considered as a representation that the CM has carefully investigated all conditions, has full knowledge of the scope, nature and quality of work required, and is familiar with all applicable State, Federal and Local regulations that affect or may at some future date affect the performance of this contract.

3. Acceptance of this proposal will take place only upon award by the CM Selection Committee, execution of the contract by the OWNERS, and delivery of the fully-executed contract to the CM. Acceptance may be revoked at any time prior to delivery of the fully-executed contract to the successful firm. The contract may be amended only by written agreement between the CM and the OWNERS.

K. General Provisions:

1. Acceptance Not Waiver: OWNERS approval of the work and materials furnished hereunder shall not in any way relieve CM of the responsibility for the technical accuracy of the work. OWNERS approval or acceptance of, or payment for, any of the services shall not be construed to operate as waiver of any rights under the agreement or of any cause of action arising out of the performance of the agreement.

2. Termination: The agreement may be terminated (a) by either party at any time for failure of the other party to comply with the terms or conditions of the agreement; (b) by either party, with thirty (30) days' prior written notice to the other party; or (c) upon mutual written agreement by both parties.

3. Entire Agreement: The agreement represents the entire and integrated agreement and understanding between both parties and supersedes all prior negotiations, statements, representations and agreements, whether written or oral.

4. Assignment: Neither the agreement, nor any rights or obligations hereunder shall be assigned or delegated by a party without prior written consent of the other party. CM's duties may not be subcontracted to another entity.

5. Modification: The agreement shall be modified only by a written agreement, duly executed by all parties hereto.

6. Invalidity: If any provision of the agreement is held invalid or unenforceable by any court of competent jurisdiction, or if the OWNERS are advised of such an actual or potential invalidity or unenforceability, such holding or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the parties that the provisions of the Agreement are fully severable.

7. Applicable Law and Venue: The parties mutually understand and agree the agreement shall be governed by and interpreted pursuant to the laws of the State of Colorado. If any dispute arises between the parties from or concerning the agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the OWNERS Court of the State of Colorado, sitting at Glenwood Springs, Colorado. The foregoing provisions of this paragraph are agreed by the parties to be a material inducement to CM and the OWNERS in executing the agreement. The provision is not intended nor shall it be construed to waive the OWNERS'S governmental immunity.

8. Contingencies: CM certifies and warrants no gratuities, kickbacks or contingency fees were paid in connection with the agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of the agreement.

9. Discrimination: All parties agree they will not discriminate against any person who performs work under the terms and conditions of the agreement because of race, color, gender, creed, handicapping condition, or national origin.

10. ADA Compliance: All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law set forth in the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101, *et. seq.*, and/or any properly promulgated rules and regulations relating thereto.

11. Colorado Immigration Law: CM certifies that it shall comply with the provisions of CRS 8-17.5-101, *et seq.* CM shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to CM that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the public contract for services. CM has participated or has attempted to participate in the basic pilot program in order to confirm the employment eligibility of all employees who are newly hired for employment in the United States. CM represents, warrants, and agrees that it has confirmed or attempted to confirm the employment eligibility of all employees newly hired for employment in the United States through participation in the basic pilot program and, if CM is not accepted into the basic pilot program prior to entering into a public contract for services, that CM shall apply to participate in the basic pilot program every three months until CM is accepted or the public contract for services has been completed, whichever is earlier. CM shall comply under all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. CM represents, warrants, and agrees that it is prohibited from using basic pilot program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed. CM represents, warrants, and agrees that if CM obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien. CM shall be required to:

- a. Notify the subcontractor and OWNERS within three days that CM has actual knowledge that a subcontractor is employing or contracting with an illegal alien; and
- b. Terminate the subcontract with the subcontractor if within three days of receiving the notice required the subcontractor does not stop employing or contracting with the illegal alien; except that CM shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly

employed or contracted with an illegal alien.

- c. If CM fails to comply with any requirement of this provision CRS 8-17.5-101, et seq., OWNERS may terminate this contract for breach of contract, and CM shall be liable for actual and consequential damages to the OWNERS.

12. Third Parties: The parties do not intend to create any other individual or entity the status of third party beneficiary, and the agreement shall not be construed so as to create such status. The rights, duties and obligations contained in the agreement shall operate only between the parties to the Agreement, and shall inure solely to the benefit of the parties of the agreement.

13. Conflict of Interest: CM and OWNERS affirm, to their knowledge, no employee of the firm has any personal beneficial interest whatsoever in the agreement described herein. No staff member of the OWNERS, compensated either partially or wholly, with funds from the agreement, shall engage in any conduct or activity, which would constitute a conflict of interest relative to the agreement.

14. Force Majeure: Neither party shall be liable to perform under the agreement if such failure arises out of causes beyond control, and without the fault or the negligence of said party. Such causes may include, but are not restricted to, Act of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. In every case, however, a failure to perform must be beyond the control and without fault or the negligence of said party.

15. Limitation on Payment: OWNERS' payment obligation is conditioned upon the availability of funds, which are appropriated and allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services and equipment provided by CM the agreement may be terminated by the OWNERS at the end of the period for which funds are available. The OWNERS shall notify CM at the earliest possible time of the services, which will or may be affected by the shortage of funds. At the earliest possible time means at least thirty (30) days before the shortage will affect the payment of claims, if the OWNERS know of the shortage at least thirty (30) days in advance. No penalty shall accrue to the OWNERS in the event this provision is exercised, and the OWNERS shall not be obligated or liable for any future payments due or for any damages as a result of termination under this provision. This provision shall not be interpreted or construed to permit the OWNERS to terminate the agreement in order to acquire similar services from another party.

16. Compliance with Laws: CM shall comply with all applicable laws, regulations and ordinances, whether federal, State or Local.

17. No term or condition of the Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq.

18. The Contract may include such other terms and conditions as determined by the OWNERS in their discretion.