

EL PASO COUNTY

**APPENDIX E**

GENERAL CONDITIONS OF THE CONTRACT

**FOR CONSTRUCTION CONTRACT #22-026**

**COLORADO SPRINGS, COLORADO**

**APPENDIX E – GENERAL CONDITIONS OF THE CONTRACT**

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## GENERAL CONDITIONS OF THE CONTRACT

### ARTICLE 1: CONTRACT DOCUMENTS

#### 1.1 Definitions

##### 1.1.1 The Contract Documents

The Contract Documents consist of the Construction Contract between Owner and Contractor, these General Conditions of the Contract, the Performance Bond, the Payment Bond, the Notice to Proceed and the Construction Documents, which are composed of the Drawings, the Technical Specifications, and all Addenda and Modifications. The Contract Documents also include all Invitation For Bids (IFB) or Request For Proposals (RFP) documents, the Contractor's Bid or proposal and portions of Addenda relating to any of these, or any other documents, specifically enumerated in the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order or Change Directive, or (3) a written Field Order for a minor change in the work issued by the Architect or Owner pursuant to Paragraph 11.1.3.

##### 1.1.2 The Contract

The Contract Documents form the Contract for Construction (the "Contract"). The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Architect and the Contractor or the Owner's Representative and the Contractor; but the Owner's Representative and the Contractor shall each be entitled to the performance and enforcement of the obligations intended for its benefit. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner and Owner's Representative and any Subcontractor(s).

##### 1.1.3 The Work

The work is comprised of the completed construction required by the Contract Documents and includes all supervision, labor, tools and equipment necessary to produce such construction and all materials and equipment incorporated or to be incorporated in such construction.

##### 1.1.4 The Project

The Project is the total construction of which the work performed under the Contract Documents may be the whole or a part.

#### 1.2 Execution, Correlation and Intent

1.2.1 The Contract shall be signed by the Owner and Contractor.

1.2.2 By executing the Contract, the Contractor represents that he/she has visited the Site, become familiar with the local conditions under which the work is to be performed, and correlated any observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the work. The Contract Documents are complementary and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations that have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meaning. Full-size or large-scale details or drawings shall govern small-scale drawings which they are intended to amplify. Dimensions shall be figured rather than determined by scale or rule. In the event of any conflict or inconsistency among the Contract Documents, the requirement defining, or describing the higher quality or more demanding work or performance shall control.

1.2.4 The organization of the Technical Specifications into divisions, sections, and articles, and the arrangement of the Drawings shall not control the Contractor in dividing the work among Subcontractors or in establishing the extent of work to be performed by any trade.

#### 1.3 Ownership and Use of Documents

1.3.1 All Contract Drawings and Technical Specifications are the property of the Owner and shall not be used by the Contractor for any purpose other than the work to be performed under this Contract. Upon completion of work, all Shop Drawings and As-Built Drawings shall be the property of the Owner. The Contractor will be permitted to keep a copy of the Contract Drawings, Technical Specifications and Shop Drawings, excluding any such drawings or documents relating to the Project's security system which might compromise that system, as necessary to maintain a contract record file and to perform warranty work.

### ARTICLE II: OWNER

#### 2.1 Definitions

2.1.1 The Owner is The Board of County Commissioners of El Paso County, Colorado identified as such in the Contract and is referred to throughout the Contract Documents as "Owner" or as the "County" as if singular in number. The term Owner or County shall include the Owner's Project Manager who shall have the authority to act for the Owner on the Project.

2.1.2 Owner's Representative means the County representative or consultant selected by the Owner to represent and advise the Owner on-site during construction, accountable only to the County. The Owner's Representative shall have no authority to act for or on behalf of the Owner, except as specifically set forth herein.

## **2.2 Information and Services Required of the Owner**

2.2.1 The Owner shall furnish a survey describing the physical characteristics, legal limitations and utility locations for the Site of the Project, and a legal description of the Site.

2.2.2 Except as provided in Subparagraph 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures.

2.2.3 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness in order to avoid delay in the orderly progress of the work.

2.2.4 Unless otherwise provided in the Contract Documents. The Contractor will be furnished, free of charge, a reasonable number of Drawings and Specifications necessary for the execution of the work.

2.2.5 The Owner shall forward all instructions to the Contractor directly, or may, at its discretion, forward instructions through the Owner's Authorized Representative.

2.2.6 The foregoing are in addition to the other duties and responsibilities of the Owner, enumerated herein, particularly those with respect to work by Owner or by Separate Contractors, Payments and Completion, and Insurance as provided in Articles III, VIII and X, respectively.

## **2.3 Owner's Right to Stop the Work**

2.3.1 If the Contractor fails to correct defective work as required by Paragraph 14.2 or persistently fails to carry out the work in accordance with the Contract Documents, the Owner, by a written order signed by Owner's Project Manager, or a designee thereof, may order the Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

## **2.4 Owner's Right to Carry Out the Work**

2.4.1 If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents, and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness satisfactorily to Owner, the Owner may, seven (7) days after giving the Contractor an additional written notice, and without prejudice to any other right or remedy he may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for additional architectural services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall promptly pay the difference to the Owner.

## **2.5 Owner's Use of Premises**

2.5.1 The Owner reserves the right, upon written notice to the Contractor, to occupy any portion of the work prior to Substantial Completion thereof. Such occupancy shall constitute acceptance of the portion of the work occupied, subject to a list of items to be completed or corrected, but shall not otherwise affect the rights or responsibilities of the parties except as specifically provided in this Paragraph 2.5. For purposes of this paragraph, access and limited use by the County of any portion of the premises for training purposes or for the installation and testing of owner-furnished equipment shall not constitute occupancy of any portion of the premises.

2.5.2 In the event that the Owner desires to exercise such right of occupancy, the Contractor shall cooperate in making available for the Owner's use such building services as heating, ventilating, cooling, water, lighting and telephone and shall complete as soon as practicable any equipment required to furnish such services which are not then ready for operation and use.

2.5.3 During any such Partial occupancy, mutually acceptable arrangements shall be made between the Owner and Contractor regarding the operation and cost of building services and guarantees and/or warranties respecting the portion of the work affected by the occupancy.

## **2.6 Owner's Review, Observation and Approval Rights**

2.6.1 The Owner's review, observation and approval rights shall not relieve the Contractor of its duty, express or implied, to perform its obligations in accordance with the Contract Documents.

## **ARTICLE III: CONTRACTOR**

### **3.1 Definition**

3.1.1 Contractor means the person, partnership, corporation, or joint venture, which has contracted with the Owner to perform the work as an independent contractor.

### **3.2 Review of Contract Documents**

3.2.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner any error, inconsistency, or omission he may discover. The Contractor shall not perform any portion of the work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the work in accordance with the provisions of the Contract Documents.

### **3.3 Supervision and Construction Procedures**

3.3.1 The Contractor agrees to perform the work or cause the work to be performed in a manner which is in strict accordance and compliance with the requirements of the Contract Documents.

3.3.2 The Contractor shall supervise, direct and perform the work using the Contractor's highest and best skill and attention. The Contractor shall also supervise and direct the work performed by its Subcontractor(s) and be responsible thereof. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures.

3.3.3 The Contractor shall be responsible to the Owner for the acts and omissions of its employees, Subcontractor(s) and their agents and employees, and all other persons performing any portion of the work under a contract with the Contractor.

3.3.4 The Contractor shall not be relieved of its obligations to perform the work in accordance with the Contract Documents either by the activities or duties of the Owner, the Owner's Representative in their administration of the Contract, or by observations, inspections, tests or approvals required or performed by persons other than the Contractor.

### **3.4 Labor and Materials**

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all Supervision, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and service necessary for the proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated in the work.

3.4.2 The Contractor shall assign an adequate number of persons to each task to complete the work on schedule and in accordance with the Contract Documents.

3.4.3 The Contractor shall have available for use when needed all necessary construction machinery and equipment which is safe, in good working condition, and adequate for the task and in the numbers needed to maintain a rate of progress sufficient to complete the work within the Contract Time and milestones.

3.4.4 The Contractor shall at all times enforce strict discipline and good order among its employees and Subcontractors and shall not employ to work or allow to be employed any unfit person or anyone not skilled in the task assigned.

### **3.5 Contractor's Warranties and Correction of Work**

3.5.1 The Contractor warrants that all parts, materials, components, equipment and other items used to perform the work shall be new (unless otherwise specified) and suitable for the purpose used and will be of good quality, free from faults and defects and in conformance with the Contract Documents. The Contractor also warrants that its workers will be sufficiently skilled to produce the highest quality of work which is free from faults and defects. Work not so conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor shall, when requested, furnish the Owner with satisfactory evidence as to the kind and quality of materials and equipment. The Contractor further warrants that the construction processes and methods employed to perform the work shall be suitable for the results required and expected. If the Contractor proposes to use an unproved and untried method, process or product, the Owner must be advised of the proposal, in writing. The Owner may permit experimentation, but may require special guarantees of the Contractor to cover the work produced by any new and untried process, method or product.

3.5.2 The Contractor further warrants that it has full title to all equipment, components and other items conveyed to the Owner under the terms of this Contract, that its transfer of such title to the Owner is rightful and that all such equipment, components and other items shall be transferred free and clear from all security interest, liens, or encumbrances whatsoever. The Contractor agrees to warrant and defend such title against all persons claiming the whole or any part thereof at no cost to the Owner.

3.5.3 The Contractor shall promptly repair, replace or otherwise correct any of its workmanship and any parts, materials, components, equipment or other items in the work that contain faults or defects whether such failures are observed by the Owner or the Contractor before or after Final Completion. The Contractor shall bear all costs of correcting such work covered by the warranties. The Contractor's warranties shall continue for a period of one (1) year after the date of Final Completion or such longer period of time as may be prescribed by the terms of any special warranties required by the Contract Documents. If repair or replacement of faulty items of the work is necessary, proper temporary substitutes shall be provided by the Contractor in order to maintain the progress of the work and/or keep systems operating without any additional costs to the Owner. These obligations shall survive

termination of the Contract. Nothing herein shall limit Owner's right to seek recovery for latent defects which are not observable until after the warranty periods have run.

- 3.5.4 Nothing herein shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents. The establishment of the warranty periods set forth above relates only to the specific obligations of the Contractor to correct known defects in the work, and has no relationship to the time within which its obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligations and resulting damages other than specifically to correct known defects in the work which are discovered and called to the Contractor's attention during the warranty period.
- 3.5.5 The Contractor at its own expense shall also repair or replace any damages to any equipment, facilities or other personal or real property owned or leased by the Owner, which is damaged because of any such fault or defect, at no cost the Owner.
- 3.5.6 All subcontractors', manufacturers', and suppliers' warranties and guarantees, expressed or implied, for any part of the work and any materials used therein shall be obtained and enforced by the Contractor for the benefit of the Owner whether or not these warranties have been assigned or otherwise transferred to the Owner. The Contractor shall assign or transfer such warranties and guarantees to the Owner if the Owner requests the Contractor to do so, but such transfer shall not affect the Contractor's obligation to enforce such warranties and guarantees.

### **3.6 Taxes**

- 3.6.1 All Contractors and Subcontractors performing work on the Project shall apply to the State of Colorado Department of Revenue for a Tax Exemption Certificate. All Contractors are to have their own tax exemption number to cover the purchase of materials provided to this job. Contractors and Subcontractors shall apply for the Tax Exemption Certificate using Form DR 172 (Rev. 6/79). This form may be obtained from the State of Colorado Department of Revenue. Contractors and Subcontractors shall submit their Tax Exemption Certificate numbers to the Owner prior to beginning any work.
- 3.6.2 The Contractor shall furnish the County with City of Colorado Springs Sales Tax Forms 16 and ST-16A with each monthly request for progress payment. If the Contractor fails to keep such records resulting in the inability of the County to collect the amount of sales tax which the Contractor has paid, the Contractor shall be liable to the County for the amount of sales tax which the County would have recovered had the Contractor kept sufficient records.

### **3.7 Permits, Fees and Notices**

- 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permits, and pay for all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Contract and which are legally required at the time the bids are received.
- 3.7.2 The Contractor shall waive all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work.
- 3.7.3 It is not the responsibility of the Contractor to ascertain that the requirements of the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. However, if the Contractor observes that any of the Contract Documents are at variance therewith in any respect, the Contractor shall promptly notify the Owner in writing, and any necessary changes shall be accomplished by appropriate Modification.
- 3.7.4 If the Contractor performs any work knowing it to be contrary to laws, codes, ordinances, rules and regulations, then regardless of whether it gives notice as required by Subparagraph 3.7.3, Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto and for the correction thereof .

### **3.8 Allowances**

- 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom it makes a reasonable objection.
- 3.8.2 Unless otherwise provided in the Contract Documents:
- 3.8.2.1 These allowances shall cover the direct cost to the Contractor (less any applicable trade discount) of the materials and equipment required by the allowance delivered at the Site, all labor, installation costs or other reasonable and customary direct expenses, and all applicable taxes.
- 3.8.2.2 The Contractor's costs for unloading and handling on the Site, storage, supervision, overhead, profit and related costs shall be included in the Contract Sum, and not in the allowance.
- 3.8.2.3 Whenever the cost of an item is more than or less than the allowance thereof, the Contract Sum shall be adjusted accordingly by Change Order.

### **3.9 Superintendent**



3.9.1 The Contractor shall employ a competent Superintendent whose qualifications shall be acceptable to the Owner. The Superintendent shall serve on a full-time basis at the work site and shall be authorized to act on behalf of the Contractor in all field, financial, engineering and other matters related to the work. The Contractor agrees that the same persons shall continue in the capacity of Superintendent until the work has been completed, unless the Owner requests that they be replaced for cause, or they cease to be employed by the Contractor or are sick or disabled. The Superintendent or his designated representative must be on-site at all times when on-site work is performed.

### **3.10 Progress Schedule**

3.10.1 The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Owner's review and approval a progress schedule for the work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents and shall provide for expeditious and practicable execution of the work. The progress schedule shall be updated monthly throughout the duration of the Project and such updates shall be submitted to the Owner for review and approval.

3.10.2 The Contractor shall schedule and coordinate the work of all of its subcontractors and suppliers including their use of the work site. The Contractor shall keep the subcontractors and suppliers informed of the Project construction schedule to enable the subcontractors and suppliers to plan and perform their work properly.

3.10.3 The Contractor shall, in accordance with the requirements of the Technical Specifications, submit a construction schedule that shall provide for the expeditious and practicable execution of the work.

3.10.4 The construction schedule for the performance of the work shall be a critical path method system with reasonable detail including a time scaled network and computer printout all as more fully detailed in the Technical Specifications.

3.10.5 Float or slack is defined as the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any activities in the schedule. Float or slack is not for the exclusive use or benefit of either the Contractor or the Owner and may be used by and benefit the party who first needs or uses it.

3.10.6 The Contractor shall submit a monthly progress report and schedule update in accordance with the scheduling provision of the Technical Specifications.

3.10.7 The Contractor shall complete the work within the Contract Time and in accordance with the most recent schedule that has been approved in writing by the Owner. Notwithstanding anything else contained herein to the contrary, the Contractor shall have no right to finish the Project early or to assert any claims to the Owner for schedule delays which prevent it from doing so.

3.10.8 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

### **3.11 Documents and Samples at the Site**

3.11.1 The Contractor shall maintain at the Site for the Owner one record copy of all Drawings, Technical Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and all approved Shop Drawings, Product Data and Samples. These shall be available to Owner and shall be delivered to the Owner upon completion of the work.

### **3.12 Shop Drawings, Product Data and Samples**

3.12.1 The term "Shop Drawings" includes fabrication, erection, layout and setting drawings, schedules, performance and test data, wiring and control diagrams, and other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and construction as required to show that materials, equipment, or systems and position thereof comply with the Contract Documents. The term "manufactured" applies to standard units usually mass-produced. The term "fabricated" means items specifically assembled or made out of selected materials to meet individual design requirements. Shop Drawings shall establish actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical equipment in proper relation to physical spaces on the structure and incorporate minor changes of construction to suit actual conditions.

3.12.2 The term "Product Data" includes illustrations, standard schedules, performance charts, instructions, brochures, diagrams, test data, manufacturer's standard drawings, catalogs and other information furnished by the Contractor to illustrate a material, product, or system for any portion of the work.

3.12.3 The term "Samples" includes materials, fabricated items, equipment, devices, appliances, or parts thereof as specified, and other samples as may be required to determine whether kind, quality, construction, workmanship, finish, color and other characteristics of materials comply with requirements of the Contract Documents. Samples shall establish kind, quality and other required characteristics of various portions of the work.

3.12.4 The Contractor shall submit Shop Drawings, Product Data and Samples in accordance with the provisions of the Contract Documents.

3.12.5 By approving and substituting Shop Drawings, Product Data and Samples, the Contractor represents that it has determined and verified all materials, field measurements and field construction criteria related thereto, or will do so, and that it has checked and coordinated the information contained within such submittals with the requirements of the work and of the Contract Documents.

- 3.12.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner's approval of Shop Drawings, Product Data or Samples unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Owner's approval thereof.
- 3.12.7 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Owner on previous submittals.
- 3.12.8 No portion of the work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the Owner as provided in Subparagraph 5.2.13 has approved the submittal. All such portions of the work shall be in accordance with the approved submittals.

### **3.13 Use of Site**

- 3.13.1 The Contractor shall confine operations at the Site to areas permitted by the Owner, by laws, ordinances, permits, and by the Contract Documents, and shall not unreasonably encumber the Site with any materials or equipment.

### **3.14 Cutting and Patching of Work**

- 3.14.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the work or to make its several parts fit together properly.
- 3.14.2 The Contractor shall not damage or endanger any portion of the work or the work of the Owner or any separate contractors by cutting, patching or otherwise altering such work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor. Structural members shall not be cut or altered except by written permission of the Owner. The Contractor shall not unreasonably withhold from the Owner or any separate contractor its consent to cutting or otherwise altering the work.

### **3.15 Cleaning Up**

- 3.15.1 The Contractor shall at all times keep the work site and the surrounding premises free of accumulated waste materials. If space is available, the Owner may designate a place on the premises to collect all debris and rejected materials. If such space is designated, the Contractor shall at its expense, install fencing and whatever else is needed to keep loose materials confined so that these are not scattered by the winds. Removal of the waste material to a suitable licensed landfill must be done on at least a weekly schedule or more often whenever the waste material creates a safety or health hazard or interferes with any contractor's work.
- 3.15.2 Accumulations of mud tracked onto areas adjacent to the work site by construction equipment must be resolved promptly and not allowed to create a hazard.
- 3.15.3 If the Contractor fails to maintain the work site in a clean, orderly, and safe condition, progress payments may be withheld or the Owner may have others perform the clean up work and deduct the cost thereof.

### **3.16 Communications**

- 3.16.1 All communications relating to the day to day activities for the project shall be exchanged between respective project representatives of the Owner (Project Director and Superintendent) and Contractor.

Within five (5) days of Notice to Proceed, the General Contractor shall provide a project directory of key personnel including name, title, address, telephone and fax numbers, and email addresses. Once on site, the list shall be updated to include on-site telephone and fax numbers. All notices shall be in writing and shall be personally delivered, sent by fax, or sent by certified mail, postage prepaid, return receipt requested, to the parties at their respective addresses listed above. Any mailed notices hereunder shall be effective three (3) days after mailing.

### **3.17 Royalties and Patents**

- 3.17.1 The Contractor shall pay all applicable royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the Owner and the Owner's Representative harmless from and against any and all claims, damage, loss, cost and expense on account thereof, except that the Owner shall be responsible for all such matters when a particular design, process or the product of a particular manufacturer or manufacturers is specified; provided, however, that if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, it shall be responsible for such loss unless it promptly gives written notice thereof to the Owner.

### **3.18 Indemnification**

- 3.18.1 To the fullest extent permitted by law, the Contractor and each of its subcontractors and sub-subcontractors shall indemnify and hold harmless the County and its Owner's Representative, their officers, employees and insurers from and against all claims, damages, losses, expenses and demands, including court costs, attorney's fees and expenses, due to injuries, losses or damages arising out of, resulting from, or in any manner connected with Contractor's services on behalf of the County pursuant to this

Contract, if any such injury, loss or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, mistake, negligence, other fault of Contractor, any subcontractor, any officer, employee, representative or agent of any of them, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable; provided, however, that except for worker's compensation, disability benefits or other similar employee benefit claims, Contractor is not obligated to indemnify the Owner and the Owner's Representative hereunder for that portion of any claims, damages, losses, demands, and expenses arising out of or resulting from any negligent act or omission of the Owner, the Owner's Representative, or their agents and employees. Contractor's indemnification obligation hereunder shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 3.18. 1.

- 3.18.2 With respect to any and all claims against the County, the Owner's Representative or any of their officers, employees, or agents by any employee of Contractor, any of its subcontractors, any of its sub-subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation described above shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, any of its subcontractors, or any of its sub-subcontractors under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- 3.18.3 The indemnification obligations of the Contractor, its subcontractors and sub-subcontractors shall not extend to the liability of the Architect, its officers, employees and agents, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, its officers, employees or agents, provided such giving or failure to give directions or instructions is the primary cause of the injury or damage.

#### **ARTICLE IV: SUBCONTRACTORS**

##### **4.1 Definition**

- 4.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the work. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and includes a Subcontractor or its authorized representative. The term Subcontractor does not include any separate contractor or its subcontractors.
- 4.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the work at the Site. The term Sub-subcontractor is referred to throughout the Contract Documents as if singular in number and includes a Sub-subcontractor's authorized representative.

##### **4.2 Award of Subcontracts and Other Contracts for Portions of the Work**

- 4.2.1 The Contractor shall provide to the Owner, in writing, a list of Subcontractors, if different from those listed in the Contractor's bid documents, within five (5) days after bid award. The Owner shall have the right to reject for reasonable cause any Subcontractor within 15 days of the receipt of a proposed Subcontractor list. The Owner shall provide to Contractor in writing the specific cause(s) for rejection. Rejection of a Subcontractor for reasonable cause shall not be grounds for a change order or claim against the Owner.
- 4.2.2 If during the course of the Project, the Contractor changes the Subcontractor list, the Contractor shall notify the Owner, in writing, within three (3) days of the change, stating the reason for substitution and providing the name of the proposed substitution Subcontractor. The Owner shall have the right to reject the substitute for reasonable cause, but must do so within five (5) days of notice. Should the Owner reject a proposed Subcontractor, the Owner shall provide to the Contractor in writing the specific cause(s). Rejection of a Subcontractor for cause shall not be grounds for a change order or claim against the Owner.

##### **4.3 Subcontractual Relations**

- 4.3.1 By an appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the work to be performed by such Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner. Said agreement shall preserve and protect the rights of the Owner and Owner's Representative under the Contract Documents with respect to the work to be performed by such Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with its sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 4.3 and identify to the Subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Contract Documents available to its Sub-subcontractors.

#### **ARTICLE V: ARCHITECT** (If Applicable To This Contract)

##### **5.1 Architect/Design Consultant**

- 5.1.1 The Architect, also sometimes referred to herein as Design Consultant, is the entity retained by the Owner under contract to design the Project and to describe that design by the preparation of drawings and specifications. The Architect may be requested to

interpret drawings and specifications and shall review and approve shop drawings, product data samples, working drawings, and other documents. The Architect observes the work as it is performed, monitors identified critical construction activities identified in the Contract Documents and participates in the final inspection of the work. Unless otherwise provided in the Contract Documents, the Architect is the entity lawfully practicing architecture identified as such in the Contract, and is referred to throughout the Contract Documents as if singular in number and includes the Architect's authorized representative(s).

## **5.2 Administration of the Contract**

- 5.2.1 The Architect will act on behalf of the Owner as further defined herein during construction of the work and until final payment is due. The Architect will advise and consult with the Owner. The Owner's instructions to the Contractor shall be forwarded directly or may be forwarded through the Architect when the Owner so elects. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Subparagraph 5.2.16.
- 5.2.2 The Architect will periodically, but not less often than every two weeks, visit the Site to become generally familiar with the progress and quality of the work and to determine if the work is proceeding in accordance with the Contract Documents. On the basis of its on-Site observations, the Architect will keep the Owner informed of the progress of the work and will endeavor to guard the Owner against defects and deficiencies in the work of the Contractor.
- 5.2.3 The Architect or Owner will not be responsible for, and will not have control or charge of, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and will not be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents. The Architect and Owner will not be responsible for, or have control or charge over, the acts or omissions of the Contractor, Subcontractors, Sub-Subcontractors, or any of their agents or employees, or any other persons performing any of the work.
- 5.2.4 The Architect and the Owner shall at all times have access to the Project site and the work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Architect and Owner may perform their functions under the Contract Documents.
- 5.2.5 Based on the Architect's observations and determination of work in place and an evaluation of the Contractor's Applications for Payment, the Architect will assist Owner in determining the amounts owed to the Contractor and will issue Certificates for Payment in said amounts, as provided in Paragraph 8.4.
- 5.2.6 Subject to Owner's final determination, the Architect will interpret the requirements of the Drawings and Technical Specifications and written notice of all such interpretations shall be delivered to Owner and Contractor.
- 5.2.7 The Architect will render interpretations necessary for the proper execution or progress of the work with reasonable promptness.
- 5.2.8 Claims, disputes, and other matters in question between the Contractor and the Owner relating to the execution or progress of the work or the interpretation of the Contract Documents may be referred to the Architect by the Owner for its recommendations, which will be set forth in writing to the Owner within a reasonable time.
- 5.2.9 All interpretations and recommendations of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents will be in writing or in the form of drawings and will be subject to final approval by Owner. Architect will endeavor to secure faithful performance of the Contract Documents by the Contractor and will not be liable to Contractor for the result of any interpretation or recommendation rendered in good faith.
- 5.2.10 The Architect's recommendations in matters relating to artistic effect will be submitted to the Owner. The Owner's decision on such matters will be final.
- 5.2.11 The Architect will have the authority to reject work which does not conform to the Contract Documents; provided, however, that work may not be rejected without prior notice to, and approval of, the Owner. Whenever, in its opinion, the Architect considers it necessary or advisable for the implementation of the intent of the Contract Documents, it will have the authority, subject to prior notice to and approval of Owner, to require special inspection or testing of the work, whether or not such work be then fabricated, installed, or completed. However, neither the Architect's authority to act under this Subparagraph 5.2.12, nor any decision in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the work.
- 5.2.12 The Architect will review and approve or take other appropriate action upon Contractor's submittals, such as Shop Drawings, Product Data, and Samples, regarding their conformance and compliance with the Contract Documents. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component, nor shall the Architect's review and approval relieve any Contractor, Subcontractor, manufacturer, supplier, fabricator, consultant, or third party from responsibility for any deficiency that may exist or for any departures or deviations from the requirements of the Contract Documents. Submittal procedures shall be in accordance with the provisions of the Contract Documents.
- 5.2.13 The Architect will prepare Change Orders in accordance with Article XI, and will have authority to order minor changes in the work as provided in Subparagraph 11.1.3.

- 5.2.14 The Architect will conduct on-Site observations to determine the dates of Substantial Completion and final completion, will receive and forward to the Owner for the Owner's review written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of Paragraph 8.9.
- 5.2.15 The duties, responsibilities, and limitations of authority of the Architect during construction, as set forth in the Contract Documents, will not be modified or extended without the written consent of the Owner and the Architect.
- 5.2.16 In case of the termination of the employment of the Architect, the Owner shall so notify Contractor in writing and shall appoint a new architect, whose status under the Contract Documents shall be that of the former architect.

#### **ARTICLE VI: WORK BY OWNER OR BY SEPARATE CONTRACTORS**

##### **6.1 Owner's Right to Perform Work and to Award Separate Contracts**

- 6.1.1 The Owner reserves the right to perform work related to the Project with its own forces and to award separate contracts in connection with other portions of the Project or other work on the Site under these or similar General Conditions of the Contract for Construction. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, it shall make such claim as provided elsewhere in the Contract Documents.
- 6.1.2 When separate contracts are awarded for different portions of the Project or other work on the Site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Agreement between Owner and Contractor for such portion of the Project.
- 6.1.3 The Owner will provide for the coordination of the work of its own forces and of each separate contractor with the work of the Contractor and the Contractor shall cooperate therewith as provided in Paragraph 6.2.

##### **6.2 Mutual Responsibility**

- 6.2.1 The Contractor shall afford the Owner and separate contractors' reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate its work as required by the Contract Documents.
- 6.2.2 If any part of the Contractor's work depends upon the work of the Owner or any separate contractor for proper execution or results, the Contractor shall, prior to proceeding with the work, promptly report to the Owner any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acceptance of the Owner's or separate contractors' work as fit and proper to receive its work, except as to latent defects which could not have been discovered by the Contractor by careful inspection before acceptance thereof.
- 6.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible thereof.
- 6.2.4 Should the Contractor wrongfully or negligently cause damage to the work or property of the Owner, or to other work on the Site, the Contractor shall promptly remedy such damage as provided in Subparagraph 9.2.5.
- 6.2.5 Should the Contractor wrongfully or negligently cause damage to property or delay the progress of the work of any separate contractor, the Contractor shall upon due notice promptly attempt to settle with such other contractor by agreement or otherwise to resolve the dispute. If such separate contractor institutes any proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Contractor's expense and, if any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court costs which the Owner has incurred.

##### **6.3 Owner's Right to Clean Up**

- 6.3.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Paragraph 3.15, the Owner may clean up and charge the cost thereof to the contractors responsible therefor.

#### **ARTICLE VII: TIME OF COMMENCEMENT AND COMPLETION**

##### **7.1 Beginning, Progress and Time of Completion**

- 7.1.1 Time is of the essence for this contract. The Owner will issue a written Notice to Proceed and the Contractor shall start the work within ten (10) days of the date of the Notice to Proceed. Thereafter, the Contractor shall prosecute the work at such place or places as the Contract Documents require and shall complete the work within the time limits set forth in the Contract Documents.

##### **7.2 Time Extension**

- 7.2.1 Any extension of the Contract Time must be requested in a Contractor Change Request which complies with all of the requirements of Article XI, and specifically Paragraphs 11.5 - 11.9. Failure to strictly comply with the timing and submittal requirements shall constitute a waiver of any request of claim.

7.2.2 If the Contractor is delayed at any time in the progress of the work and such delay was caused, in whole or in part, by any act or omission of the Owner, any separate contractor, or by changes ordered in the work, or by directed suspensions of the work, strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or any other causes beyond the Contractor's control, then the Contract Time shall be extended. Such extensions will be for such period of time as the Owner may, in its sole discretion, determine, based upon the criteria of Paragraph 11.9; provided, however, that such delay could not have been avoided by the exercise of due diligence by the Contractor and did not result from the acts or omissions of the Contractor; and provided further that the Contractor has taken reasonable actions to mitigate or prevent further delays resulting from such causes.

7.2.3 If abnormal weather conditions are the basis for a claim for an extension of the Contract Time, such claim shall be documented by data substantiating that weather conditions were unusually severe for the period of time and could not have been reasonably anticipated. To establish the existence of abnormal weather, the Contractor must submit documentation which establishes that the weather conditions experienced fall outside of the extreme ranges of weather data published by the National Climatic Data Center for the area closest to the Project. Regardless of actual weather conditions, any day in which the Contractor is able to work eighty percent (80%) or more of its scheduled work force shall not be counted as an abnormal weather day for purposes of calculating weather related time extensions.

### **7.3 Suspension of Work**

7.3.1 The Contractor agrees that the Owner may suspend all or any part of the work by written order signed by the Owner without invalidating the Contract for such period or periods as it may deem necessary due to:

- (a) any reason for the convenience of the Owner, with or without cause, including, but not limited to, the availability of funding for the Project provided. However, such a suspension shall not exceed 90 days;
- (b) an order from a state or federal court; or
- (c) Contractor's failure to perform any provision of the Contract Documents.

7.3.2 If it should become necessary to suspend the work, the Contractor shall immediately submit a plan to the Owner for acceptance. The plan shall describe how the Contractor will store all materials in a manner so that the materials will not become an obstruction or become damaged in any way, what cost effective methods it will employ to prevent damage to or deterioration of the work, and otherwise protect the work, how suitable drainage will be provided, what temporary structures will be necessary and how the Contractor will prepare for resuming the work for the least possible start-up cost. After the plan is accepted, the Contractor shall implement it in accordance with instructions received from the Owner.

7.3.3 Under no circumstance shall a suspension absolve the Contractor or the Contractor's sureties of the duties and responsibilities guaranteed under bond. A suspension order will be signed by the Owner. The Contractor shall again proceed with the work when it is ordered to do so in writing by the Owner.

7.3.4 For all suspensions not involving the Contractor's failure to perform in accord with Contract Documents, adjustment of Contract Amount and/or Contract Time, if any, will be made pursuant to Paragraphs 11.8, 11.9 and 11.11, except that any adjustments to Contract Amount shall not include anticipated lost profits or other consequential damages.

### **7.4 Suspension for the Work for the Owner's Convenience**

7.4.1 An order suspending all of the work for the Owner's convenience will extend the Contract Time for the number of days of such suspension. If the suspension applies to only a part of the work, a time extension will not be authorized until the partial suspension has been lifted and its effect on the date for completing the work has been evaluated and determined by the Owner.

### **7.5 Suspension Because of Order of State or Federal Court or Agency**

7.5.1 The Order of suspension will identify the court or agency order, which caused the suspension and will extend the Contract by the amount of time specified by the court or agency order. If the order causes suspension for an indefinite period of time and as a result a time extension cannot be established, the order of suspension will also be for an indefinite period of time. If the order is issued because of acts or omissions of the Contractor, the Contractor shall not be entitled to a time extension or payment for any additional costs it incurs.

### **7.6 Suspension Resulting from Contractor's Failure of Performance**

7.6.1 If a suspension order results from the Contractor's failure to satisfactorily perform any of the provisions of the Contract Documents, including, but not limited to, faulty workmanship, improper or inadequate manpower, equipment, supplies or super-vision, or failure to perform the work or pay employees, subcontractors or suppliers in a timely manner, the order will identify the reason, or reasons, for the order. In this circumstance, the Contractor will not be authorized a time extension and any costs to the Contractor resulting from such a suspension order will not be reimbursed by the Owner. A suspension order issued under these circumstances will remain in effect until the Contractor has removed or corrected the grounds for the suspension.

### **7.7 Delay Damages**

7.7.1 The Contractor agrees that delays resulting from any causes other than acts or omissions of the Owner, its employees, agents or officials shall be considered fully compensated by a time extension and agrees to make no claims for monetary damages for such delays. In no event shall the Contractor be entitled to recover any delay costs caused by the acts or omissions of the Contractor, its employees or agents.

- 7.7.2 If the Contractor believes that it has suffered delays in performing the Contract that are caused by acts or omissions of the Owner, the Contractor may submit a Contractor Change Request under Paragraph 11.5. Failure of the Contractor to comply with all applicable requirements of Paragraphs 11.5, 11.6 and 11.9 shall constitute a waiver of any claim for damages resulting from such delays.

## ARTICLE VIII: PAYMENTS AND COMPLETION

### 8.1 Contract Amount

- 8.1.1 "Contract Amount" means the total amount of money payable to the Contractor under the Contract.

### 8.2 Schedule of Values

- 8.2.1 Before the first Application for Payment, the Contractor shall submit to the Owner for approval a schedule of values allocated to the various portions of the work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, once accepted by the Owner, shall be used as the basis for the Contractor's Applications for Payment.
- 8.2.2 Should the Owner issue a change order that decreases or increases the Contract Amount, the schedule of values shall be modified to reflect the amount of the decrease or increase.

### 8.3 Applications for Payment

- 8.3.1 The Contractor shall, on a monthly basis, on or before the 10th of each month, submit to the Owner an itemized Application for Payment, in form satisfactory to Owner and notarized if required, supported by such data substantiating the Contractor's right to payment as the Owner may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents.
- 8.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the work, but delivered and suitably stored at the Site, and, if approved in advance by the Owner, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the Site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the Site for those materials and equipment stored off the Site.
- 8.3.3 The Contractor warrants that title to all work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the work or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereafter referred to in this Article VIII as "liens"; and that no work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing work at the Site or furnishing materials and equipment for the Project, subject to an agreement under which an interest or an encumbrance is retained by the seller or otherwise imposed by the Contractor or such other person.

### 8.4 Certificates for Payment

- 8.4.1 If the Contractor has made Application for Payment as required above, the Owner will, within fourteen (14) days after such Application is received, issue a recommendation for payment, or notify the Contractor in writing any reasons for withholding a Certificate for Payment as provided in Subparagraph 8.6.1. All certifications and payments, including those pursuant to a pending claim, shall be conditional and it shall not be necessary for the Owner to make any statement to this effect.
- 8.4.2 Upon Contractor's acceptance of progress payments by the Owner, the Owner shall be released from any claims from the Contractor, all subcontractors, suppliers and material men for any and all services or materials included in the payment application.
- 8.4.3 The provisions for payment and Certificates for Payment are solely for the benefit of the Owner and no other party (including sureties of the Contractor) shall have any claim for negligence or other action against the Owner or anyone acting in behalf of either of them for waiving or otherwise deviating from these provisions.

### 8.5 Progress Payments

- 8.5.1 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.
- 8.5.2 The Owner may, upon request and at its discretion, furnish to any Subcontractor information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Owner on account of that portion of the work done by such Subcontractor.
- 8.5.3 The Owner shall not have any obligation to pay, or to see to the payment of, any monies to any Subcontractor except as may otherwise be required by law.

8.5.4 No Certificate for Payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of any work not in accordance with the Contract Documents.

8.5.5 The Owner shall deduct and retain a total of up to five percent (5%) from the amount shown in approved Applications for Payment throughout the duration of the project and until the work has been completed to the Owner's satisfaction. The Owner, at its sole discretion, at any time after Contractor has substantially completed the work and it deems that satisfactory progress has and continues to be made and, if applicable, upon the Contractor's presentation of Consent of Surety, may make any remaining progress payments without further retainage, but may elect to reinstate the withholding of up to five percent (5%) at any time it deems it is in the best interest of the County to do so.

## **8.6 Payments Withheld**

8.6.1 The Owner may decline to certify payment and may withhold the Certificate for Payment in whole or in part, to the extent necessary to protect the Owner. If the Contractor and the Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which it believes is appropriate. The Owner may withhold payment and may decline to certify payment because of subsequently discovered evidence or subsequent observations. The Owner may nullify the whole or any part of any Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss due to:

- (a) Defective work not remedied;
- (b) Third party claims filed or reasonable evidence indicating probable filing of such claims;
- (c) Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- (d) Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract Sum;
- (e) Damage to the Owner or another contractor;
- (f) Reasonable evidence that the work will not be completed within the Contract Time; or
- (g) Persistent failure to carry out the work in accordance with the Contract Documents.

8.6.2 When the above objections in Subparagraph 8.6.1 are cured, payment shall be made for amounts withheld on account thereof.

8.6.3 Execution of this Contract by the Contractor shall constitute a waiver by the Contractor to claim any right of payment of interest upon any such retained funds, or to claim any right of payment of interest upon funds withheld under the provisions of Section 38-26-107, Colorado Revised Statutes.

## **8.7 Failure of Payment**

8.7.1 If the Owner does not issue a Certificate for Payment or notice as required by Subparagraph 8.4.1, through no fault of the Contractor, within fourteen (14) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor the amount due pursuant to the Contract Documents within fifteen (15) days after the date established in the Contract Documents, subject to other applicable provisions of the Contract Documents, the Contractor may, upon seven (7) additional days written notice to the Owner, stop the work until payment of the amount owing has been received; provided, however, that a dispute between the Contractor and Owner concerning any amount due shall not give the Contractor the right to stop work. The Contract Sum shall be adjusted by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, which adjustment shall be effected by an appropriate Change Order in accordance with Article XI.

## **8.8 Substantial Completion**

8.8.1 The date of substantial completion of the work, or any designated portion thereof, is the date certified by the Owner when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the work, or any designated portion thereof, for the use for which it is intended.

8.8.2 When the Contractor considers that the work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Paragraph 8.8.1, the Contractor shall prepare for submission to the Owner a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents. When the Owner determines, on the basis of its review, that the work or designated portion thereof is substantially complete, it will then prepare a Certificate of Substantial Completion which shall establish the date of substantial completion, the responsibilities of the Owner and the Contractor, as agreed upon, for security, maintenance, heat, utilities, damage to the work and insurance, and shall fix the time within which the Contractor shall complete or correct the items listed therein. Warranties required by the Contract Documents shall commence on the date of substantial completion of the work, or designated portion thereof, unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate.

8.8.3 Upon substantial completion of the work, or designated portion thereof, and upon application by the Contractor and issuance of the Certificate of Substantial Completion by the Owner, the Owner shall make payment, reflecting adjustment in retainage, if any, for such work or portion thereof, as provided in the Contract Documents.

## **8.9 Final Completion and Final Payment**

8.9.1 "Final Completion" of the work occurs following substantial completion and when the Owner confirms, in writing, that the Contractor has completed the work in accordance with the Contract, including completion of all punch list and clean-up work. Upon receipt of written notice that the work is ready for final review and acceptance, and upon receipt of a final Application for Payment, the Owner



will promptly review the completed work and, if it finds the work acceptable under the Contract Documents and the Contract fully performed, the Owner will promptly issue a final Certificate for Payment stating that to the best of its knowledge, information and belief, and on the basis of its observations, the work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate of Payment, is due and payable. The Owner's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Paragraph 8.9.5 have been fulfilled.

- 8.9.2 The notice of final payment shall be advertised in accordance with C.R.S. § 38-26-107, by two (2) publications of notice, the last publication appearing at least ten (10) days prior to the time of final settlement. On the date of final settlement thus advertised, and after the Contractor has completed the foregoing requirements, and the Owner is satisfied that no claims have been filed, final payment and settlement shall be made.
- 8.9.3 If any unpaid claim for labor, materials, rental, machinery, tools, supplies, or equipment is filed prior to the date set for final settlement, the Owner shall withhold from the Contractor sufficient funds to ensure the payment of such claim, until the same shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing a receipt in full or an order for withdrawal signed by the claimant or its duly authorized agent or assignee. It is further understood by the Contractor that the Owner will withhold from payment any funds it may be required by law to withhold or that it may in the determination of the Owner be entitled to withhold, and final payment will not be made until in the sole determination of the Owner all conditions of law have been met.
- 8.9.4 In the event there are, at the time set for final settlement, outstanding claims against the Contractor or its subcontractors or for any other reason the Contractor is not able to give a proper affidavit that liens or other obligations have been properly paid and settled, the Owner may, at its sole discretion, waive the requirement of the said affidavit provided the surety on the Performance and Payment Bonds will agree to the Owner making final settlement without in any way lessening or modifying the surety's liability under such Performance and Payment Bonds.
- 8.9.5 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Owner or its property might in any way be responsible, have been paid or otherwise satisfied, (2) Consent of Surety to final payment, and (3) if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens or verified claims arising out of the Contract, to the extent and in such form as may be designated by the Owner. If any such lien or claim remains unsatisfied after all payments to Contractor are made, the Contractor shall refund to the Owner all monies that the Owner may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorneys fees.
- 8.9.6 If, after substantial completion of the work, final completion is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, the Owner may, upon application by the Contractor, subject to applicable statutory provisions and such other terms as it deems reasonable and necessary, and without terminating the Contract, make payment of the balance due for that portion of the work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims under Paragraph 8.9.7.
- 8.9.7 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:
- (a) Unsettled liens or verified claims;
  - (b) Faulty or defective work;
  - (c) Failure of the work to comply with the requirements of the Contract Documents, including the terms of any warranties and guarantees required by the Contract Documents; or
  - (d) Incomplete work appearing or discovered after substantial completion.
- 8.9.8 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.

#### ARTICLE IX: PROTECTION OF PERSONS AND PROPERTY

##### 9.1 Safety Precautions and Programs

- 9.1.1 The Contractor shall provide all necessary protective devices and safety precautions which may include, but are not limited to, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials; placement of warning flares; equipment back-up alarms; installation of barricades; promulgation and application of safety regulations and employment of safety personnel and guards. Signs will not be considered an adequate substitute for physical protective barriers. The costs of all protective devices and the planning and implementing of safety precautions are included in the Contract Amount.
- 9.1.2.1 The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work.

##### 9.2 Safety of Persons and Property

- 9.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:
- (a) All employees on the Project and all other persons who may be affected by the project;

- (b) All the work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, or under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and
- (c) Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

- 9.2.2.1 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.
- 9.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.
- 9.2.4 When the use or storage of explosives, flammable or otherwise hazardous materials or equipment is necessary for the execution of the work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.
- 9.2.5 The Contractor shall promptly remedy all damage or loss to any property referred to in Clauses 9.2.1.(b) and 9.2.1.(c) caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Clauses 9.2.1.(b) and 9.2.1.(c), except damage or loss attributable solely to the acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to its obligations under Paragraph 3.18.
- 9.2.6 The Contractor shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents and administration of safety procedures. This person shall be the Contractor's Superintendent unless otherwise designated by the Contractor in writing to the Owner.
- 9.2.7 The Contractor shall not load or permit any part of the work to be loaded so as to endanger its safety.
- 9.2.8 When required by law or for the safety of the work, the Contractor shall shore up, brace, underpin and protect foundations and other portions of existing structures which are in any way affected by the work. The Contractor, before commencement of any part of the work, shall give any notices and obtain any permits or written permission required to be given to or received from adjoining landowners or other parties.

### **9.3 Emergencies**

- 9.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, in its reasonable discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of the Contract Time claimed by the Contractor on account of emergency work shall be determined as provided in Paragraphs 11.8 and 11.9.

### **9.4 Protection of Property and Work in Progress**

- 9.4.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:
- (a) All the work and all materials and equipment to be incorporated therein, whether in storage on or off the work site, under the care, custody or control of the Contractor, Subcontractors, Sub-subcontractor, or suppliers.
  - (b) Other property at the work site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
  - (c) The work of the Owner or other contractors provided, however, that the Contractor shall not be responsible to furnish the direct protection of the work of the Owner or other contractors.
- 9.4.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the safety of property or its protection from damage, injury or loss.
- 9.4.3 The Contractor shall be totally responsible for the design, installation and maintenance of all temporary structures such as concrete forms and all necessary bracing, shoring, and tying of all decks, framing and structures or structural elements to prevent the failure of materials or temporary facilities required in the execution of the work which could result in damage to property or the injury or death of persons. The Contractor shall take all reasonable precautions to ensure that no part of any structure or equipment of any description is loaded beyond its carrying capacity with anything that will endanger its safety at any time during the execution of the work and shall provide for the adequacy and safety of all scaffolding and hoisting equipment. The Contractor shall not permit open fires within any building enclosure. The Contractor shall construct and maintain all necessary temporary drainage and do all pumping reasonably required to keep excavations, floors, pits, and trenches free of water.
- 9.4.4 If any of the Contractor's operations destroy or damage any real or personal property, public or private, the Contractor shall promptly repair or replace such property before the Owner will accept the work performed under this Contract.
- 9.4.5 Should the Contractor do anything to impair or otherwise diminish the capabilities of any permanent or temporary highway, street or road without first notifying the Owner, the Owner may withhold progress payments or suspend the Contractor's right to proceed with the work.

9.4.6 Any damages to public roads or streets caused by the Contractor or Subcontractor shall be repaired as soon as is practical. The Owner shall have the right to stop work until such repairs are made to the satisfaction of the Owner. Such stop work order shall not be grounds for a claim against the Owner.

#### 9.5 Protection of the Environment

9.5.1 The Contractor shall comply with all applicable federal, state and local environmental protection rules, laws and regulations and accept responsibility for compliance with all environmental quality standards, limitations and permit requirements promulgated thereunder, including, but not limited to, the federal and state air quality standards for fugitive dust control prevention of surface and groundwater contamination and hazardous and other waste disposal practices and procedures.

9.5.2 If the Owner is determined by any federal, state or local government agency, department, board or commission, or in any judicial proceeding to have violated any such environmental protection rules, laws, or regulations as a result of the Contractor's acts or omissions, the Contractor agrees to indemnify and hold harmless the Owner from any and all prosecutions, payment of any and all fines or penalties, and the cost of abatement and remediation and shall take action to remedy the claims or charges against the Owner. In addition, Contractor shall reimburse Owner for all costs, expenses and reasonable attorney's fees incurred by Owner as a result of the violation of said rules, laws or regulations.

#### 9.6 Hazardous and Explosive Materials

9.6.1 The Contractor shall exercise the utmost care and caution if the storage or use of hazardous materials or explosives are required for the performance of the work. Activities related to the purchase, storage, use, removal, treatment, and disposal of such hazardous materials shall at all times be the sole responsibility of the Contractor and shall be supervised and carried out by personnel properly qualified to perform such activities. However, in no circumstances shall activities requiring the purchase, storage, use, removal, treatment or disposal of hazardous materials be started without first notifying the Owner in writing of the proposed activity and receiving the Owner's written approval of that action. The use and storage of explosives will not be allowed on site unless they are required or permitted by the Contract Documents. If hazardous and explosive materials are required on site, the Contractor shall comply with all federal, state, and local laws, rules, and regulations that are applicable.

#### 9.7 Archeological and Historical Discoveries

9.7.1 The Contractor is required to inform the Owner of any evidence which might suggest to a lay person that archaeological, historical materials or human remains may be present in the work area. Upon making such a discovery, the Contractor shall do whatever is necessary to avoid disturbing that work area. This could require that the Contractor's activities be redirected or stopped until the Owner determines how to proceed.

9.7.2 If as a result of the Contractor's efforts to preserve the potential discovery site, the Contractor's activities are delayed for longer than eight (8) normal working-time hours, the Contractor may submit a Contractor's Change Request if it believes it is entitled to an adjustment in Contract Amount and/or Contract Time. Adjustments for such delays shall be considered by the Owner only for the portions of the delay which exceed eight (8) hours.

### ARTICLE X: INSURANCE

#### 10.1 Insurance

10.1.1 In part to assure the Owner that the Contractor is always capable of fulfilling the specified indemnification obligations, the Contractor is required to purchase and maintain insurance of the kind and in the minimum amounts specified in the Contract Documents. However, the insurance requirements contained in the Contract Documents shall not be deemed to limit or define the obligations of the Contractor as provided elsewhere.

10.1.2 **CONTRACTOR** shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this **CONTRACT**. All insurance policies required by this **CONTRACT** shall be issued by insurance companies as approved by the County.

10.1.3 Workers' Compensation: Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment.

**Employer's Liability:**  
\$2,000,000 bodily injury for each accident  
\$2,000,000 each employee for disease  
\$2,000,000 disease aggregate

10.1.4 General Liability: Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: \$1,000,000 each occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed operations aggregate; and \$50,000 damage to premises rented to you – any one premises

**Minimum Limits:**  
\$2,000,000 each occurrence  
\$2,000,000 general aggregate with dedicated limits per project site  
\$2,000,000 products and completed operations aggregate

- 10.1.5 Automobile Liability: Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.
- 10.1.6 Umbrella Liability Insurance: Commercial Umbrella/Excess Liability Insurance for bodily injury and property damage liability must sit over Contractor's primary Employer's Liability, Commercial General Liability and Commercial Automobile Liability with limits of: \$1,000,000 each occurrence and aggregate. Higher or Lower limits may be required or determined acceptable at the sole discretion of **COUNTY**.
- 10.1.7 Protected Information: If Contractor's scope of work will include access to Confidential Information, such as PII, PHI, PCI, Tax Information, and CJJ, Contractor shall maintain Cyber/ Network Security and Privacy Liability Insurance in an amount of not less than \$1,000,000 each occurrence; and \$2,000,000 general aggregate to cover civil, regulatory and statutory damages, contractual damage, as well as data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as confidential information of County.
- 10.1.8 Pollution Liability: If Contractor's scope of work includes any pollution liability exposure, Contractor must provide and maintain a separate Pollution Liability Insurance policy. Such insurance shall include coverage for the Hold-Harmless or Indemnification Clause contained in this Agreement. Coverage shall include Additional Insured status in favor of County, its agents and employees and a Waiver of Subrogation in favor of additional insured parties the policy shall be written with a limit of liability no less than \$1,000,000 each occurrence and aggregate.
- 10.1.9 Professional Liability Insurance: If Contractor's scope of work includes the performance of professional services, Contractor shall provide and maintain, for the statute of repose, Professional liability insurance covering any damages caused by an error, omission in performance of the professional services with minimum limits as follows: \$1,000,000 each claim; and \$1,000,000 general aggregate.
- 10.1.10 Crime Insurance: If Contractor's scope of work includes Contractor or Contractor's employees' involvement with money or securities of County, Contractor shall provide and maintain Commercial Crime coverage for a loss arising out of or in connection with any fraudulent or dishonest act committed by employees of the Contractor, in an amount of not less than \$1,000,000 single limit. Commercial Crime Coverage shall include third party liability coverage and list County as a loss payee.
- 10.1.11 Primacy of Coverage: Coverage required of Contractor shall be primary over any insurance or self-insurance program carried by the County.
- 10.1.12 Cancellation: The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the County in accordance with Paragraph 8.14 within 7 days of Contractor's receipt of such notice. If such provisions are not commercially available from carriers, then Contractor shall be responsible for providing the notice of Cancellation in a manner acceptable to County.
- 10.1.13 Subrogation Waiver: All insurance policies secured or maintained by Contractor in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against the County, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
- 10.1.14 All insurance as required by Contractor under this Section 8 shall also be required of any Subcontractor hired by Contractor to perform work under this Contract.
- 10.1.15 Contractor shall furnish certificates of such insurance to the County Contracts and Procurement Manager ("Manager") prior to the performance of this Contract. The County, and its' employees and agents, shall be named as an additional insured on all policies of liability insurance, except professional liability, workers' compensation, and commercial crime when applicable. Unless otherwise noted in Section 8 to the contrary, insurance coverage shall be maintained for the duration of the Contract.
- 10.1.16 Special Provisions: County reserves the right to review, approve and/or reject any and all certificates of insurance and required endorsements. Certificate Holder should be listed as follows:

El Paso County, Board of County Commissioners  
County Address: 200 South Cascade Avenue, Suite 150, Colorado Springs, CO 80903

All policies are to be written through companies duly entered and authorized to transact that class of insurance in the state in which the job is located. The insurance companies must have an A.M. Best rating of A-, VIII or better in the most recent Best's Key Rating Guide.

Approval, disapproval or failure to act by County regarding any insurance supplied by the Contractor shall not relieve the Contractor of full responsibility or liability for damages and accidents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance County exonerate the Contractor from liability.

No Special payments shall be made for any insurance that the Contractor may be required to carry; all are included in the contract price.

## **10.2 Builder's Risk Insurance**

- 10.2.1 The Contractor shall purchase and maintain All Risk Builder's Risk insurance upon the entire Project to One Hundred Percent (100%) of the insurable value thereof for the benefit of the Owner and the Contractor. Such insurance shall include any and all direct damage to all structures under construction (including temporary structures) and all materials, supplies, machinery and equipment at the work site which are or will be incorporated in the work, which is caused by hazards such as but not limited to, the hazards of fire, lightning, wind, earthquake, flood, vandalism, malicious mischief and other hazards included in a standard Extended Coverage Endorsement.

## **ARTICLE XI: CHANGES IN THE WORK**

### **11.1 Owner-Initiated Changes - General**

- 11.1.1 The Owner may require, without notification to sureties, the Contractor to perform changes, additions or deletions to the work at any time after execution of the Contract without invalidating the Contract. Changes shall be accomplished by a written Change Order or a Change Directive. If a Change Directive is used, a Change Order will be executed when the terms of the change are agreed upon.
- 11.1.2 The Contractor shall promptly perform changes in the work which are described in Change Orders and Change Directives in accordance with applicable provisions of the Contract Documents, unless otherwise provided in the Change Order or Change Directive.
- 11.1.3 The Owner will have authority to order minor changes in the work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order and shall be binding on the Contractor. The Contractor shall carry out such written orders promptly.

### **11.2 Change Request**

- 11.2.1 The Owner may issue a request informing the Contractor of a planned change in the work and its scope, and requesting the Contractor's detailed price proposal. The Contractor, at no expense to the Owner, shall submit a priced proposal for performing the proposed change in the work. The Contractor, within ten (10) days after receiving the Change Request, or such longer time which the Owner in its discretion has granted, shall provide the Owner with a complete and itemized proposal which includes the estimated increase or decrease in the Contract Amount and/or in the Contract Time attributable to the planned changes based on the criteria and methods described in Paragraphs 11.8 and 11.9. The Contractor shall be responsible for delays to the work and any additional costs incurred by the Owner caused by its failure to submit complete pricing information within the time provided above. The Contractor shall participate with the Owner in prompt joint analysis and negotiations to finalize a Change Order.

### **11.3 Change Directive**

- 11.3.1 A Change Directive is a written order signed by the Owner's Project Manager or its designated representative which directs the Contractor to commence a change in the work, prior to complete agreement on a Change Order.
- 11.3.2 A Change Directive may be used when:
- (a) The Owner determines that the Contractor must proceed immediately to perform a change in the work in order to avoid an adverse impact on the schedule or other unchanged work, and sufficient time is not available to negotiate an adjustment to the Contract Amount or Contract Time; or
  - (b) The Owner and Contractor have not completed their negotiation and reached agreement on all of the terms of a Change Order, but the Owner requires the Contractor to proceed without such agreement.
- 11.3.3 Upon receipt of a Change Directive, the Contractor shall promptly sign the Change Directive and return it to the Owner, and shall promptly proceed with performing the change in the work. Additionally, the Contractor shall comply with all of the requirements of Paragraph 11.2.

### **11.4 Change Order**

- 11.4.1 A Change Order is a written instrument signed by the Owner's Project Manager or its designated representative and by the Contractor which contains their agreement upon all of the following matters:
- (a) A change, addition or deletion to the work;
  - (b) The amount or method of the adjustment in the Contract Amount, if any (see Paragraph 11.8); and
  - (c) The extent of the adjustment in the Contract Time (see Paragraph 11.9), if any.
- 11.4.2 When the Owner and Contractor reach agreements on the adjustments to the Contract Amount and/or Contract Time, if any, as appropriate, such agreements shall be promptly recorded in an executed Change Order.

### **11.5 Contractor Change Request**

- 11.5.1 If the Contractor: (1) receives any oral or written instructions, directives or interpretations of Contract Documents, or determinations from the Owner; or (2) identifies what it believes are design errors or omissions or any other errors or omission in the Contract Drawings or Technical Specifications; or (3) encounters a differing site condition; or (4) is delayed in the progress of the work; or (5)

becomes aware of any other matter or circumstance which it believes would require a change in Contract Time or Contract Amount, the Contractor shall give the Owner prompt written notice of such matters in a letter or notice denominated Contractor Change Request," and request a Change Order.

- 11.5.2 All Contractor Change Requests shall be dated, numbered sequentially, and shall describe the action or event which the Contractor believes may require the issuance of a Change Order. The Contractor shall also provide descriptions of possible Contractor actions or solutions to minimize the cost of the Contractor Change Request and, when possible, provide an estimate of the adjustment in the Contract Time and Contract Amount that it believes is appropriate.

#### **11.6 Time Requirements**

- 11.6.1 With respect to orders, instructions, directives, interpretations, determinations, or the discovery of any errors or omissions in the Contract Documents, a Contractor Change Request shall be submitted before the Contractor acts on them, but in no event more than ten (10) days after they were received or discovered.
- 11.6.2 With respect to any differing site conditions (Article XII), a Contractor Change Request shall be submitted before the conditions are disturbed, but in no event more than ten (10) days after the conditions are first discovered.
- 11.6.3 With respect to delays, a Contractor Change Request shall be submitted as soon as the Contractor has knowledge of the delay, but in no event more than ten (10) days from that time.
- 11.6.4 With respect to any other matter or circumstance which the Contractor believes would require a Change, including delays, a Contractor Change Request shall be submitted as soon as the Contractor has knowledge of the matter or circumstance, but in no event more than ten (10) days after the Contractor becomes aware of such circumstances or matter.

#### **11.7 Submittal Requirements and Waiver of Claims**

- 11.7.1 If the Contractor does not submit a Contractor Change Request within the time required by Subparagraph 11.6 above, any action by the Contractor related to such order, direction, instruction, interpretation, determination, design error or omission, or other matter, including delays or differing site conditions, will not be considered by the Owner as a change to the work and the Contractor waives any claim for an adjustment on the Contract Amount or the Contract Time.
- 11.7.2 The Contractor shall, within twenty (20) days after submitting a Contractor Change Request, provide the Owner a complete and itemized proposal which contains the information described in Paragraph 11.8. The proposal shall also contain a detailed explanation, citing all applicable provisions in the Contract Documents, which supports the Contractor Change Request. If the Contractor does not submit its itemized proposal for a Change Order within the time described above or within such extension which the Owner, in its discretion may have granted in writing, it waives any claim for an adjustment in the Contract Amount or Contract Time arising out of the act or event described in the Contractor Change Request.
- 11.7.3 If a Contractor Change Request is denied by the Owner in whole or in part, any claim for an increase in the Contract Amount or Contract Time arising out of the act or event described in the Contractor Change Request is waived unless the Contractor timely complies with the provisions of Paragraph 13.1 (Notice of Intent to Claim).

#### **11.8 Adjustment to Contract Amount**

- 11.8.1 All adjustments to the Contract Amount shall be determined by using one or more of the following methods:
- (a) A negotiated lump sum. If requested by the Owner, the Contractor shall promptly provide itemized and sufficient substantiating data, including calculations, measurements, cost records, production rates, equipment types and capacity, labor costs by craft and other information which the Owner may reasonably require the Contractor to produce in order to permit the Owner to evaluate the Contractor's lump sum change order proposals. In pricing this proposal, the Contractor shall include estimates of the type of costs described in Subparagraph 11.11;
  - (b) Unit prices stated in the Contract Documents or subsequently agreed upon multiplied by final verified quantities of work performed;
  - (c) Cost to be determined in a manner agreed upon by the parties which includes markups that do not exceed those set forth in Subparagraph 11.11.7 below; and
  - (d) Costs to be determined in the manner described in Subparagraph 11.10.

#### **11.9 Contract Time Adjustment**

Any adjustment in Contract Time shall be determined in accordance with the scheduling requirements in the Technical Specifications. The Contractor shall support any request or proposal for an adjustment in Contract Time with a schedule produced in accordance with the Technical Specifications, which shows how and where a delay on the critical path occurs and will affect the Contract Time. This submittal shall include a description of the Contractor's efforts to reschedule work in order to mitigate the effect of the changes on the schedule.

#### **11.10 Force Account Work**

- 11.10.1 In situations where the cost or time for performing a required change cannot be adequately defined or agreed upon, but the changed work must proceed, the Owner may direct the Contractor to perform the work on a Force Account basis. Adjustments shall be

determined on the basis of reasonable expenditures and savings of those performing the change in the work including, in case of an increase in the Contract Amount, an allowance for overhead and profit which shall not exceed the allowance described in Subparagraph 11.11.7 below. In such case, the Contractor shall keep and present in such form as the Owner may prescribe an itemized detailed accounting together with appropriate supporting data of all of the costs associated with the change in accordance with the rates described in Subparagraph 11.11.1 through Subparagraph 11.11.4 which clearly distinguishes the cost of changed work from base contract work. Information which shall be required on these forms includes an itemization of all costs for labor, materials and equipment rental and total costs to date for force account work. The Contractor shall include hours worked, rates of pay, names and job classifications for all workers and size, type, identification number, rental rate and hours of operation for equipment.

- 11.10.2 Unless otherwise provided in the Contract Documents, costs for the purposes of Force Account Work shall be itemized daily on Daily Force Account Forms provided by the Owner which are signed by the Contractor and Owner. Such costs shall form the basis for determining the maximum amount to be paid the Contractor, but this amount may be reduced where necessary to take into account the cost of base contract work, work included in approved Change Orders, work described in Change Directives, idle time for workers and/or equipment when work could have been performed in other locations or the number of workers or amount of equipment provided exceeds the number or amount required to perform the work, unsatisfactory work or work which may be performed concurrently with the changed work and which cannot be easily segregated from the changed work.

### 11.11 Contract Sum Determination

In no event shall the charge or credit to the Owner associated with any change exceed the sum of the following:

- 11.11.1 Direct Labor. Actual net direct increase or decrease in the cost of the Contractor's labor for all work associated with the change. Contractor's labor shall be limited to labor (including salaried field personnel) that performs the individual change in the work full-time.
- 11.11.2 Labor Burden. Contractor's actual costs for worker's compensation and liability insurance, payroll taxes, social security and employees' fringe benefits (including employer paid health insurance) imposed on the basis of payrolls. This labor burden must reflect the variability of some burdens, i.e., social security. The burden shall include all small tools that cost less than \$200 a piece.
- 11.11.3 Direct Material, Supplies, Installed Equipment. Actual net direct cost of materials, supplies and equipment incorporated in or consumed by the work. If actual costs are not available, the cost shall be the lowest commercially available price including all discounts and rebates and all applicable taxes. Cost shall be based on buying the material, supplies and equipment in the largest practical quantity to receive quantity discounts.
- 11.11.4 Equipment. Actual net cost to the Contractor of owned and/or rented equipment, other than small tools, is to be determined using the following methods:
- (a) Owned equipment operating costs shall be determined in accordance with the requirements and provisions applicable to owned equipment and extra work contained in the current edition of the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction.
  - (b) Rental equipment costs shall be determined using actual invoiced rates less all discounts for bare equipment rental. Operating costs will be determined based on rates in the above-cited Colorado Department of Transportation Specifications.
  - (c) Mobilization/demobilization costs will be paid if the equipment is mobilized exclusively for work described in a Change Order. If the equipment is used on base contract work, no mobilization or demobilization cost will be paid. Mobilization/demobilization cost will be based on using the least expensive means to mobilize or demobilize. Equipment shall be obtained from the nearest available source. When the least expensive methods are used, then costs shown in the actual invoice will be the basis for pricing.
- 11.11.5 Bonds, Insurance, Permits and Taxes. Actual increases or decreases in the cost of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the work.
- 11.11.6 Subcontract Costs. Net cost of Subcontractor work at any tier, provided that the cost of the Subcontractor is determined in accordance with the above requirements. When possible, the Contractor shall obtain quotes from more than one Subcontractor.
- 11.11.7 Overhead and Profit.
- (a) Twelve percent (12 %) of the sum of Subparagraphs 11.11.1 through 11.11.5 above, to cover a Contractor's or Subcontractor's overhead and profit for work performed by that Contractor or Subcontractor.
  - (b) Three percent (3 %) of Subparagraph 11.11.6 above to cover Contractor's and Subcontractor's overhead and profit for overseeing work performed by Subcontractors at any tier.
  - (c) Neither the Contractor nor any Subcontractor, nor the Owner in the case of a credit, will attempt to apply these percentage adjustments in a way which would pyramid either the cost or credit because a Subcontractor or Subcontractors at any tier are involved.
- 11.11.8 Totals as Equitable Adjustment. The Contractor agrees that the total of the above constitutes an equitable adjustment for any and all damages resulting from a change or due to delay or disruption caused by the Owner.

### 11.12 Variation in Quantity of Unit-Priced Items

- 11.12.1 Where the quantity of a unit-priced item in this Contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 25 percent above or below the estimated quantity, an equitable adjustment in the Contract Amount may be made by Change Order. The equitable adjustment shall be based upon any increase or decrease in cost due solely to the variation above 125 percent or below 75 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completing the work, the Contractor may request in writing an extension of time in accordance with Paragraph 11.5.

## ARTICLE XII: SITE CONDITIONS

### 12.1 Differing Site Condition

- 12.1.1 The Contractor shall promptly and before such conditions are disturbed, but in no event more than ten (10) days after the conditions are first discovered, notify the Owner both verbally and with a written Contractor Change Request submitted pursuant to Subparagraphs 11.5 through 11.9 of the following: (a) subsurface or latent physical conditions at the work site differing materially from those indicated in the Contract Documents; or (b) unknown physical conditions at the work site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.
- 12.1.2 The Owner shall promptly investigate the conditions and, if it finds that such conditions do materially so differ and could not have been discovered or reasonably inferred from the Contract Documents or a thorough inspection of the work site by the Contractor, and such conditions cause an increase or decrease in the Contract Time or Contract Amount, the Owner shall issue a Change Notice or Change Directive under Paragraphs 11.2 or 11.3
- 12.1.3 If the Contractor has not fully complied with the notice and submittal requirements of this Paragraph 12.1 and Paragraphs 11.5 through 11.7 (including if appropriate the provisions of Paragraph 11.9) with particular attention to not disturbing the site prior to allowing the Owner to investigate the condition, the Contractor shall be deemed to have waived its right to assert a claim for an adjustment in the Contract Time or Contract Amount arising out of such differing site conditions.

### 12.2 Site Conditions, Inspection and Investigations

- 12.2.1 By executing the Contract, the Contractor represents that it has visited the site, familiarized itself with the local conditions under which the work is to be performed, and correlated its observations with the requirements of the Contract Documents.

### 12.3 Geo-technical and Other Designer Reports, Investigations and Test

- 12.3.1 By executing the Contract, the Contractor acknowledges that certain soil reports, boring, and other geo-technical data, more particularly described or referenced in the Technical Specifications of this Contract, have been made available for inspection and review.
- 12.3.2 It is expressly understood by the Contractor that the Owner does not warranty the accuracy or reliability of said borings and other geo-technical data or of the data, information or interpretations contained in said soils reports, and is not responsible for any deduction, interpretation, or conclusion drawn therefrom by the Contractor. Said soil reports may contain interpretations of borings and geo-technical data obtained at the work site by engineering or design professionals. Such borings and geo-technical data are subject to sampling errors, and any interpretations or conclusions based on such borings and data depend to a degree on the judgment of the engineering or design professional.
- 12.3.3 The Contractor agrees that it will make no claims against the Owner if, in performing the work, it finds that the actual conditions encountered conform to those indicated by said soil reports, borings and other geo-technical data, those reasonably inferred therefrom, or those reasonably discoverable by a thorough inspection of the site by the Contractor.

## ARTICLE XIII: CLAIMS FOR ADJUSTMENTS

### 13.1 Notice of Intent to Claim

- 13.1.1 If after receiving a decision from the Owner that a Change Order or Change Directive will not be issued as requested by the Contractor, or the Contractor does not agree with the Owner's decision on an equitable change in price or time, or the Contractor disputes a decision by the Owner to assess charges against the Contractor or any other event occurs giving rise to a claim, and the Contractor intends to submit a claim thereof, the Contractor shall submit in letter form a Notice of Intent to Claim to the Owner. A Notice of Intent to Claim for change in price or time cannot be filed unless a Contractor's Change Request has first been made in accord with Subparagraphs 11.5 through 11.9.
- 13.1.2 The written Notice of Intent to Claim shall be clearly titled as such and all Notices shall be numbered sequentially. The Notice shall contain the following:
- (a) Date of the event giving rise to the claim.
  - (b) A description of the claim.
  - (c) The reasons why the Contractor believes additional compensation or time is due or charges were wrongly assessed.
  - (d) An estimate of any additional costs associated with the claim.
  - (e) Contractor's plan for mitigating costs or delays associated with the claim.
- 13.1.3 The Notice of Intent to Claim described above shall be given within ten (10) days after (1) denial of any request for a change in the Contract Amount or Contract Time contained in a Contractor Change Request submitted pursuant to Subparagraphs 11.5 and 11.9,



(2) issuance of a Change Directive with which the Contractor disagrees, (3) receipt of written notice from the Owner that the Owner intends to assess liquidated damages or other charges against the Contractor, or (4) the occurrence of any other event or events giving rise to the claim.

### **13.2 Submittal of Claims**

13.2.1 The Contractor shall, within twenty (20) days after it submits a Notice of Intent to Claim, submit to the Owner a complete and itemized claim which includes any claimed increase in Contract Time and Contract Amount. The Contractor may request an extension of time to submit the claim, which extension may be granted by the Owner for good cause shown. The claim must be described in sufficient detail to allow the Owner to evaluate the basis of and costs associated with said claim. A claim for increase in Contract Amount shall be submitted based on actual costs whenever possible, rather than estimate or opinion, shall be supported by invoices, time cards, and other business records commonly accepted in the industry, and shall comply with the requirements of Subparagraph 11.11. The claim shall be accompanied by copies of all contract provisions or other documents relied on and a summary of the legal and factual theories supporting the claim. A claim for time extension must be accompanied by a Revised Construction Schedule reflecting the effects of the delay on the critical path and showing actions which the Contractor has taken or proposes to take to minimize the effects of the delay. The claim shall also identify any measures the County can take to minimize the claim.

The Contractor shall furnish upon request all additional information and data which the Owner determines would be needed to aid in resolving the claim through negotiation or which is required to complete an evaluation of the claim. The Contractor shall give the Owner access to its books, correspondence, records, and other materials relating to the work described in the claim, shall require its Subcontractors and suppliers to provide the Owner with such access, and shall make its personnel and that of its subcontractors and suppliers available to discuss and answer cost, schedule and other questions related to its claim. Clear copies of all necessary supporting records shall be provided to the Owner at no cost. Failure to submit requested information may be the basis for denial of a claim.

13.2.2 Failure to submit the claim in writing within the time and in the manner described above, or within such extended time granted by the Owner shall constitute a waiver by the Contractor of any right equitable or otherwise to make such claim.

13.2.3 The Contractor shall submit with its claim a notarized certificate that:

- (a) the claim is made in good faith;
- (b) all supporting data are accurate and complete to the best of the Contractor's knowledge and belief;
- (c) the amount requested is not overstated or inflated and fairly and accurately reflects that contract adjustment for which the Contractor believes the Owner is liable; and
- (d) The prices stated for material and equipment are the lowest reasonably available to the Contractor and include all available discounts.

If the Contractor is an individual, the certification shall be executed by that individual. If the Contractor is not an individual, the certification shall be executed by (1) a senior company official in charge of the work performed under this Contract; or (2) an officer or general partner of the Contractor.

13.2.4 The Owner or his designee shall investigate, review and evaluate the claim and make a determination. Such determination shall normally be made in writing within thirty (30) days of receipt of a completed and fully-documented claim; however, if special circumstances exist or the claim is unusually complex, the Contractor will be notified of a longer period.

13.2.5 The Contractor shall proceed diligently with performance of this Contract pending final resolution of any claim made under this section, and shall comply with any decision of the Owner pending final resolution of the claim. Failure to proceed with the work shall be grounds for suspension or termination of the Contract.

13.2.6 If the Contractor agrees with any determination or resolution by the Owner requiring a change in Contract Time or Amount, it shall be processed as a Change Order.

13.2.7 Failure to meet any of the requirements of this Article XIII in a timely and complete manner shall constitute a waiver by the Contractor of any right to adjustments of Contract Time or Amount either by administrative review or by any other action at law or equity.

## **ARTICLE XIV: UNCOVERING AND CORRECTION OF WORK**

### **14.1 Uncovering of Work**

14.1.1 If any portion of the work should be covered contrary to the request of the Owner or the requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner, be uncovered for its observation and replaced at the Contractor's expense.

14.1.2 If any other portion of the work has been covered which the Owner has not specifically requested to observe prior to being covered, the Owner may request to see such work and it shall be uncovered by the Contractor. If such work shall be found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs

unless it is found that this condition was caused by the Owner or a separate contractor (as described in Article IV), in which event the Owner shall be responsible for the payment of such costs.

#### **14.2 Correction of Work**

- 14.2.1 The Contractor shall promptly correct all work rejected by the Owner as defective or as failing to conform to the Contract Documents, whether such defect or failure is observed before or after substantial completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected work, including compensation for additional services made necessary by such defect or failure.
- 14.2.2 If, within one year after the date of substantial completion of the work or designated portion thereof, or within one year after acceptance by the Owner of designated equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so (unless the Owner has previously given the Contractor a written acceptance of such specific condition). This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.
- 14.2.3 The Contractor shall remove from the site all portions of the work which are defective or non-conforming and which have not been corrected under Paragraphs 3.5.3, 14.2.1 and 14.2.2, unless such obligation to remove is waived in writing by the Owner.
- 14.2.4 If the Contractor fails to correct defective or nonconforming work as provided in Paragraphs 3.5.3, 14.2.1 and 14.2.2, the Owner may correct it in accordance with Paragraph 14.2.5.
- 14.2.5 If the Contractor does not proceed with the correction of such defective or nonconforming work within a reasonable time as specified by written notice from the Owner, the Owner may correct or remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may, upon ten (10) days written notice, sell such work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for any additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall promptly pay the difference to the Owner.
- 14.2.6 The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction or removal.
- 14.2.7 Nothing contained in this Paragraph 14.2 shall be construed as establishing a period of limitation with respect to any other obligation of Contractor under the Contract Documents, including without limitation Paragraph 3.5 hereof. The establishment of the time period of one (1) year after the date of substantial completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the work, and shall in no way be deemed to limit or modify the time within which Contractor's obligation to comply with the Contract Documents may be sought to be enforced. Further, this will not modify the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations under the Contract Documents other than specifically to correct the work.

#### **14.3 Acceptance of Defective or Non-Conforming Work**

- 14.3.1 If the Owner agrees to accept defective or non-conforming work, it may do so instead of requiring its removal and correction. In the event of such acceptance by Owner, a Change Order will be issued to reflect an adjustment in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has then been made.

### **ARTICLE XV: OWNER'S RIGHT TO TERMINATE THE CONTRACT**

#### **15.1 Termination of Contract for Cause**

- 15.1.1 The Owner may terminate the Contract for cause based on reasons due to actions or inactions of the Contractor. Such reasons for termination are:
- (a) If the work to be performed under the Contract is assigned by the Contractor without written permission of Owner;
  - (b) If the Contractor shall file a voluntary petition in bankruptcy;
  - (c) If a general assignment of the Contractor's assets are to be made for the benefit of his creditors;
  - (d) If a receiver should be appointed for the Contractor or any of its property;
  - (e) If at any time the Owner shall conclude that the performance of the work under the Contract is being unnecessarily delayed or that the Contractor is violating any of the conditions, provisions, or covenants of the Contract, drawings, or specifications, or that the Contractor is executing the same in bad faith or otherwise not in accordance with terms of the Contract;
  - (f) If the work or any part thereof is not fully completed within the time or times named for its completion or within the time to which such completion date or dates may be extended;
  - (g) If the Contractor abandons the work;
  - (h) If the Contractor fails to maintain the required bonds and/or insurance;
  - (i) If other just causes exist.

- 15.1.2 The Owner will serve written notice on the Contractor of the Owner's intent to terminate for cause and will give the Contractor ten (10) days from the date it receives the Notice to cure the default or provide to the Owner, in writing, a detailed plan of how it will remove the causes for termination, except that, if the contract completion date is less than ten (10) days away, the Notice may specify less than ten (10) days. If the Contractor does not submit such plan within the time established or if, in the judgment of the Owner, such plan will not ensure the satisfactory performance of the work, the Owner may declare the Contract terminated on the effective date specified in the Notice or any other date thereafter.
- 15.1.3 In the event of such termination, the Owner shall notify the Contractor to discontinue all work under the Contract and the Contractor shall immediately respect such notice and stop work and cease to have any right to the possession of the work site and shall forfeit its Contract as of the effective date of termination specified.
- 15.1.4.1 Upon such termination, the Owner may take possession of all materials, equipment, tools and plant as may be on the site of the work and required as necessary for completion of the work and take over the work and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Contractor. The Contractor and its surety shall be liable to the Owner for any and all costs and expenses in excess of the Contract Amount or prices sustained by the Owner by reason of such prosecution and completion, which costs shall include administrative costs and attorney's fees.

## 15.2 Termination of Contract for Convenience of Owner

- 15.2.1 The performance of work under this Contract may be terminated by the Owner in whole or in part whenever for any reason, in its sole discretion, Owner shall determine that such termination is in the best interest of the Owner or whenever the Owner is prohibited from completing the work because of conditions beyond the control of either the Owner or the Contractor. Such termination shall be effected by giving not less than three (3) days written notice to the Contractor specifying the extent to which performance of work under this Contract is terminated and the date upon which such termination becomes effective.
- 15.2.2 Upon receipt of notice of such termination, the Contractor shall:
- (a) Stop work as specified in the notice;
  - (b) Terminate all orders and subcontracts except as necessary to complete work which is not terminated;
  - (c) If directed by the Owner, assign all right, title and interest in subcontracts and materials in progress, in which case the Owner will have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such subcontracts;
  - (d) Settle outstanding liabilities and claims with the approval of the Owner or his designated representative;
  - (e) Complete performance of such part of the work as has not been terminated; and
  - (f) Take such other actions as may be necessary, or as may be directed by the Owner, for the protection and preservation of the property related to the Contract.
- 15.2.3 Except as provided above, any inventory resulting from the termination of this Contract may, with written approval of the Owner, be sold or acquired by the Contractor under the conditions prescribed by and at prices approved by the Owner.
- 15.2.4 Upon receipt of Notice of such termination, the Contractor shall submit to the Owner a request for payment of its termination costs, in the form and with certification prescribed by the Owner. Such request shall be submitted promptly but in no event later than six (6) months from the effective date of termination, unless extended in writing by the Owner upon the written request of the Contractor within such six (6) month period. However, if the Owner determines that the facts justify it, a request may be received and acted upon after six (6) months.
- 15.2.5 The Contractor shall be entitled to receive reimbursement for the reasonable cost of the work and a proportion of the bid profit as of the date of termination, including, a release of retainage. The Owner will additionally reimburse the Contractor for such other reasonable costs resulting from said termination such as restocking charges and protection of the work. The reimbursement of profit shall be calculated by dividing the amount of the work paid for prior to termination by the total contract amount and multiplying that percentage by the amount of profit in the original bid and approved change orders. The Contractor shall not be entitled to loss of other anticipated profits, profits lost on other work not obtained or any other consequential damages, or any reimbursement for any costs incurred due to the Contractor's fault or failure to mitigate, as a result of any such termination for convenience, and in no event shall the total sums paid the Contractor exceed the Contract Amount.
- 15.2.6 In arriving at the amount due the Contractor under this Paragraph 15.2, there shall be deducted:
- (a) All unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this Contract;
  - (b) Any claim which the Owner may have against the Contractor in connection with this Contract;
  - (c) The agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired or sold by the Contractor or sold pursuant to the provisions of Paragraph 15.2.3 and not otherwise recovered by or credited to the Owner; and
  - (d) Any outstanding Subcontractor claims.
- 15.2.7 The Owner may, from time to time, under such terms and conditions as it may prescribe, authorize partial payments and payments against costs incurred by the Contractor for the terminated portion of the construction, if it is estimated that the total of such payments will not exceed the amount to which the Contractor will be entitled.
- 15.2.8 A settlement for the work performed shall not relieve the Contractor or its surety from responsibility for defective work and/or materials on the completed portion of the work nor for labor and materials as guaranteed by the Payment and Performance Bonds.

- 15.2.9 The Owner shall be given full access to all books, correspondence, records and other materials of the Contractor relative to this Contract in order to determine the amounts to be paid on account of the termination of the Contract. The Contractor shall, as requested by the Owner, furnish clear copies of any such materials.

#### **ARTICLE XVI: ENVIRONMENTAL HAZARDS**

Contractor shall not permit the site to be used in any manner, or permit any operations to be conducted thereon, which might result in the site becoming contaminated by any hazardous substance or environmental pollutant in violation of any federal, state, or local environmental statutes, ordinances or regulations, including without limitation the Comprehensive Environmental Response and Compensation and Liability Act.

#### **ARTICLE XVII: PERFORMANCE AND PAYMENT BONDS**

##### **17.1 Surety Bonds**

Payment bonds and performance bonds must be issued by a corporate surety authorized to do business in the State of Colorado, on the U.S. Treasury Department's list of approved sureties, and approved by the Owner.

##### **17.2 Performance Bond**

The Contractor must procure and pay for a performance bond which, when executed by the Contractor and surety, shall be a guarantee for the faithful performance and completion of the work in strict accordance with the terms of the Contract. The performance bond shall also be a guarantee for the repair or replacement of all work found to be defective or otherwise unacceptable during the Contract Time and through the warranty period. This bond shall be in the amount of one hundred (100%) percent of the dollar value of the Contract.

##### **17.3 Payment Bond**

The Contractor must procure and pay for a payment bond which, when executed by the Contractor and surety, shall be a guarantee that all those performing labor or furnishing materials, supplies, tools, and equipment for the performance of work under the Contract shall be paid. This bond shall be in the amount of one hundred percent (100%) of the dollar value of the Contract, and it shall meet the requirements of Title 38, Article 26, Colorado Revised Statutes, as amended.

#### **ARTICLE XVIII: DISPUTES AND LITIGATION**

- 18.1 If a dispute arises out of or relating to this Contract or its breach, the parties shall endeavor to settle the dispute first through direct discussions. The parties may, upon mutual agreement, voluntarily conduct mediation of the dispute through Colorado's 4<sup>th</sup> Judicial District Office of Dispute Resolution or other mutually agreeable mediator.
- 18.2 In the event the parties choose to mediate a dispute, each party shall bear all of its own costs, which cost shall not be recoverable as part of a change order or in any subsequent Litigation.
- 18.3 Any litigation whatsoever regarding this Contract, including but not limited to claims and disputes concerning payment or breach or default of this Contract, shall be tried by the District Court in and for the County of El Paso, State of Colorado.
- 18.4 In the event any dispute or litigation arises under this Contract and during the time such dispute or litigation is being resolved, the Contractor hereby agrees that it shall continue performance under this Contract in accordance with the terms and conditions hereof since time is of the essence. The failure of the Contractor to continue expeditious performance due to a dispute or litigation arising under this Contract, at the option of the Owner, shall be construed as a material breach of this Contract justifying termination or such other action as the Owner deems appropriate.

#### **ARTICLE XIX: REQUEST FOR INFORMATION**

- 19.1 The Contractor shall submit any requests for information or clarification of drawings and specifications to the Owner. When the Owner responds to such requests for explanation or clarification, it will issue a response which can consist of a written explanation with or without drawings. Responses to requests for information shall neither authorize nor constitute time extensions or changes in the Contract Amount. Should the Contractor believe that the response to requests for information requires a change in Contract Time and/or Contract Amount, it must submit a Contractor Change Request to the Owner.
- 19.2 The Contractor shall attempt to answer requests for information from its Subcontractors and suppliers. Such requests may be forwarded by the Contractor to the Owner if the Contractor is unable to answer them. If Subcontractor requests are submitted to the Owner, the Contractor shall identify any information or statements in the request which it believes are incorrect and the reasons why.

#### **ARTICLE XX: SUBSTITUTION OF MATERIALS AND EQUIPMENT**

- 20.1 Within thirty (30) days of the Notice to Proceed, the Contractor may ask for substitution of specified material or equipment with equal or equivalent items only under the following circumstances:

- (a) The Contractor provides evidence to the Owner which, in the Owner's opinion, establishes that an item of specified material is not available; or
- (b) The Contractor provides evidence to the Owner which, in the Owner's sole opinion, establishes that the specified item will have an unreasonable delivery time due to no fault of the Contractor; or
- (c) The Technical Specifications allow the use of equal or equivalent items or material.

20.2 All requests shall be in writing as part of a submittal. The request shall describe all features of the requested substitution including any tie in with other elements of the construction including utilities and controls along with the substitute materials or equipment's size and capacity. The request shall list all differences from the product described in the Technical Specifications, include the price of the specified item and the requested substitution, and describe any advantages or disadvantages of the proposed substitution. If the equal or equivalent material or equipment costs less than that specified, the Contractor shall so state in its submittal and if the Owner accepts the proposed substitution, it may issue a change order to reduce the Contract Amount by the amount of the direct cost savings to the Contractor. If the equal or equivalent material or equipment is accepted for the reasons described in (a) or (b) above, the Owner may issue a change order to adjust the Contract Amount. If there are any additional and/or increased costs charged to the Owner by the Contractor due to a substitution of materials, the Contractor shall bear the additional and/or increased costs.

#### **ARTICLE XXI: ACCOUNTING OF COSTS AND AUDIT**

- 21.1 Contractor shall keep and maintain in the metropolitan Colorado Springs area, and shall cause its Subcontractors and outside consultants to keep and maintain books, records, accounts and other documents (hereinafter collectively referred to as "records") that are sufficient to accurately and completely reflect all costs incurred pursuant to this Contract, including costs which may be the basis of a Contractor Change Request or a claim by the Contractor. Such records shall include the project estimate, receipts, memoranda, vouchers, and accounts of every kind and nature pertaining to the performance of the work, including, but not limited to, job cost ledgers, invoices from and payments to subcontractors and material men, and records or home and field office overhead, as well as complete summaries and reports setting forth all reimbursable man-hours expended and payroll records. All such records shall be kept for three (3) years from the date of Final Completion.
- 21.2 The Owner and any firm of auditors retained by the Owner shall have access, upon reasonable advance notice in writing, to all such records maintained by Contractor and its Subcontractors and consultants, for the purpose of auditing and verifying Contractor's costs or any other costs claimed to be due and payable hereunder. The Owner shall have the right to reproduce any such records, and Contractor and its Subcontractors and consultants shall keep and preserve all such records for a period of at least three (3) years from and after final acceptance or termination of the Contract.
- 21.3 The Contractor shall include in all subcontracts, consulting agreements and any other agreements entered into by Contractor pursuant to the performance of the work a provision to the effect that its Subcontractors, consultants or other parties shall observe and comply with all the obligations of Contractor under this provision in the same manner and to the same extent as Contractor.

#### **ARTICLE XXII: MISCELLANEOUS PROVISIONS**

##### **22.1 Parties to the Contract**

Although other entities may be involved in the work performed under the Contract and other parties may be affected by that work, it shall be understood that there are only two parties to the Contract; the Owner and the Contractor.

##### **22.2 No Waiver of Rights**

No assent by the Owner, expressed or implied, to any breach of any one or more of the covenants, provisions, and agreements of the Contract Documents shall be deemed or taken to be a waiver of any succeeding breach.

##### **22.3 Third-Party Beneficiary**

It is specifically agreed between the parties executing this Contract that is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof a third-party beneficiary hereunder or, except as otherwise expressly provided for herein, to authorize anyone not a party to this Contract to maintain a suit for personal injuries, property damage, or any other damages under this Contract. The duties, obligations, and responsibilities of the parties to this Contract, with respect to third parties, shall remain as imposed by law.

##### **22.4 Contract Made in Colorado**

The Contract between the Contractor and the Owner shall be deemed to have been made in the State of Colorado and shall be governed, interpreted, and construed in accordance with the laws of the State of Colorado.

##### **22.5 Successors and Assigns**

The Owner and the Contractor each binds itself, its partners, successors, assigns and legal representatives to all covenants, agreements and obligations contained in the Contract Documents. Neither Owner nor Contractor shall assign the Contract or any interest therein, or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to it under any of the Contract Documents without the previous written consent of the Owner.

## **22.6 Tests**

- 22.6.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the work to be inspected, tested or approved, the Contractor shall give the Owner timely notice of its readiness so that the Owner may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals.
- 22.6.2 If the Owner determines that any work requires special inspection, testing or approval which Subparagraph 22.6.1 does not include, it will instruct the Contractor to order such special inspection, testing or approval and the Contractor shall give notice as provided in Subparagraph 22.6.1. If such special inspection or testing reveals a failure of the work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs for the correction thereof or attributable thereto, including compensation for any additional services made necessary by such failure. Otherwise, the Owner shall bear such costs and an appropriate change order shall be issued.
- 22.6.3 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered to the Owner.
- 22.6.4 If the Owner is to observe the inspections, tests or approvals required by the Contract Documents, it will do so promptly and, where practicable, at the source of supply.

## **22.7 Attorney's Fees**

In the event litigation is commenced to enforce or interpret all or any portion of this Contract, or if litigation is commenced for damages or for any other relief hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees incurred in connection with such litigation.

## **22.8 Contract Provisions**

If any provision of this Contract is found to be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality or enforceability of any other provision of this Contract, and there shall be substituted for the affected provision a valid and enforceable provision as similar as possible to the affected provision.

## **22.9 No Discrimination on Project**

The Contractor shall not discriminate in its employment practices against any person by reason of race, religion, color, sex or national origin and agrees to comply with the provisions of said laws and all laws and orders relating to the employment of the handicapped, the employment of veterans and the use of minority business enterprises to the extent any such laws and orders are applicable in the performance of work or furnishing of services, materials or supplies hereunder. For this purpose, the provisions of such laws and orders and pertinent regulations issued thereunder, as now in force or hereafter amended, shall be deemed an integral part of this Contract to the same extent as if written at length herein.

## **22.10 Public Relations**

- 22.10.1 The Contractor and its subcontractors shall not include any reference to this Contract or to work it performs thereunder in any of its advertising or public relations materials without first obtaining the written approval of the Owner. All information published shall be factual, and shall in no way imply that the Owner endorses the Contractor or its services or product. All signage on the site shall comply with state and local sign codes, ordinances and regulations and shall be subject to the approval of the Owner.
- 22.10.2 The Owner shall have the right to photograph, videotape, film or in any other manner record the progress of the work at any time and to use such materials for any purpose.

## **22.11 Compliance with Laws**

At all times during the performance of this Contract, contractor shall strictly observe and conform to all applicable federal, state and local laws, rules, regulations and orders that have been or may hereafter be established.

## **22.12 Colorado Labor Preference**

The provisions of Sections 8-17-101 and 102, C.R.S., may be applicable to this Contract. If this Contract includes federal funds, this paragraph does not apply. If the work to be performed under this construction contract falls within the definition of 'public works project', then the Colorado Labor Preference applies. Colorado labor must be employed to perform the work to the extent of not less than eighty percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed on the Project. "Colorado labor" means any person who is a resident of the State of Colorado, at the time of the public works project, without discrimination as to race, color, creed, sex, age or religion except when sex or age is a bona fide occupational qualification. A resident of the state of Colorado is a person who can provide a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty days.