



REQUEST FOR CITY COUNCIL ACTION

Meeting Date: November 2, 2020

AGENDA ITEM NO.	ORIGINATING DEPARTMENT:	PRESENTED BY:
Consent Agenda –	Administration	Drew Nelson

ITEM:

Beacon Tower Replacement Contract for Harriet Alexander Field

BACKGROUND:

Harriet Alexander Field is owned and operated by a partnership between Chaffee County and the City of Salida. The airport is managed by a board made up of representatives of both the City and County, and the board makes operational recommendations to both the Board of County Commissioners and the City Council.

The beacon tower replacement project has been on tap for a few years in the airport's capital improvement plan, and was listed in the airport's Master Plan that was approved by the City Council in June (Resolution 2020-29). This project will utilize a beacon donated to the airport from Leadville that has been on site for some time, finally utilizing equipment that will make travelling to and from Harriet Alexander Field safer.

FISCAL NOTE:

The bid for the work to replace the beacon tower was submitted at \$54,683.10. These costs are split equally between the City and Chaffee County; however, the airport was the recipient of \$30,000 in CARES Act money that will be applied first to the project. The remaining \$24,683.10 will be split equally between the County and the City, with the fiscal impact to the City of Salida at \$12,341.55. This project was included in the budget request from the airport in the 2020 Annual Budget.

STAFF RECOMMENDATION:

Staff recommends that the City Council approve the Construction Contract with EasTex Tower, LLC to replace the beacon tower at Harriet Alexander Field as recommended by the Airport Advisory Board.

SUGGESTED MOTIONS:

A City Councilperson should make a motion to combine and approve the Consent Agenda, followed by a second and a roll call vote.

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT is made and entered into as of October 6, and is by and between EasTex Tower, LLC, a Texas corporation ("Contractor"), and the Board of County Commissioners of Chaffee County and the City Council for the City of Salida, Colorado (the Chaffee County and the City of Salida together as the "Parties").

BACKGROUND:

- A. Parties desire that Contractor perform the duties of general contractor for the installation of a beacon tower and the relocation and electrical work on an existing beacon at the Salida Harriet Alexander Airport (the "Project").
- B. Contractor desires to perform such duties pursuant to the terms and conditions provided for in this Contract.

CONTRACT:

In consideration of the mutual promises and covenants specified below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Statement of Work. The terms of this Contract are contained in the plans and specifications prepared by Contractor and approved by Parties, including the Request for Proposal, as well as the Proposal. Such plans and specifications, Request for Proposal, and Proposal are specifically incorporated as a part of this Contract. Contractor shall procure the materials, equipment and/or products necessary for the Project and shall diligently provide all services, labor, personnel and materials necessary to perform the Project. Contractor shall faithfully perform the work in accordance with the standards of professional care, skill, training, diligence and judgment provided by highly competent contract professionals performing services of a similar nature to those described in this Contract. Contractor shall further be responsible for the timely completion, and acknowledges that a failure to comply with the plans and specifications within the time limits prescribed by Parties may result in Parties' decision to withhold payment or to terminate this Contract.
2. Independent Contractor. Contractor is an independent contractor and is responsible for all taxes (including employment taxes) and insurance applicable under existing laws with respect to the fees paid under this Contract. Contractor shall not have authority to bind the Parties in any contract or agreement. Contractor will not participate in any retirement, bonus, welfare or benefit plans of Parties. Contractor acknowledges that it is not entitled to unemployment insurance benefits or workers' compensation benefits from Chaffee

County, the City of Salida, its elected officials, agents, or any program administered or funded by Chaffee County or the City of Salida. Contractor shall be entitled to unemployment insurance or workers' compensation insurance only if unemployment compensation coverage or workers' compensation coverage is provided by Contractor, or some other entity that is not a party to this Contract.

3. Time of Commencement and Completion. Construction under this Contract will begin no later than within fifteen (15) calendar days after the date of receipt of the Notice to Proceed issued by County and shall be completed no later than thirty (30) calendar days after the commencement date (the "Completion Date"). A sample Notice to Proceed is attached as Exhibit B. The Completion Date may, at Parties' sole discretion, be extended if approved by Parties in writing. If, due to misconduct or neglect, Contractor fails to complete the Project on or before the Completion Date, Parties may deduct liquidated damages in the amount of \$200.00 from the contract price per day for each day Contractor works beyond this date. Actual damages caused by Contractor's failure to complete this Contract on time are impracticable or extremely difficult to fix; accordingly, the per diem deduction from the contract price will be retained by Parties as payment by Contractor of liquidated damages, and not as a penalty for failure.

4. Compensation.

- a. Parties shall pay and Contractor shall receive the contract price as stipulated in the Notice of Award, attached to this contract as Exhibit A and incorporated herein by this reference, as FULL compensation for everything furnished and done by Contractor under this Contract, including all loss or damage arising out of the work or from the action of the elements; for any unforeseen obstruction or difficulty encountered in the prosecution of the work, including increased prices for or shortages of materials for any reason, including natural disasters; for all risks of every description associated with the work; for all expenses incurred due to the suspension or discontinuation of the work; and for well and faithfully completing the work as provided in this Contract.
- b. Pursuant to C.R.S. §24-91-103.6(2), Parties have appropriated sufficient funds to pay for the contract price specified in the Notice of Award.

5. Expenses. Except as specifically set forth in this Contract, Contractor is responsible for Contractor's expenses and overhead, including without limitation, travel, insurance, material and equipment expenses, and expenses in connection with furthering Contractor's skills or membership in professional societies and organizations.

6. Liability for Damages.

- a. Parties, its officers, agents or employees, shall not in any manner be answerable or responsible for any loss or damage to the work or to any part of the work; for any loss or damage to any materials, building, equipment or other property that may be used or employed in the work, or placed on the worksite during the progress of the work; for any injury done or damages or compensation required to be paid under any present or future law, to any person, whether an employee of Contractor or otherwise; or for any damage to any property occurring during or resulting from the work.
- b. Contractor shall be liable and responsible for any and all damages to persons or property caused by or arising out of the actions, obligations, or omissions of Contractor, its employees, agents, representatives or other persons acting under Contractor's direction or control in performing or failing to perform the work under this Contract. Contractor will defend, indemnify and hold harmless Parties, its elected and appointed officials, employees, agents and representatives (the "indemnified parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including but not limited to attorneys' fees, which may be made or brought or which may result against any of the indemnified parties as a result or on account of the actions or omissions of Contractor, its employees, agents or representatives, or other persons acting under Contractor's direction or control. In addition, the Parties reserve the right to bring tort claims in the event of the discovery of an intentional fraud committed during contract performance. Nothing in this indemnification agreement shall be construed in any way to be a waiver of Parties' immunity protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended and as may be amended from time to time.

7. Inspection of Work and Materials.

- a. Parties may appoint and employ such persons as may be necessary to act as inspectors or agents for the purpose of supervising in the interests of Parties materials furnished and work done as the work progresses.
- b. Parties shall at all times have unrestricted access to all parts of the work and to other places where or in which the preparation of materials and other integral parts of the work are being carried on and conducted.
- c. Contractor shall provide all facilities and assistance required or requested to carry out the work of supervision and inspection by Parties, including material tests.
- d. Inspection of the work by the above-mentioned authorities or their representatives shall in no manner be presumed to relieve in any degree the responsibility or obligations of Contractor, or to constitute Contractor an agent of Parties.

- e. No material of any kind shall be used in the work until it has been inspected and accepted by Parties. All rejected materials shall be immediately removed from the premises. Any materials or workmanship found at any time to be defective shall be replaced or remedied at once regardless of previous inspection. Inspection of materials shall be promptly made, and, where practicable, at the source of supply within twenty-four (24) hours of notification. Failure to inspect shall constitute acceptance of materials.
 - f. Whenever the specifications, the instructions of Parties, or the laws, ordinances or regulations of any public authority require work to be specially tested or approved, Contractor shall give Parties timely notice of its readiness for inspection, and if the inspection is by another authority, of the date fixed for the inspection.
8. Insurance. Contractor shall not commence work under this Contract until Contractor has obtained all insurance required under this section and the insurance has been approved by the County Administrator and City Administrator, and/or his or her designee. Similarly, Contractor shall not allow any approved subcontractor to commence work on his or her subcontract until all similar insurance required of subcontractor has been so obtained and approved. Parties shall be named as additional insureds on all insurance policies required under this Contract. The "additional insured" wording shall be as follows: County of Chaffee, State of Colorado, and City of Salida, State of Colorado, both body corporate and politic, are named as Additional Insured. All insurance policies must be written in a manner consistent with the requirements of the Standard Form Contract. Contractor shall furnish Parties prior to the commencement of work under this Contract and annually thereafter copies of company-issued Certificates of Insurance policies obtained by Contractor in compliance with this paragraph demonstrating that the insurance requirements have been met, and Contractor shall ensure that Parties are notified in writing and at least thirty days in advance of any amendment or cancellation of such policy or policies. These Certificates of Insurance shall also contain a valid provision or endorsement that these policies may not be canceled, terminated, changed or modified without thirty days written notice to the Parties. The following insurance shall be required:
- a. Commercial General Liability Insurance: At a minimum, combined single limits of \$1,000,000 per occurrence and \$2,000,000 for general aggregate for bodily injury and property damage, which coverage shall include products/completed operations, independent contractors, and contractual liability each at \$1,000,000 per occurrence and \$50,000 any one fire.
 - b. Automobile Liability. Minimum limits are required to be \$1,000,000.00 for each occurrence. Coverage must include:

- i. All vehicles owned, non-owned, and hired to be used on the Contract;
 - ii. Medical Payments.
 - c. **Workers' Compensation and Employer's Liability:** Workers' compensation insurance for all of Contractor's employees engaged in work at the site of the Project including occupational disease coverage in accordance with scope and limits as required by the State of Colorado.
- 9. **Performance and Payment Bond.** To secure performance of Contractor's obligations under this Contract, Contractor shall provide Parties with a Performance and Payment Bond in the amount of the full contract price. Prior to execution of this Contract, Contractor shall provide the form of the Performance and Payment Bond to Parties for their review and approval. Parties shall be authorized to draw upon the Performance and Payment Bond to correct any default by Contractor under this Contract, which default shall be determined and substantiated by an Affidavit of Default signed by the Parties' Administrators. The Performance and Payment Bond shall be issued prior to the commencement of any work on the Project and shall be held by Parties through the warranty period specified in Paragraph 21 below.
- 10. **Notice to Proceed.** Notice to Proceed shall be issued by Parties within ten calendar days of the execution of this Contract by all parties. A sample Notice to Proceed is attached as Exhibit B. If Parties fail to issue such Notice to Proceed within that time limit, Contractor may terminate the Contract without further liability on the part of either party. Such notice of termination must be tendered in writing to Parties. Additionally, the parties may mutually agree that the time for the Notice to Proceed may be extended.
- 11. **Work Ownership.** This is a "work for hire" labor arrangement. All ideas, materials, products, and work prepared by, and discoveries made by Contractor in fulfillment of this Contract belong exclusively to Parties. Upon termination of this Contract, all ideas, materials, products, work, and discoveries in Contractor's possession that relate to the arrangement will be delivered to Parties within two weeks of termination along with written certification of same. Upon termination, Contractor will assign to Parties all rights to ideas, materials, products, and work prepared by, and discoveries made by, Contractor under this Contract.
- 12. **Prohibition Against Discrimination.**
 - a. Contractor shall not discriminate because of race, color, religion, sex, age, national origin, marital status, disability or status as a Vietnam veteran, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment-related activities concerning Contractor's employees. In addition, Contractor affirms that it is an equal opportunity and affirmative action employer, and that it shall comply with

all applicable federal, state, and local laws and regulations including, but not limited to, the letter and spirit of the Colorado Anti-Discrimination Act, executive order 11246 as amended by 11375 and 12086; 12138; 11625; 11758; 12073; the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans Readjustment Assistance Act of 1975; Civil Rights Act of 1964; Equal Pay Act of 1963; Age Discrimination in Employment Act of 1976; Immigration Reform and Control Act of 1986; Public Law 95-507; the Americans With Disabilities Act, the Colorado Anti-Discrimination Act; and any additions or amendments thereto. The Equal Opportunity Clauses set forth in 41 CFR § 60-1.4 and 41 CFR § 60-741.5 are hereby incorporated by reference into this Contract.

- b. No contractor, subcontractor or any person on behalf of such contractor or subcontractor, shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, color, religion, sex, sexual preference, or national origin. For each person who is discriminated against or intimidated in violation of the provisions of this Contract, there may be deducted from the amount payable to Contractor by Parties under this contract a penalty of \$100.00 for each calendar day during which discrimination or intimidation occurred. This Contract may be canceled or terminated by Parties, and all monies due or to become due under this Contract may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of this contract. The deduction of any moneys or termination of Contract under this section shall not operate as a bar to any person pursuing individual legal remedies for discrimination.
- c. In all solicitations by Contractor for any work related to this Contract to be performed under a subcontract, either by competitive bidding or negotiation, Contractor shall notify each potential subcontractor of Contractor's obligations under this Contract, and of all pertinent regulations relative to nondiscrimination and unfair employment practices.

13. Compliance with Laws. Contractor and every subcontractor or person doing or contracting to do any work contemplated by this contract shall keep himself or herself fully informed of all national and state laws and all municipal ordinances and regulations in any manner affecting the work or performance of his or her contract or any extra work, and shall at all times observe and comply with such laws, ordinances and regulations, whether or not the laws, ordinances or regulations are mentioned in this contract, and shall indemnify Parties, its officers, agents and employees, against any claim or liability arising from or based on the violation of any such laws, ordinances or regulations.

14. Certificates and Permits. Contractor shall secure at Contractor's own expense all necessary certificates, licenses and permits required in connection with the work contemplated by this Contract or any part of this Contract, and shall give all notices

required by law, ordinance or regulation. Contractor shall pay all fees and charges incident to the due and lawful prosecution of the work contemplated by this Contract, and any extra work performed by Contractor. Prior to any final payments for the Project, Parties may require Contractor to sign a lien release in the form attached to this Contract as Exhibit C, and may require Contractor to obtain such lien releases from its vendors and subcontractors.

15. Work By Illegal Aliens Prohibited.

- a. Contractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement; or enter into a contract with a subcontractor who fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- b. Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program or Department Program.
- c. Contractor shall not use either the E-Verify Program or Department Program to undertake pre-employment screening of job applicants while the Agreement is in effect.
- d. If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, Contractor shall be required to:
 - i. notify the subcontractor and Parties within three days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien ("Notice"); and
 - ii. terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor 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.
- e. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment ("Department") made in the course of an investigation that the Department is undertaking pursuant to the authority established in subsection 8-17.5-102(5), C.R.S.

- f. If Contractor violates this Paragraph, Parties may terminate this Contract for breach of contract. If this Contract is so terminated, Contractor shall be liable for actual and consequential damages to Parties arising out of said violation.
16. Certification Regarding Employing or Contracting with an Illegal Alien. If Contractor has any employees or subcontractors, Contractor shall comply with §8-17.5-101 C.R.S., *et seq.*, regarding Illegal Aliens - Public Contracts for Services, and this Agreement. By execution of this Agreement/Addendum, Contractor certifies that it does not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that Contractor will participate in either the E-Verify Program or Department Program in order to confirm the eligibility of all employees who are newly hired for employment to perform work under the Agreement.
17. Prohibition on Acceptance of Gifts. Pursuant to Section 3 of Art. XXIX of the Constitution of the State of Colorado, Parties Employees or contractors cannot accept any gifts, meals, theatre or sporting event tickets unless:
- a. the aggregate value of things received from a single source does not exceed \$59/calendar year; or
 - b. the Parties employee/elected official gave the donor consideration of equal or greater value; or
 - c. an enumerated exception applies.
18. Termination. Parties may, at their discretion, terminate this Contract without liability in the event that Contractor fails to provide the required Performance and Payment Bond, Certificates of Insurance, or otherwise fails to meet the conditions precedent to issuance of the Notice to Proceed described above. Parties may also, at their discretion, on one week's notice to Contractor, terminate this Contract without liability before the completion date, and without prejudice to any other remedy Parties may have, when Contractor defaults in the performance of any provision, or fails to carry out the construction of the Project in accordance with the provisions of this Contract.
19. Remedies. Upon termination, Parties' sole liability to Contractor shall be to pay compensation with respect to the work which has been completed, and Parties shall have the entire right, title and interest in and to such Work. If Parties terminate this Contract because Contractor has materially breached this Contract, and Contractor fails to remedy such breach within ten days of receipt of written notice of such breach, in addition to other damages which may be due Parties, Contractor will refund to Parties within fifteen days of such notice all compensation paid pursuant to this Contract. A material breach of this Contract shall include the failure by Contractor to perform the Work within the applicable time frames.

20. Substantial Completion/Acceptance. The date of substantial completion of the Project shall be a date mutually agreed upon by Parties and Contractor. In the event that Parties and Contractor do not reach an agreement as to the date of substantial completion, the County Director of General Administration shall determine such date. Upon the date of substantial completion, Contractor or its engineer shall certify in writing that the improvements have been completed in conformance with the plans and specifications and submit to Parties a completed acceptance checklist utilizing a form approved by Parties. Thereafter, and within thirty business days after a request for final inspection by Contractor, Parties shall inspect the Project and notify Contractor in writing and with specificity of their conformity or lack thereof to the plans and specifications. Contractor shall make all corrections necessary to bring the Project into conformity with the plans and specifications. Once any and all corrections are completed, Parties shall promptly notify Contractor in writing that the Project is in conformance with the approved plans and specifications, and the date of such notification shall be known as the "Acceptance Date." The Acceptance Date shall coincide with the commencement of the warranty period described in Paragraph 21 below. In accordance with Colorado Revised Statutes § 38-26-107, within thirty days of the Acceptance Date, Parties shall pay Contractor the amount shown on the final draw request; provided, however, that the amount of funds left from the contract price specified in the Notice of Award are sufficient to cover this amount.
21. Warranty. Contractor represents and warrants that all improvements constituting the Project shall be free from any security interest or other lien or encumbrance. Contractor further represents and warrants that all improvements constituting the Project shall be free of any defects in materials or workmanship for a period of one (1) year and that the work was performed in accordance with the standards of professional care, skill, training, diligence and judgment provided by highly competent contract professionals performing services of a similar nature to those described in this Contract.

Contractor shall warrant any and all improvements constituting the Project constructed for Parties pursuant to this Construction Contract for a period of six (6) months from the Acceptance Date. Contractor shall arrange for Parties to have the benefit of and the right to enforce all warranties by subcontractors (all tiers), suppliers and manufacturers. Specifically, but not by way of limitation, Contractor shall warrant that:

- a. Any and all improvements constituting the Project shall be free from any security interest or other lien or encumbrance;
- b. All materials and equipment furnish under the Contract shall be of good quality and new unless expressly specified in the Contract; and
- c. The Project and all structures will conform to the requirements of the Contract and shall be free of any defects in materials or workmanship for a period of one

year, as stated above and that the work was performed in accordance with the standards of professional care, skill, training, diligence and judgment provided by highly competent contract professionals performing services of a similar nature to those described in this Contract.

22. Corrections to Project. If any of Contractor's work on the Project is found to be not in accordance with the standards set forth in this Contract (including the Request for Proposal and Proposal), Contractor shall, at Contractor's expense, correct it promptly after receipt of a written notice from Parties to do so unless Parties have previously accepted such condition. Such notice shall be either delivered personally or by overnight express courier, or sent by registered or certified mail, postage prepaid, return receipt requested, and must be received by Contractor as soon as practicable after Parties discover the defect or the loss or damage caused by such defect, but in no event later than the date that the warranty expires.

23. Change Orders.

- a. Increases to the contract price on account of changes in the work (change orders) are prohibited unless approved in writing by Parties, with payment of such increase guaranteed by Parties. Pursuant to Colorado Revised Statutes § 24-91-103.6, as amended, Parties have, prior to execution of this Contract, made appropriations as specified in the Notice of Award as payment in total for the Project.
- b. Any order or directive regarding additional work must be in writing in order to be enforceable against Parties. Contractor acknowledges that any work it performs beyond that specifically authorized IN WRITING by Parties is performed at Contractor's risk and without authorization under this Contract.
- c. No change order or modification increasing the contract price beyond such amount shall be issued unless Parties provide Contractor with written assurance that lawful appropriations to cover the costs of additional work have been made and the appropriations are available prior to performance of the additional work.
- d. Notwithstanding the above, Parties shall periodically reimburse Contractor for Contractor's costs (consisting of materials purchased specifically for the Project) in connection with all additional directed work (again, such direction must be in writing) until a change order is finalized. In no instance shall the periodic reimbursement be required before the contractor has submitted an estimate of cost to Parties for the additional compensable work to be performed.
- e. Parties shall not be liable for the payment of taxes, late charges or penalties of any nature other than the compensation stated herein.

24. Preference for Local Labor. When possible, Contractor shall utilize local laborers and subcontractors.
25. Tax Exemption. Contractor acknowledges and understands that all materials, products and supplies used or consumed on the Project are exempt from state and local sales and use taxes and that such sales and use taxes shall not be included in any applications for payment. Contractor further acknowledges receipt of the Parties' tax exempt number for itself and all subcontractors and material suppliers associated with the Project
26. Modifications. Parties may modify this Contract with respect to the arrangement, character, alignment, grade, or size of the work or appurtenances whenever in its opinion it shall deem it necessary or advisable to do so. Contractor shall accept such modifications when ordered in writing by the County Administrator or his designee. Any such modifications shall not subject Contractor to increased expense without equitable compensation, which compensation shall be approved by the Chaffee County Board of County Commissioners. If any modification results in a decrease in the cost of work involved, an equitable deduction from the contract price shall be made. These deductions shall be determined by County Administrator or his designee. The determination of any such additional compensation or deduction shall be based on the bids submitted and accepted. No modifications in the work shown on the plans and described in the specifications shall be made, unless the nature and extent of the modifications has first been certified by Parties in writing and sent to Contractor.
27. Examination of Records. Any duly authorized representative of Parties, including the County Auditor, shall have access to and the right to examine and audit any books, documents, papers and records of Contractor, involving all matters and/or transactions related to this Contract or the Project. Contractor shall maintain these documents for seven years from the date of the last payment received.
28. Constitutional Requirements. The other provisions of this Contract notwithstanding, financial obligations of Parties payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. Parties are prohibited by law from making financial commitments beyond the term of its current fiscal year. Parties have contracted for goods and/or services under this Contract and have reason to believe that sufficient funds will be available for the full term of the Contract. Where, however, for reasons beyond the control of Parties as the funding entity, funds are not allocated for any fiscal period beyond the one in which this Contract is entered into, Parties shall have the right to terminate this Contract by providing seven days written notice to Contractor, and will be released from any and all obligations hereunder. If Parties terminates the Contract for this reason, Parties and Contractor shall be released from all obligations to perform the Project and make payments, except that Parties shall be required to make payment for work which has been performed by

Contractor prior to the effective date of termination under this provision; and, conversely, Contractor shall be required to complete any work for which Parties have made payment prior to providing written notice to Contractor of the termination.

29. Governing Law and Jurisdiction. The interpretation and performance of this Contract shall be construed under the laws of Colorado, without regard to choice of law principles. In the event of litigation, jurisdiction and venue shall be in the Chaffee County District Court.
30. Successors and Assigns; Assignment; Subcontractors. The rights and obligations of Parties under this Contract will inure to the benefit of and will be binding upon the successors and assigns of Parties. Contractor may not subcontract, pledge, assign or transfer either this Contract or any of the payments or benefits under this Contract without the written consent of Parties.
31. Amendment. This Contract shall not be amended, except by subsequent written Contract of the parties.
32. Captions. The captions in this Contract are inserted only for the purpose of convenient reference and in no way define, limit, or prescribe the scope or intent of this Contract or any part thereof.
33. Attorney Fees. Notwithstanding any provision in any other document or proposal, each party shall be responsible for their own attorney fees and costs in connection with enforcing this Contract.
34. Statutory and Regulatory Requirements. This Contract is subject to all statutory and regulatory requirements that are or may become applicable to counties or political subdivisions of the State of Colorado generally. Without limiting the scope of this provision, the Contract is specifically subject to the following:
- a. Contract payments may be withheld pursuant to C.R.S. § 38-26-107 if the Parties receives a verified statement that Contractor has not paid amounts due to any person who has supplied labor or materials for the Project.
 - b. The design work under this Contract shall be compatible with any requirements, if any, of the Federal Aviation Agency ("FAA") for the design/construction of the Project. The FAA is an intended third party beneficiary of this Contract for that purpose.
35. Priority of Provisions. In the event that any terms of this Agreement and any Exhibit, attachment, or other referenced document are inconsistent, the following order of priority shall control:

- 1st: This Agreement unless otherwise provided for in a subsequent agreement
- 2nd: Request for Proposal (if applicable)
- 3rd: Insurance Requirements
- 4th: Exhibit D - Scope of Services and details of Contractor's Fees
- 5th: Response to Request for Proposal (if applicable)

- 36. Binding Effect. This Contract shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns.
- 37. Survival. All express representations, indemnifications or limitations of liability included in this Contract will survive its completion or termination for any reason.
- 38. Waiver. Any waiver of a breach of this Contract shall not be held to be a waiver of any other or subsequent breach of this Contract. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.
- 39. Third Party Beneficiary. The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to Parties and Contractor, and nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other or third party. It is the express intent of the parties to this Contract that any person receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.
- 40. Authority. Each person signing this Contract represents and warrants that he is fully authorized to enter into and execute this Contract, and to bind the party it represents to the its terms and conditions.
- 41. Counterparts. This Contract may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed one and the same instrument.

The parties hereto have executed duplicate originals of this Construction Contract on the day and year first written above.

Contractor:

By: _____
Print Name: _____
Title: _____

Federal ID#: _____

Notice Address: _____

Fax: _____

Board of Commissioners of Chaffee County:

By:  _____
Greg Felt, Chairman

Notice Address:
Attention: County Attorney
P.O. Box 699
Salida, Colorado 81201
Fax: 719.539.7442

Salida City Council:

By: _____
_____ [Title]

Notice Address:
448 E. 1st Street, Suite 112
Salida, Colorado 81201

EXHIBIT A
NOTICE OF AWARD

NOTICE OF AWARD TO: EasTex Tower, LLC

Project: Airport Beacon Tower

Description: Installation of Beacon Tower and Relocation of and Electrical Work on Beacon at Salida Harriet Alexander Airport

Chaffee County has considered the bid submitted by you for the above described work in response to its advertisement for bids dated July 15, 2020, and information for bidders.

You are hereby notified that your bid has been accepted for items in the amount of \$54,683.10.

You are required to execute the Contract attached to this Exhibit and furnish the required contractor's performance bond and affidavits or copies of insurance coverage within ten calendar days from the date of receipt of this notice to you.

If you fail to execute the Contract and furnish the required bond, affidavits and copies of insurance coverage within ten days from the date of receipt of this notice, Chaffee County will be entitled to consider all your rights arising out of its acceptance of your bid as abandoned and as a forfeiture of your bid bond.

Chaffee County will be entitled to such other rights as may be granted by law.

Dated this day of October 6, 2020.

BOARD OF COUNTY COMMISSIONERS OF CHAFFEE COUNTY


By:  - Grey Felt
Chairman or Acting Chairman

EXHIBIT C

RELEASE

Mechanic Lien, Miller Act Claim (40 USCA 270), Stop Notice, Equitable Lien, Labor Material Bond Release and Lien on Funds.

From: (VENDOR NAME)

To: ()

Project: ()

Owner: ()

1. Subject to receipt of payment of \$(DOLLAR AMOUNT), undersigned hereby release all Mechanic's Liens Rights, Miller Act Claim (40 USCA 270), Stop Notice, Equitable Liens, Labor and Material Bond Rights and Liens on Funds (CRS Title 38, Article 26) resulting from labor and/or materials, subcontractor work, equipment or other work, rents, services or supplies heretofore furnished in and for the construction, design, improvement, alteration, additions to or repair of the above described project.
2. The undersigned warrants and represents that all claims against the undersigned or the undersigned's subcontractors and/or materials suppliers have been paid or that arrangements, satisfactory to the owner and contractor, have been made for such payments.
3. In further consideration of the payment made or to be made as above set forth, and to induce the contractor to make such payment, the undersigned agrees to defend and hold harmless the owner, contractor, and/or lender, and/or principal and surety from any claim or claims hereinafter made by the undersigned and/or its material suppliers, subcontractors or employees, servants, agents, or assigns of such persons against the project. The undersigned agrees to indemnify or reimburse all persons so relying upon this release for any and all sums, including attorney's fees and costs, which may be incurred as the result of any such claims.
4. The undersigned acknowledges that the designation of the above project constitutes an adequate description of the property and improvements for which the undersigned has received consideration for this release.
5. This release is for the benefit of and may be relied upon by the owner, the contractor, and any construction lender and the principal and surety on any labor and material bond for the project.
6. Upon fulfillment of the above referenced condition, this shall constitute a complete release of all rights and claims of the undersigned up to and including the () Day of (), 2020.

FIRM: _____

BY: _____

TITLE: _____

DATE: _____

WITNESS:

NOTICE TO PROCEED TO: EASTEX TOWER, LLC, A TEXAS CORPORATION

Date: OCTOBER 16, 2020

Project Name: SALIDA AIRPORT BEACON TOWER

You are hereby notified to commence work in accordance with the Contract dated 10.06, 2020, on or before Oct. 6, 2020, and you are to complete the work within thirty (30) Calendar days thereafter. The date of completion of all work is therefore Dec 31, 2020. 2020 (BA) MT

Dated this day of October 19, 2020.

BOARD OF COUNTY COMMISSIONERS OF CHAFFEE COUNTY

By: MT - Greg Felt
Chairman or Acting Chairman