

# **CONSTRUCTION CONTRACT**

## **(INCLUDES WARRANTY LANGUAGE)**

THIS CONSTRUCTION CONTRACT (hereinafter referred to as “Contract” or “Agreement”) is made by and between the **CITY OF MONTROSE**, a Colorado home rule municipal corporation, whose address is 433 S. First Street, P.O. Box 790, Montrose, Colorado 81402 (“OWNER” or “City”) and **Name**, (“CONTRACTOR”), whose address is **Address** for the Construction Project (“Project”) known as:

**NAME**

The OWNER's Representative (“OR”) is: Scott Murphy, City Engineer

NOW THEREFORE, in consideration of the mutual promises made herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions set forth herein, the OWNER and CONTRACTOR agree as follows:

### **ARTICLE 1**

#### **THE WORK:**

The CONTRACTOR shall perform all the Work required by the Contract Documents and attached exhibits.

### **ARTICLE 2**

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

The Work to be performed under this Contract shall be commenced upon written notice from the OWNER to proceed, and pursued with due diligence thereafter until completion, which shall be **Date**.

### **ARTICLE 3**

#### **CONTRACT AMOUNT AND BASIS:**

The OWNER shall pay the CONTRACTOR an amount not to exceed **cost (\$dollars)** as set forth in **Exhibit A** for the satisfactory performance of the Work, subject to additions and deductions by Change Order as provided in the General Conditions.

### **ARTICLE 4**

#### **PROGRESS PAYMENTS:**

Based upon Applications for Payment submitted to the OR by the CONTRACTOR and Certificates for Payment issued by the OR the OWNER shall make progress payments to the CONTRACTOR as follows:

Five percent (5%) of each amount certified for payment shall be retained by the OWNER until

final payment. The Parties may agree to a different arrangement for specific projects, so long as such arrangements are made in writing, and agreed to by all Parties. In the absence of a specific written agreement setting forth another amount, the aforementioned ten percent (5%) shall be the default amount to be retained.

**ARTICLE 5**

**FINAL PAYMENT:**

After completion of the Work, provided the Contract is then fully performed, subject to the provisions of Article 16 of the General Conditions, the OWNER shall publish a Notice of Final Settlement twice at least 10 days prior to the date of final settlement. The OWNER shall withhold from final payments any amounts as required pursuant to C.R.S. 38-26-107.

**ARTICLE 6**

**ENUMERATION OF CONTRACT DOCUMENTS:**

The Contract Documents are as noted in Paragraph 7.1 of the General Conditions and are indicated as follows:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Agreement including General Conditions | <input type="checkbox"/> Modifications - if any   |
| <input type="checkbox"/> Special Conditions                                | <input type="checkbox"/> Written Interpretation of OR - if any                                    |
| <input checked="" type="checkbox"/> City of Montrose Specifications        | <input checked="" type="checkbox"/> Performance Bond or <input type="checkbox"/> Letter of Credit |
| <input checked="" type="checkbox"/> Drawings                               | <input checked="" type="checkbox"/> Payment Bond or <input type="checkbox"/> Letter of Credit     |
| <input checked="" type="checkbox"/> Bid Documents and Addenda              | <input type="checkbox"/> Notice to Proceed  |
| <input type="checkbox"/> Change Orders - if any                            | <input type="checkbox"/> Request for Bids   |
| <input checked="" type="checkbox"/> Contractor's Insurance Documentation   | <input checked="" type="checkbox"/> Exhibits A,B,C,__,__,__                                       |

An index of Exhibits is as follows:

- Exhibit A – Bid Documents, Addenda, and Completed Bid Form
- Exhibit B – Contractor's Insurance Documentation
- Exhibit C – Contractor's Bonding Documentation

**ARTICLE 7**

**CONTRACT DOCUMENTS:**

7.1 The Contract Documents consist of this Agreement (which includes the General Conditions), Special Conditions, the Drawings, the Specifications, all Addenda issued prior to the execution of this Agreement, all modifications, any performance or payment bonds, all Change Orders, all Exhibits, and all written interpretations of the Contract Documents issued by the OR. These form the Contract and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, materials,

equipment and other items as provided in Paragraph 10.2 necessary for the proper execution and completion of the Work and the terms and conditions of payment therefor, and also to include all Work which may be reasonably inferable from the Contract Documents as being necessary to produce the intended results.

7.2 The Contract Documents shall be signed in not less than duplicate by the OWNER and the CONTRACTOR. If either the OWNER or the CONTRACTOR do not sign the Drawings, Specifications, or any of the other Contract Documents, the OR shall identify them. By executing the Contract, the CONTRACTOR represents that he has visited the site and familiarized himself with the local conditions under which the Work is to be performed.

7.3 The term Work as used in the Contract Documents includes all labor necessary to produce the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in such construction.

## **ARTICLE 8**

### **OWNER'S REPRESENTATIVE (OR)**

8.1 The OR will provide general administration of the Contract and will be the OWNER's representative during construction and until issuance of the final Certificate for Payment.

8.2 The OR shall at all times have access to the Work wherever it is in preparation and progress.

8.3 The OR will make periodic visits to the site to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of his on-site observations, he 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. The OR will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The OR will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and he will not be responsible for the CONTRACTOR's failure to carry out the Work in accordance with the Contract Documents.

8.4 Based on such observations and the CONTRACTOR's Applications for Payment, the OR will determine the amounts owing to the CONTRACTOR and will issue Certificates for Payment in accordance with Article 16.

8.5 The OR will be, in the first instance, the interpreter of the requirements of the Contract Documents. He will make decisions on all claims and disputes between the OWNER and the CONTRACTOR.

8.6 The OR will have authority to reject Work which does not conform to the Contract Documents.

**ARTICLE 9**

**OWNER:**

9.1 The OWNER shall furnish all surveys as specified in bid documents.

9.2 The OWNER shall secure any required permanent easements or real property necessary for the project and advise CONTRACTOR of the boundaries of OWNER's easements or property.

9.3 The OWNER shall issue all instructions to the CONTRACTOR through the OR.

**ARTICLE 10**

**CONTRACTOR:**

10.1 The CONTRACTOR shall supervise and direct the Work, using his best skill and attention. The CONTRACTOR shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

10.2 Unless otherwise specifically noted, the CONTRACTOR shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.

10.3 The CONTRACTOR shall at all times enforce strict discipline and good order among his employees, and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to CONTRACTOR.

10.4 The CONTRACTOR warrants to the OWNER and the OR that all materials and equipment incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards may be considered defective. Any warranty associated with the Work shall be in compliance with 23 CFR 635.413. In the event of a conflict between 23 CFR 635.413 and warranty-related provisions of this Contract, 23 CFR 635.413 shall control.

10.5 The CONTRACTOR shall pay all sales, consumer, use and other similar taxes required by

law and shall secure all permits, and licenses necessary for the execution of the Work at CONTRACTOR's expense except as provided in Article 24. The OWNER is exempt from state and local sales and use taxes. CONTRACTOR shall take steps to obtain such exemption from the Colorado Department of Revenue pursuant to C.R.S. 39-26-114(1)(a) XIX and 114(d). The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work, and shall notify the OR if the Drawings and Specifications are at variance therewith.

- 10.6 The CONTRACTOR shall be responsible for the acts and omissions of all his employees and all SUBCONTRACTORS, their agents and employees and all other persons performing any of the Work under a Contract with the CONTRACTOR.
- 10.7 The CONTRACTOR shall review, stamp with his approval and submit all samples and shop drawings as directed for approval of the OR for conformance with the design concept and with the information given in the Contract Documents. The Work shall be in accordance with approved samples and shop drawings.
- 10.8 The CONTRACTOR at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as his tools, construction equipment, machinery and surplus materials, and shall clean all glass surfaces and shall leave the Work "broom clean" or its equivalent, except as otherwise specified.
- 10.9 The CONTRACTOR shall indemnify and hold harmless the OWNER and the OR and their officers, agents and employees from and against all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to damage to or destruction of tangible property including the loss of use resulting therefrom, and (2) is caused in whole or in part by any act or omission of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. In any and all claims against the OWNER or the OR, or any of their officers, agents or employees by any employee of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose actions any of them may be liable, the indemnification obligation under this Paragraph 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 or any SUBCONTRACTOR under worker's compensation acts, disability benefit acts or other employee benefit acts. The obligations of the CONTRACTOR under this Paragraph shall not extend to the liability of the OR, his agents or employees 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 OR, his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

**ARTICLE 11  
SUBCONTRACTS:**

- 11.1 A SUBCONTRACTOR is a person who has a Contract with the CONTRACTOR to perform any of the Work at the site.
- 11.2 Unless otherwise specified in the Contract Documents or in the Instructions to Bidders, the CONTRACTOR, as soon as practicable after the award of the Contract, shall furnish to the OR in writing a list of the names of SUBCONTRACTORS proposed for the principal portions of the Work. The CONTRACTOR shall not employ any SUBCONTRACTOR to whom the OR or the OWNER may have a reasonable objection. The CONTRACTOR shall not be required to employ any SUBCONTRACTOR to whom he has a reasonable objection. Contracts between the CONTRACTOR and the SUBCONTRACTOR shall be in accordance with the terms of this Agreement and shall include the General Conditions of this Agreement insofar as applicable.

**ARTICLE 12  
SEPARATE CONTRACTS AND OWNER WORK:**

- 12.1 The OWNER reserves the right to award other Contracts in connection with other portions of the Project or other work on the site or to perform such work itself.
- 12.2 The CONTRACTOR shall afford other CONTRACTORS or OWNER reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate his Work with theirs.
- 12.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefor.

**ARTICLE 13  
ROYALTIES AND PATENTS:**

The CONTRACTOR shall pay all royalties and license fees. The CONTRACTOR shall defend all suits or claims for infringement of any patent rights and shall save the OWNER harmless from loss on account thereof.

**ARTICLE 14**

**PERFORMANCE AND PAYMENT BONDS:**

- 14.1 A Performance and a Payment Bond shall be submitted by CONTRACTOR for all Contracts in excess of fifty thousand U.S. Dollars (\$50,000.00) or if indicated in Article 6. When indicated in Article 6, a clean irrevocable letter of credit payable to the OWNER from a bank acceptable to the OWNER may be substituted for the bonds.
- 14.2 Each bond shall be in the amount of the Contract sum and shall either be in the form supplied by OWNER or shall be in such other form as approved by OWNER. Each bond shall comply with the requirements of C.R.S. 38-26-105 and 106.
- 14.3 Regardless of whether a bond or letter of credit is used by the CONTRACTOR and accepted by the OWNER, such bond or letter of credit shall not expire prior to two (2) years following final settlement.

**ARTICLE 15**

**TIME:**

- 15.1 All time limits stated in the Contract Documents are of the essence to the Contract.
- 15.2 If the CONTRACTOR is delayed at any time in the progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in transportation, unavoidable casualties, causes beyond the CONTRACTOR's control, or by any cause which the OR may determine justifies the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the OR may determine.

**ARTICLE 16**

**PAYMENTS:**

- 16.1 Payments shall be made as provided in Article 4 of this Agreement.
- 16.2 Payments may be withheld on account of (1) defective Work not remedied, (2) claims asserted or evidence which indicates probable assertion of claims, (3) failure of the CONTRACTOR to make payments properly to SUBCONTRACTORS or for labor, materials, or equipment, (4) damage to another CONTRACTOR or OWNER, or (5) unsatisfactory prosecution of the Work by the CONTRACTOR.
- 16.3 Final payment shall not be due until (1) the CONTRACTOR has delivered to the OWNER cash or an irrevocable letter of credit satisfactory to the OWNER indemnifying OWNER against any claim which has been asserted by anyone for labor, materials, equipment or

otherwise arising out of the Contract or on account of any claim which either OWNER or CONTRACTOR believes may be asserted, (2) the OWNER has inspected and approved the Work as complying with the Contract, (3) written consent of surety, if any is given, and (4) any manufacturers or suppliers warranties and equipment literature, and any as built plans required are delivered to OWNER.

- 16.4 The making of final payment shall constitute a waiver of all claims by the OWNER except those arising from (1) unsettled claims, (2) faulty or defective Work appearing after Substantial Completion, (3) failure of the Work to comply with the requirements of the Contract Documents, or (4) terms of any special guarantees required by the Contract Documents. The acceptance of final payment shall constitute a waiver of all claims by the CONTRACTOR except those previously made in writing and still unsettled.

## **ARTICLE 17**

### **PROTECTION OF PERSONS AND PROPERTY AND RISK OF LOSS:**

The CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the Work and other persons who may be affected thereby, (2) all the Work and all materials and equipment to be incorporated therein, and (3) other property at the site or elsewhere. CONTRACTOR shall bear all risk of loss to the work, or materials or equipment for the work due to fire, theft, vandalism, or other casualty or cause, until the work is fully completed and accepted by the OWNER. CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. All damage or loss to any property 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, shall be remedied by the CONTRACTOR.

## **ARTICLE 18**

### **INDEMNIFICATION AND INSURANCE:**

- 18.1: Indemnification:

The CONTRACTOR agrees to indemnify and hold harmless OWNER, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind



whatsoever, which arise out of or are in any manner connected with this Contract, if 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, professional error, mistake, negligence, or other fault of the CONTRACTOR, any SUBCONTRACTOR of the CONTRACTOR, or any officer, employee, representative, or agent of the CONTRACTOR or of any SUBCONTRACTOR of the CONTRACTOR, or which arise out of any worker's compensation claim of any employee of the CONTRACTOR or of any employee of any SUBCONTRACTOR of the CONTRACTOR. The CONTRACTOR agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the CONTRACTOR, or at the option of OWNER, agrees to pay OWNER or reimburse OWNER for the defense costs incurred by OWNER in connection with, any such liability, claims, or demands. The CONTRACTOR also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent. The obligation of this Section 18.1 shall not extend to any injury, loss, or damage, which is caused solely by the act, omission, or other fault of the OWNER, its officers, or its employees.

#### 18.2 Insurance:

The CONTRACTOR agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the CONTRACTOR pursuant to Section 18.1. Such insurance shall be in addition to any other insurance requirements imposed by this Contract or by law. The CONTRACTOR shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section 18.1 by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

18.2.1 CONTRACTOR shall procure and maintain, and shall cause any SUBCONTRACTOR of the CONTRACTOR to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to OWNER. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the CONTRACTOR pursuant to Section 18.1. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

18.2.1(A) Worker's Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this contract, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - each employee. Evidence of qualified self-insured status may be substituted for the Worker's Compensation requirements of

this paragraph.

- 18.2.1(B) Commercial General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent CONTRACTORS, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.
- 18.2.1(C) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of CONTRACTOR's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the CONTRACTOR has no owned automobiles, the requirements of this Paragraph (3) shall be met by each employee of the CONTRACTOR providing services to the OWNER under this contract.
- 18.2.2 The policy required by paragraphs 18.2.1(B) and (C) above shall be endorsed to include OWNER and OWNER's officers and employees as additional insureds. Every policy required above shall be primary insurance and any insurance carried by OWNER, its officers, or its employees, or carried by or provided through any insurance pool of OWNER, shall be excess and not contributory insurance to that provided by CONTRACTOR. No additional insured endorsement to any policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The CONTRACTOR shall be solely responsible for any deductible losses under any policy required above.
- 18.2.3 The certificate of insurance provided by OWNER shall be completed by the CONTRACTOR's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by OWNER prior to commencement of the Contract. No other form of certificate shall be used. The certificate shall identify this Contract and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to OWNER. The completed certificate of insurance shall be sent to OWNER.
- 18.2.4 Failure on the part of the CONTRACTOR to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of this Contract upon which OWNER may immediately terminate this Contract, or at its discretion OWNER may

procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by OWNER shall be repaid by CONTRACTOR to OWNER upon demand, or OWNER may offset the cost of the premiums against any monies due to CONTRACTOR from OWNER.

18.2.5 OWNER reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

18.2.6 The parties hereto understand and agree that OWNER is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, {24-10-101 et seq., 10 C.R.S.}, as from time to time amended, or otherwise available to OWNER, its officers, or its employees.

18.2.7 The Agreement shall not be executed, and no notice or authorization to proceed shall be given until the Certificates required above, are submitted and approved by the OWNER.

## **ARTICLE 19**

### **PROPERTY INSURANCE:**

19.1 Unless otherwise provided, the CONTRACTOR shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interest of the OWNER, the CONTRACTOR, SUBCONTRACTORS and Sub-SUBCONTRACTORS in the Work and shall insure against the perils of Fire, Theft, Extended Coverage, Vandalism and Malicious Mischief. Such policy shall be an "all-risk" Builders Risk policy.

19.2 Any insured loss is to be adjusted with the OWNER and made payable to the OWNER as trustee for the insureds, as their interests may appear, subject to the requirements of any mortgagee clause.

19.3 The CONTRACTOR shall file a copy of all such policies with the OWNER prior to the commencement of the Work.

19.4 The OWNER and CONTRACTOR waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance provided under this paragraph. The CONTRACTOR shall require similar waivers by SUBCONTRACTORS and Sub-SUBCONTRACTORS.

## **ARTICLE 20**

### **CHANGES IN THE WORK:**

- 20.1 The OWNER, without invalidating the Contract, may order Changes in the Work consisting of additions, deletions, or modifications with the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by written Change Order signed by the OWNER, or the OR.
- 20.2 The Contract Sum and the Contract Time may be changed only by Change Order.
- 20.3 The cost or credit to the OWNER, if any, from a Change in the Work shall be determined by unit prices if specified in the Contract documents, or by mutual agreement.

## **ARTICLE 21**

### **CORRECTION OF WORK:**

The CONTRACTOR shall correct any Work that fails to conform to the requirements of the Contract Documents where such failure to conform appears during the progress of the Work, and shall remedy any defects due to faulty materials, equipment or workmanship which appear within a period of two (2) years from the Date of Final Settlement of the Contract or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents. The provisions of this Article 21 apply to Work done by SUBCONTRACTORS as well as to Work done by direct employees of the CONTRACTOR, and are in addition to any other remedies or warranties provided by law.

## **ARTICLE 22**

### **TERMINATION BY THE CONTRACTOR:**

If the OR fails to issue a Certificate of Payment for a period of thirty days through no fault of the CONTRACTOR, or if the OWNER fails to make payment thereon for a period of thirty days, the CONTRACTOR may, upon seven days' written notice to the OWNER and the OR, terminate the Contract and recover from the OWNER payment for all Work executed and for any proven loss sustained upon any materials, equipment tools, and construction equipment and machinery, including reasonable profit and damages.

## **ARTICLE 23**

### **TERMINATION BY THE OWNER:**

If the CONTRACTOR defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the OWNER may, after seven days' written notice to the CONTRACTOR and without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the CONTRACTOR or, at his option, may terminate CONTRACTOR's work

under the Contract and take possession of the site and of all materials and may finish the Work by whatever method he may deem expedient, and if the unpaid balance of the Contract Sum exceeds the expense of finishing the Work, such excess shall be paid to the CONTRACTOR, but if such expense exceeds such unpaid balance, the CONTRACTOR shall pay the difference to the OWNER. These rights and remedies are in addition to any right to damages or other rights and remedies allowed by law.

**ARTICLE 24**  
**PERMITS:**

OWNER shall be responsible for paying any Building and Plumbing Permit fees, water and sewer tap fees, and electrical deposits. CONTRACTOR shall obtain and pay for any state electrical permits and fees. CONTRACTOR shall be responsible for ensuring that all stipulations of permits obtained by the OWNER for the project are upheld.

**ARTICLE 25**  
**MISCELLANEOUS PROVISIONS:**

25.1 This Contract is governed by the laws of the State of Colorado.

25.2 CONTRACTOR shall not assign this Contract. The provisions of the Contract are binding on the heirs, successors or assignees of the parties.

25.3 The rights and remedies available under this Contract shall be in addition to any rights and remedies allowed by law.

25.4 No failure to enforce any provision of the Contract on account of any breach thereof, shall be considered as a waiver of any right to enforce provisions of this Contract concerning any subsequent or continuing breach.

25.5 The terms of this Agreement shall remain in full force and effect following final payment.

**ARTICLE 26**  
**HAZARDOUS CONDITIONS**

26.1 For the purposes of this Article 26, "Hazardous Conditions" are any materials, wastes, substances and chemicals deemed to be hazardous by State, Federal, or local laws, rules, or regulations (hereinafter "Laws"), or the handling, storage, remediation, or disposal of which are regulated by applicable Laws.

- 26.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, CONTRACTOR is not responsible for any Hazardous Conditions encountered at the site. Upon encountering any Hazardous Conditions, CONTRACTOR will stop Work immediately in the affected area and duly notify OWNER and, if required by applicable Laws, all government or quasi-government entities with jurisdiction over the Work or site.
- 26.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, OWNER shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include OWNER retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that OWNER must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.
- 26.1.3 CONTRACTOR shall be obligated to resume Work at the affected area only after OWNER's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Work or site.
- 26.1.4 CONTRACTOR will be entitled, in accordance with applicable sections or articles of this Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent CONTRACTOR's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.
- 26.1.5 OWNER is not responsible for Hazardous Conditions introduced to the site by CONTRACTOR, Subcontractors, or anyone for whose acts they may be liable. CONTRACTOR shall indemnify, defend and hold harmless OWNER and OWNER's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the site by CONTRACTOR, Subcontractors or anyone for whose acts they may be liable.
- 26.1.6 CONTRACTOR shall release and hold harmless the OWNER and OWNER's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions present at the site.

## **ARTICLE 27**

### **ADDITIONAL PROVISIONS:**

27.1 Further Assurances. Each Party hereto agrees to cooperate in all reasonable respects necessary to consummate the transactions contemplated by this Agreement, and from time to time to do such acts and things and execute and deliver such documents and instruments as may reasonably be required in order to implement the transactions contemplated hereby. Each Party hereto agrees to cooperate in the execution of subsequent addenda, or to re-execute an amended version of this Agreement, in the event that a Party discovers: 1) a clerical error; or 2) a misinterpretation of law; or 3) an error as to form; when such error(s) obviate or hinder the consideration, performance or enforcement of this Agreement.

27.2 Upon any discovery of archaeological resources, historical resources, or paleontological resources, as those terms are defined in 17 CR 1, 1-94; (8 CCR 1504-7), *et seq.*, or any similar, like thing, CONTRACTOR shall notify the OWNER of its presence upon the site, so that OWNER may take appropriate action, or perform its due diligence in order to comply with CRS § 24-80-401, *et seq.*, as amended from time to time by the State of Colorado. Notwithstanding contrary provisions contained herein, or in any exhibit hereto, OWNER shall not be responsible for loss or damages to CONTRACTOR should any discovery of any materials listed above cause a delay in the Work.

27.3 The following provisions are required by HB 06-1343, as amended by HB 07-1073 and SB 08-139:

27.3.1 CONTRACTOR shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

27.3.2 CONTRACTOR shall not enter into a contract with a Subcontractor that fails to certify to the CONTRACTOR that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. CONTRACTOR shall, within twenty (20) days of hiring a new employee during the term of this Agreement, cause a written, notarized copy of its affirmation of said employee's status to be sent to the OWNER.

27.3.3 CONTRACTOR hereby affirms that it has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment in the United States through participation in the e-verify program, ("e-verify program" means the employment verification program authorized in 8 U.S.C. 1324a, as amended, that is administered by the United States Department of Homeland Security, or the "department program"). If the CONTRACTOR is not accepted into the e-verify program, prior to entering into this Agreement, the CONTRACTOR shall apply to participate in the e-verify program every three (3) months until the CONTRACTOR is accepted or this Agreement has been completed, whichever is earlier. CONTRACTOR is prohibited from using the e-verify program procedures to undertake preemployment screening of job applicants while this Agreement is being performed. This subparagraph "27.3.3" shall not be effective if the e-verify program is discontinued.

CONTRACTOR shall certify to OWNER if it chooses to participate in the “department program”.

27.3.4 If the CONTRACTOR obtains actual knowledge that a Subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the CONTRACTOR shall be required to: (a) notify the Subcontractor and the OWNER within three (3) days that the CONTRACTOR has actual knowledge that the Subcontractor is employing or contracting with an illegal alien; and (b) terminate the subcontract with the Subcontractor if within three (3) days of receiving the notice required pursuant to section (a) of this subparagraph, if the Subcontractor does not stop employing or contracting with the illegal alien; except that the CONTRACTOR shall not terminate the contract with the Subcontractor if during such three (3) days the Subcontractor provides information to establish that the Subcontractor has not knowingly employed or contracted with an illegal alien.

27.3.5 CONTRACTOR shall comply with any reasonable request by the applicable State agency or department made in the course of an investigation that said agency or department is undertaking pursuant to its lawful authority. If CONTRACTOR violates a provision of this Section 27.3, OWNER may terminate this Agreement for material breach. If this Agreement is so terminated, CONTRACTOR shall be liable for actual and consequential damages to OWNER. OWNER is required by State law to notify the Office of the Secretary of State if CONTRACTOR violates a provision of this Section 27.3, and OWNER terminates this Agreement for that reason.

27.4 Additional Terms: NONE.



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THIS AGREEMENT is effective this \_\_\_\_ day of \_\_\_\_\_, 2015.

CITY OF MONTROSE, COLORADO

By \_\_\_\_\_  
William E. Bell, City Manager

CONTRACTOR:

By \_\_\_\_\_  
Name, Title, Company

STATE OF COLORADO     )  
  ) SS.  
COUNTY OF MONTROSE    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by William E. Bell, City Manager for the City of Montrose

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary

(SEAL)

STATE OF COLORADO     )  
  ) SS.  
COUNTY OF MONTROSE    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by Name, Title of Company.

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary

(SEAL)



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Reviewed by the City Attorney for the City of Montrose this \_\_\_\_ day of \_\_\_\_\_, 2015.

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City Attorney

## GENERAL CONDITIONS

**Ref.**

**No.**

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The following Contract Provisions are general in scope and may refer to conditions which will not be encountered in the performance of the Work included in this Contract, and which are not applicable thereto. Any requirements, provisions or other stipulations of these General Conditions which pertain to a non-applicable condition shall be excluded from the scope of the Contract. Where conflict appears, "Special Conditions" shall take precedent over "General Conditions" unless specifically provided.

**2. DEFINITIONS AND TERMS**

When the Contract indicates that Work shall be "accepted, acceptable, approved, authorized, condemned, considered necessary, contemplated, deemed necessary, designated, determined, directed, disapproved, established, given, indicated, insufficient, interpreted, ordered, permitted, rejected, required, reserved, satisfactory, specified, sufficient, suitable, suspended, unacceptable, unsatisfactory," it shall be understood that these expressions are followed by the words "by the Owner".

Wherever the following abbreviations, terms, or pronouns are used in these Specifications, Plans, or other Contract Documents, the intent and meaning shall be interpreted as follows:

**ABBREVIATIONS -**

AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ADA	Americans With Disabilities Act
AGC	Associated General Contractors of America
AI	Asphalt Institute
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
ANSI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
ANSI	American National Standards Institute, Inc.
ARA	American Railway Association
AREA	American Railway Engineering Association
ARTBA	American Road and Transportation Builders Association

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ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
ATSSA	American Traffic Safety Services Association
AWG	American Wire Gauge
AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
CCA	Colorado Contractors Association
CDOT	Colorado Department of Transportation
CP	Colorado Procedure
CPSC	Consumer Products Safety Commission
CRS	Colorado Revised Statutes, 1973, as amended
CRSI	Concrete Reinforcing Steel Institute
EIA	Electric Industries Association
FHWA	Federal Highway Administration Department of Trans.
FSS	Federal Specifications and Standards
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineering Society
IMSA	International Municipal Signal Association
IPCEA	Insulated Power Cable Engineers Association
ITE	Institute of Transportation Engineers
MIL	Military Specifications
MUTCD	Manual on Uniform Traffic Control Devices



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NEC	National Electrical Code
NEMA	National Electrical Manufacturers' Association
NIST	National Institute of Standards and Technology
NSF	National Sanitation Foundation
OSHA	Occupational Safety and Health Act
SAE	Society of Automotive Engineers
UL	Underwriters Laboratories, Inc.

**ADVERTISEMENT** - A public announcement inviting Proposals for Work to be performed and or Materials and Equipment to be furnished.

**AWARD** - The acceptance by the Owner of a Proposal.

**BASIS OF PAYMENT** - The terms under which Work is paid, as a designated Contract Item in accordance with the quantity measured and the Contract Documents.

**BIDDER** - An individual, firm or corporation submitting a Proposal for the advertised Work.

**CALENDAR DAY** - Each and every Day shown on the calendar, beginning and ending at midnight.

**CERTIFIED INVOICE** - An invoice from a supplier which has been reliably endorsed by the Contractor guarantying that the material was purchased and received for the Project and establishing the value of the Material.

**CHANGED OR EXTRA WORK** - Work not provided for in the Contract as awarded but determined by the Owner to be essential to the satisfactory completion of the Contract within its intended scope.

**COMPLETION DATE** - The date on which all the Contract Work is specified to be substantially completed.

**CONDITION PRECEDENT** – An act or event that shall occur prior to the start of a subsequent act or event as defined by the Contract Documents.

**CONSTRUCTION EQUIPMENT** – All plant, machinery, tools, and apparatus, including parts and supplies for operation and maintenance, which are necessary for the proper construction and acceptable completion of the Work.

**CONTRACT CHANGE ORDER** - A written order issued to the Contractor by the Owner which covers additions, deletions, or revisions to the Contract Documents, as well as Extra Work and which establishes the Basis Of Payment and any time adjustment for the Work affected by the Contract Change Order. The Contract Change Order is the only method authorized for modifying the Contract.

**CONTRACT DOCUMENTS** - The Contract Documents are comprised of the items listed in the Contract.

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**CONTRACT ITEM (PAY ITEM)** - A specifically described unit of Work for which a price is provided in the Contract Documents.

**CONTRACTOR** – The party contracting directly with the Owner to furnish and perform all Work in accordance with the Contract Documents.

**CONTRACT PRICE** – The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents.

**CONTRACT TIME** - The number of Calendar Days including authorized time extensions, allowed for Substantial Completion of the Contract Work. Where a calendar date of completion is specified, the Contract Work shall be substantially completed on or before that date, including authorized time extensions.

**CONTRACT UNIT PRICE** - Prices as established by the Bid Proposal, Schedule of Contract Items and Prices.

**COUNTY** - The County in which the Work is to be done.

**DAY** - Unless otherwise defined shall mean Calendar Day.

**DEFECTIVE** - An adjective which, when modifying the word Work refers to work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to final payment (unless responsibility for the protection thereof has been assumed by Owner in writing at Substantial Completion).

**ENGINEER** - The Director of Public Works, Contract Manager, or their designated representatives.

**FINAL ACCEPTANCE** - The acknowledgment by the Owner that the Guaranty Period has expired and there appear to be no outstanding items to be corrected under the provision of the guaranty.

**FINAL SETTLEMENT DATE** - The date designated by the Owner in accordance with CRS 38-26-107, or as subsequently amended.

**GENDER AND NUMBER** - References are made as if masculine in gender and singular in number unless neuter gender is appropriate in the context; however, the use of any gender shall be applicable to all genders and the use of singular number shall include the plural and conversely.

**GOOD AND WORKMANLIKE MANNER** - In a manner generally considered skillful by those capable of judging such Work and as compared to the industry standard practices in the Denver Metropolitan Area.

**GOOD REPAIR** - A condition free from any defect, functional problems or structural deterioration (except that from ordinary and reasonable use) which appreciably reduces the effectiveness or efficiency of the Work or improvement for the purpose intended, or any departure from the standards of original construction described in the Contract Documents. The Contractor warrants that the Work shall be in Good Repair during the Guaranty Period.

**GUARANTY PERIOD** - The period from Initial Acceptance to Final Acceptance that the Contractor is responsible for corrections to keep the Work in Good Repair.

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**INITIAL ACCEPTANCE** - An acknowledgment by the Owner that, to the best of the Owner's knowledge, all Work including punch list items has been completed in accordance with the Plans and Specifications. Initial Acceptance shall not release the Contractor of any warranty or guaranty obligations.

**INSPECTOR** - The Owner's authorized representative assigned to make detailed inspections of Contract performance.

**MATERIALS AND/OR EQUIPMENT** - All components, articles, appliances, devices, substances, supplies and miscellaneous items specified or required for use in the construction of the Project.

**MAY** - Permissive

**METHOD OF MEASUREMENT** - The manner in which a Contract Item is measured to conform with the Contract Unit Price.

**MILESTONE DATE** - A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of the Work.

**NON-CONFORMANCE** - Not in accordance with the terms and conditions set forth in the Bid Documents.

**NOTICE TO PROCEED** - Written notice to the Contractor to proceed with the Contract Work including, when applicable, the date of beginning and ending of Contract Time.

**OWNER** - The City of Montrose or its designated representative, may also be referred to as Montrose or COT.

**PLANS** - The drawings, or reproductions, provided by the Owner which show the location, character, dimensions, and details of the Work to be done.

**PROJECT** - The Work to be completed pursuant to this Contract.

**PROPOSAL** - The offer of a Bidder, on the prescribed form, to perform the Work at the prices quoted, may also be referred to as Bid or Bid Proposal.

**PROPOSAL FORM** - The documents furnished by the Owner on which the offer of a Bidder is submitted.

**PROPOSAL GUARANTY** - The security furnished with a Proposal to guaranty that the Bidder will enter into the Contract if the Proposal is accepted.

**REFERENCE TO TRADE CONTRACTORS** - When only this principal Contract exists for all Work covered by the Contract Documents, reference to trade contractors in the Contract Documents shall not create any contractual relationship between the Owner and any trade Contractor with whom the principal Contractor may subcontract.

**RIGHT - OF - WAY** - A general term denoting land, property, or interest therein, acquired for or devoted to the construction of an improvement; may also be referred to as R.O.W.

**SALVAGEABLE MATERIAL** - Material that can be saved or salvaged.

**SAMPLES** - Physical examples furnished or constructed by the Contractor to illustrate Materials, and Equipment, workmanship or finishes, and to establish standards by which the Work will be judged.

**SCHEDULE OF WORK** – A bar chart schedule or a critical path method schedule, as the Contract Documents require, which graphically depicts the Contractor’s plan for the performance of the Work from Notice to Proceed to Substantial Completion of the Project.

**"SHALL" IMPLIED** - In the interest of conciseness, some sentences, statements and clauses used in the Specifications exclude any form of the verb "shall" normally expressed in a verb phrase with verbs such as "furnish", "install", "provide", "perform", "construct", "erect", "comply", "apply", "submit", etc. but any such sentences, statements and clauses shall be interpreted to include the applicable form of the phrase "The Contractor shall" and the requirements described therein shall be interpreted as mandatory elements of the Contract.

**SHALL** - Mandatory.

**SUBMITTALS** - Shop Drawings, diagrams, illustrations, certificates, test reports, schedules, performance charts, brochures, shop layouts, fabrication layouts, assembly layouts, foundation layouts, wiring and piping layouts, specifications and descriptive literature, and any other submittals required by the Contract Documents, which are prepared by the Contractor or any Subcontractor, manufacturer, supplier, or distributor, and which illustrate some portion of the Work.

**SPECIFICATIONS** – Those portions of the Contract Documents, also know as the Technical Specifications, consisting of the written technical descriptions of Materials and Equipment, construction systems, standards and workmanship as applied to the completion of the Work.

**SUBCONTRACTOR** – A party supplying labor and material or only labor for Work at the site of the Project for, and under separate Contract or agreement with, the Contractor. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner and any Subcontractor.

**SUBSTANTIAL COMPLETION** - When the Work is sufficiently completed so it may be utilized by the Owner, for all of the purposes for which it was intended, in accordance with applicable life, health and safety codes but exclusive of minor Work to be completed or corrected as typically referred to in the construction industry as “punch list” Work.

**SUPERINTENDENT** - The Contractor's authorized representative in charge of directing the Contractor’s on site Work.

**WORK** - All Materials, and Equipment incorporated or to be incorporated into the construction and all labor, expendable equipment, utilities, transportation, operations and services necessary to produce the construction, including in part all obligations, duties, and responsibilities necessary to the successful completion of the construction in Good and Workmanlike Manner.

### **3. CONTRACTOR'S UNDERSTANDING**

- A. It is understood and mutually agreed that by submitting a Proposal, the Contractor acknowledges that he has carefully examined all documents pertaining to the Work, and certifies that he has completed a thorough site investigation including but not limited to the locations, accessibility, and general character of the site of the Work and all existing buildings and structures within and adjacent to the

site, and has satisfied himself as to the nature of the Work, the condition of existing buildings and structures, the conformation of the ground, the character, quality, and Construction Equipment, and any other facilities needed preliminary to and during prosecution of the Work, the general and local conditions, the construction hazards, and all other matters, including but not limited to the labor situation which can in any way affect the Work under the Contract. It is further mutually agreed that by submitting a Proposal, the Contractor acknowledges that he has satisfied himself as to the feasibility and correctness of the Contract Documents for the construction of the Work and that he accepts all the terms, conditions, and stipulations contained therein; and that he is prepared to work in peace and harmony with other Contractors performing Work on the site.

- B. No verbal agreement or conversation with any officer, agent, or employee of the Owner, either before or after the execution of the Contract, shall affect or modify any of the terms, conditions, or other obligations set forth in any of the Contract Documents. All Contract modifications must be in writing from the authorized agent of the Owner and be in the form of a Contract Change Order.

#### **4. REMEDY OF DEFECTS**

If, in the opinion of the Owner, a defect exists, or functional or structural deterioration takes place, or substantial departure from the standards or original construction exists in the Work or improvements as stated in the definition of "guaranty/warranty", the Owner shall so notify the Contractor by certified letter mailed to the address given in the Contractor's Proposal, or to the Contractor's last business address known to him who gives the notice. It is mutually agreed that such notice shall be sufficient and adequate. If the Contractor shall not proceed to remedy such defects, deficiencies, deterioration, or departures as are called to his attention in the notice within seven (7) consecutive Calendar Days after mailing of notice, the Owner shall cause the repairs to be made as the Owner deems best, and the entire cost thereof shall be paid by the Contractor or his Surety or deducted from any amounts then or thereafter as due to the Contractor from the Owner.

#### **5. NOTICE AND SERVICE THEREOF**

Where the manner of giving notice is not otherwise provided for in the Contract Documents, any notice to the Contractor from the Owner relative to any part of the Contract shall be in writing and considered delivered and the service thereof completed, when said notice is posted, by certified mail, to the Contractor at the address given in the Contractor's Proposal, or at the last business address known to him who gives the notice, or delivered in person to the Contractor or his authorized representative on the site. It is mutually agreed that such notice shall be sufficient and adequate.

#### **6. PROPOSALS**

- A. Proposals must be submitted on forms furnished by the Owner and endorsed as provided in the Contract Documents.

- B. Proposals must be submitted filled out with ink or typewriter, and without erasure, interlineation or changes, and if not made in accordance with the Contract Documents, will be subject to rejection as irregular. The Owner reserves the right to waive any irregularities or informalities.
- C. Proposals shall be made in the name of the principal and if a co-partnership, the names of all partners shall be given. Exact post office address shall be given in all cases. If Proposals are submitted by an agent, satisfactory evidence of agency authority must accompany the Proposal.

**7. NON-CONFORMING PROPOSALS**

- A. Proposals shall be considered non-conforming and may be rejected for the following reasons unless otherwise provided by law:
  - 1. If the Proposal Form furnished to the Bidder by the Owner is not used or is altered.
  - 2. If there are unauthorized additions or conditional bids, or irregularities of any kind which may tend to make the Proposal incomplete, indefinite, or ambiguous as to its meaning.
  - 3. If the Bidder adds any provisions reserving the right to accept or reject any award, or to enter into a Contract pursuant to an award.
  - 4. If the unit or lump sum prices contained in the Bid schedule are obviously unbalanced either in excess or below the reasonable cost analysis values.
  - 5. If the Bidder fails to insert a unit cost for every Bid item indicated.
  - 6. If the Bidder fails to complete the Proposal in any other particulars where information is requested so Bidder's Proposal may be properly evaluated.
- B. The Owner reserves the right to reject any or all Bids and to waive irregularities or informalities as may be deemed best and in the Owner's interest.

**8. WITHDRAWAL OR REVISION OF PROPOSALS**

- A. A Bidder may, without prejudice, withdraw a Proposal after it has been deposited with the Owner, provided the request for such withdrawal is received by the Owner, in writing or by telegram, before the time set for opening Proposals. Telephonic communications shall not be accepted. After opening of Bids, no Proposal may be withdrawn by the Bidder for a period of 45 Days or as otherwise required by law.
- B. Any Bidder may modify his Bid by telegraphic communication any time prior to the scheduled time for opening Proposals, provided such telegraphic communication is received by the Owner prior to the opening of Proposals, and, provided further, the Bidder provides compelling evidence that a written confirmation of the telegraphic modification over the signature of the Bidder was mailed prior to the opening of Proposals. The telegraphic communication should not reveal the Bid price but should provide the addition or subtraction or other modification so that the final prices or terms will not be known by the Owner until the sealed Bid is opened. If written confirmation is not received within two (2) days after the scheduled time for opening Proposals, no consideration will be given to the telegraphic modifications.

**9. CORPORATE BIDDERS**

Corporate Bidders to be eligible to enter into Contract with the Owner shall be qualified to do business in the State of Colorado and the City of Montrose. Bidders shall comply with applicable licensing requirements. Foreign corporations which have not domesticated or otherwise become licensed in the City of Montrose shall obtain a permit to do business in Montrose pursuant to Montrose's requirements.

**10. INTERPRETATIONS**

If a Bidder who contemplates submitting a Bid for proposed Work is in doubt as to the precise meaning of any part of the proposed Contract Documents, he may submit to the Owner a written request for an interpretation thereof. The Bidder submitting the request will be responsible for its prompt and actual delivery. Any interpretation of such documents will be made by addendum duly issued, and a copy of such addendum will be mailed or delivered to each Bidder receiving a set of such documents. The Owner will not be responsible for any other explanations or interpretations of such documents which anyone should make on behalf of the Owner.

**11. POST-QUALIFICATION OF BIDDERS**

- A. The Owner reserves the right to request a financial statement, together with a statement of past experience, personnel, Construction Equipment available to perform the proposed Work from any Bidder considered for Award of a Contract. Failure or refusal to furnish such a statement or statements, or failure to provide a satisfactory statement of financial responsibility shall constitute a basis for disqualifying any Bidder.
- B. The Owner also reserves the right to require evidence of satisfactory operation of any Equipment offered and to be incorporated into the Work for the number of years set out in the Equipment Specifications.

**12. OR EQUAL CLAUSE**

The inclusion of a manufacturer's name, trademark, or other proprietary identification of a product shall not limit competition, but shall establish a standard of quality, implying an "or equal" clause, unless expressly specified otherwise (see Special Conditions). However, the substitution of a product in place of that specified shall be permitted only upon the Owner's issuance of written approval in the form of an Addendum or Change Order to the Contract in response to a formal request submitted by the Contractor sufficiently in advance to allow adequate time for evaluation by the Owner. If the Owner, in his sole discretion, determines that tests are necessary for a proper evaluation, such testing shall be performed as specified by the Owner and at the Contractor's expense.

The substitution of a product shall be subject, without limitation, to any requirements listed in the Special Conditions or other parts of this Contract and the following conditions:

1. It is determined by the Owner that the proposed substitute product is equal or superior in properties, quality, character, and appearance to that specified;
2. Such changes as may be required in the Work to install the substitute product and to properly integrate it into the Work are approved by the Owner;
3. All costs for changes due to substitutions are the full responsibility of the Contractor.

4. The Contractor will provide at least the same warranty for the substitution that the Contractor would provide for the product specified;
5. The effect of the substitution on the total cost of the Work is approved by the Owner.

**13. RETURN OF BID SECURITY**

Bid security of the lowest two or more Bidders may be retained until the Contract is executed or rejection made by the Owner. Other Bid security will be returned if requested only after the tabulation of Bids is completed.

**14. REJECTION OF BIDS**

The Owner reserves the right to reject any Bid if investigation of such Bidder fails to satisfy the Owner that such Bidder is properly qualified to carry out the obligations and to complete the Work contemplated by the Contract Documents. Any or all Proposals will be rejected if there is a reason to believe that collusion exists among the Bidders.

**15. AWARD**

The Owner will proceed to consider the Proposals and reserves the right to reject any or all Bids, to pass upon the regularity, or waive any irregularity or informality of the Bidders and the acceptability of the Surety offered. The Owner will Award the Contract by written Notice of Award.

**16. SECURITY - CONTRACT**

- A. The Contractor shall furnish two separate surety bonds (the form of which shall be substantially as attached), each in an amount at least equal to one hundred (100) percent of the Contract Price as security for the following:
  1. The faithful performance of the Contract and the terms, conditions, and stipulations contained therein;
  2. Payment of all laborers and mechanics for labor performed and payment for all Materials and Equipment furnished and for all Materials and Equipment used or rented in the performance of the Contract.
- B. The Surety on such bonds shall be satisfactory to the Owner and shall be a duly authorized Surety company licensed to do business in the State of Colorado, and appearing on the latest Federal Register circular 570 as published by the Department of the Treasury unless otherwise approved by the Owner. In no case will Sureties with less than a Best's B Rating be approved. The Surety will in no way be financially associated with the Contractor.
- C. Any and all bonds shall be so written as to make these bond Specifications a part hereof, whether by reference or attachment, in order to give the Surety full notice of the conditions thereof.
- D. The Contractor shall within ten (10) consecutive Calendar Days from and including the date of receipt of Notice of Award, furnish the Owner with the required "Performance Bond" and "Labor and Materials Payment Bond" each in a sum equal to the amount of the Contract Price.



- E. If at any time, a Surety or any such bond shall become insolvent, is declared bankrupt, loses its right to do business in the state in which the Work is to be performed, or is no longer listed in Department of the Treasury Circular 570, Contractor shall within ten (10) Days after notice from the Owner to do so, substitute acceptable bonds in such form and sum and signed by such other sureties as may be satisfactory to the Owner.

**17. DATE OF CONTRACT**

A formal written Contract will be entered into by the parties and be binding upon the Owner and Contractor when approved and executed by the Owner. The date of the Contract shall be the date the Contract is executed by the Owner.

**18. FAILURE TO EXECUTE CONTRACT**

Should the successful Bidder fail to execute the Contract and furnish bond or bonds satisfactorily to the Owner, or validate the same within ten (10) Calendar Days after Award of Contract, his Bid security shall be forfeited to the Owner as a penalty.

**19. SCHEDULE OF CONSTRUCTION AND COMPLETION**

The Contractor shall submit to the Owner within fourteen (14) Days after award of Contract, or as may be otherwise requested by the Owner, a schedule showing the order in which the Contractor proposes to carry on the Work and at a rate sufficient to successfully construct all of the Work set forth in the Contract Documents within the Contract Time. Such schedule shall show the dates at which the Contractor will start and complete the several parts of the Work, and the order of construction and delivery dates of critical Materials and Equipment. The schedule shall be subject to approval by the Owner. The schedule shall be binding on the Contractor and shall be complied with by the Contractor unless, for good cause shown, a modification of the schedule shall be requested in writing to and approved by the Owner in accordance with General Conditions, Section 75, Extension of Contract Time.

**20. ORDER OF CONSTRUCTION**

Where the Owner's operations require specific sequencing of the Work, such sequencing requirements as provided for in the Contract Documents shall be followed.

**21. TAXES**

- A. Contractor shall pay all sales, consumer, use or other similar taxes required to be paid in accordance with the laws and regulations of the place of the Project which are applicable during performance of the Work. Owner is exempt from Colorado State, and City of Montrose sales and use taxes on Materials and Equipment to be permanently incorporated into the Work. Said taxes shall not be included in the Contractor's Bid or the Contract Price.
- B. Contractor shall apply to the Colorado Department of Revenue for an exemption certificate and purchase the Materials and Equipment tax free (Section 39-26-104, C.R.S. as amended). Contractor shall be liable for exempt taxes paid due to the failure to apply for exemption certificates or failure to use said certificates.

**22. ASSIGNMENTS**

The Contractor shall not assign the whole or any part of the Contract or any monies due or to become due thereunder without the written consent of the Owner and of the Surety on the Contractor's Bond. A copy of such consent of Surety, together with a copy of the assignment, shall be filed with the Owner. If the Contractor assigns all or any part of any monies due or to become due under the Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims and liens of all persons, firms, and corporations for services rendered; for the payment of all Materials and Equipment furnished and for payment of all Materials and Equipment used or rented in the performance of the Work called for in the Contract; and for the payment of any liens, claims, or amounts due the Federal, State, or local government or any of their funds.

**23. SUBCONTRACTING**

- A. The Contractor may utilize the services of specialty Subcontractors on those parts of the Work which, under normal contracting practices, are performed by specialty Subcontractors.
- B. The Contractor shall not award any Work to any Subcontractor without prior written approval of the Owner. This approval will not be given until the Contractor submits to the Owner a written statement concerning the proposed award to the Subcontractor, which statement shall contain such information as the Owner may require.
- C. The City of Montrose encourages all Contractors to utilize minority, disadvantaged, and women-owned businesses whenever possible.
- D. The Contractor shall be as fully responsible to the Owner for the acts and omissions of his Subcontractors, and of persons either directly or indirectly employed by them, or under their control, as he is for the acts and omissions of himself and of persons directly employed by him.
- E. The Contractor shall cause appropriate provisions to be inserted in all Subcontracts relative to the Work to bind Subcontractors to the Contractor under any provision of the Contract Documents, including all insurance requirements.
- F. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the Owner.

**24. SEPARATE CONTRACTS**

- A. The Owner reserves the right to let other Contracts in connection with the Work, to include deletions in portions of this Contract. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials, machinery, equipment, supplies, and the execution of their Work, and shall properly connect and coordinate his Work with theirs.
- B. If any part of the Contractor's Work depends upon the Work of any other contractor for proper execution or results, the Contractor shall inspect and promptly report in writing to the Owner any lack of progress or defects in the other contractor's Work that render it unsuitable for proper execution or results. Failure on the part of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's Work as fit and proper for the reception of the Contractor's Work. No extra time will be allowed the Contractor for failure on the part of the Contractor to so inspect and report on above mentioned unsuitable Work.

- C. To insure the proper execution of this subsequent Work, the Contractor shall measure existing Work and shall at once report in writing to the Owner any incompatibility between the existing Work and the Work anticipated by the Contract Documents.

**25. LINES AND GRADES**

Responsibility of survey for lines and grades shall be as specified in the project plans and bid documents.

**26. LAWS, PERMITS, LICENSES, REGULATIONS, ETC.**

- A. The Contractor in the execution of the Work shall conform to all applicable Federal and State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over employment discrimination, wages and working conditions, and the construction of the Work, including but not limited to all construction codes, O.S.H.A. Requirements, and safety codes, which may apply to:
  - 1. Performance of the Work;
  - 2. Protection of adjoining and adjacent property; and
  - 3. Maintenance of passage-ways, guard fences or other protective facilities
- B. The Contractor shall obtain all permits and pay for licenses and approvals necessary for the construction of the Work and give all required notices.

**27. CITY PROPERTY**

The Owner will furnish land as shown in the Contract Documents for the performance of the Work under the Contract. Contractor shall confine his operations to the city property furnished.

**28. OPERATIONS AND STORAGE AREAS**

- A. All operations of the Contractor (including storage of Materials, and Equipment) shall be confined to areas authorized by the Owner. The Contractor shall be liable for any and all damages caused by him to such premises.
- B. The Contractor shall hold and save the Owner free and harmless from liability of any nature or kind arising from any use, trespass, or damage occasioned by his operations on the premises of third persons.
- C. The Contractor shall be wholly responsible for the care, compliance with law, and storage of Materials, or Equipment delivered on the Work site or purchased for use thereon. Stored Materials, or Equipment shall be carefully and continuously protected from damage or deterioration and so located so as to facilitate inspection by the Owner. The responsibility for the care and storage of Materials, or Equipment shall be with the Contractor whether such Materials, or Equipment are furnished by the Contractor or by the Owner. Storage of Materials, or Equipment shall not unduly interfere with the progress of the Contractor's Work or the Work of any other Contractor.

**29. RIGHT-OF-ENTRY**

Contractor shall provide to the Owner, or representative of the Federal, State, County, District and Municipal governmental officials and services, complete and free access to the Work, whenever access is requested by the Owner.

**30. ACCESS AND DRAINAGE**

The Contractor shall keep a sufficient clear area around fire hydrants to permit their full and effective use in case of fire. The Contractor shall keep natural drainage and water courses unobstructed or provide other equal courses effectively placed.

**31. SANITARY CONVENIENCES**

The Contractor shall furnish the necessary sanitary conveniences, properly secluded, for the use of workers during construction, and these conveniences shall be maintained in a manner that will be inoffensive and in compliance with Federal, State and local health and sanitation requirements.

**32. CLEANUP PRACTICES**

- A. The Contractor shall maintain general cleanup practices to keep all streets, alleys, sidewalks, or other premises as free from material and debris as the character of the Work will permit, and upon completion of any part of the Work, shall as required and or as directed by the Owner, remove all surplus material, mud, rubbish, debris, or other objectionable items and leave Right-Of-Way and premises in a safe, acceptable, condition. Under no circumstances shall the Contractor allow any condition to exist which creates a nuisance, fire hazard, or an environment injurious to health or safety, or an attraction for children, animals, birds, rodents, etc., during or after construction.
- B. Failure to comply with this provision, after due and proper notice had been given by the Owner or his agent, will be sufficient grounds, but shall not constitute the duty for the Owner to proceed to clean up such material and debris, make repairs, and charge same to the Contractor, who hereby agrees to the provisions as set forth herein.

**33. PLANS AND SPECIFICATIONS**

- A. The Owner will provide the Contractor with four sets of Plans, and Specifications after the execution of the Contract. If additional Plans, and Specifications are required, the Contractor shall compensate the Owner for same.
- B. When in the opinion of the Owner, revised partial Plans, and Specifications are required to clarify or reflect Changed or Extra Work the Owner shall provide four copies of such revisions to Contractor. Additional copies required must be paid for by the Contractor. Contractor shall immediately post such revisions to his record set of Contract Documents.
- C. The Plans, and Specifications are the property of the Owner, and are furnished to the Contractor for the construction of Work under the Contract only.
- D. Data and Measurements. The data given in the Specifications and shown on the Plans is believed to be accurate but the accuracy is not guaranteed. The Contractor must confirm all levels, locations, measurements, and verify all dimensions on the job site prior to construction and adapt his Work into the exact limits of construction. Scale measurements taken from Plans are not considered for more than reference.

**34. CORRELATION OF DOCUMENTS**

- A. Plans, and Specifications are complimentary and supplementary. Portions of the Work which can best be illustrated by the Plans may not be included in the Specifications and portions best described by the Specifications may not be depicted on the Plans. All items necessary or incidental to completely construct or erect the Work specified shall be furnished, whether called for in the Specifications or shown on the Plans.
- B. The order of precedence of the documents shall be as established in the Contract. Any discrepancies between the documents shall be brought to the Owners attention for a resolution.

**35. SUBMITTALS, SHOP DRAWINGS, SAMPLES, AND OPERATOR'S INSTRUCTIONS**

- A. Within fourteen (14) Calendar Days from Notice of Award, the Contractor shall submit a schedule of Shop Drawing and Sample submittals, which shall list each required submittal, the times for Contractor submittal as well as the times for the Owner's review and approval of each submittal. This schedule of submittals shall be consistent with the Contractor's Schedule of Work for completion of the Project. All Shop Drawing and Sample submittals shall be submitted to the Owner for review and approval in accordance with this schedule of Shop Drawing and Sample submittals.
- B. The Contractor shall furnish all Shop Drawings and Samples which are specified or required by the Contract Documents for the completion of the Work. Shop Drawings of Material and Equipment offered by the Contractor for approval by the Owner shall be in sufficient detail to adequately show construction and operation. A minimum of four (4) copies of the submittals shall be provided to the Owner for review unless otherwise specified. Shop Drawings and Samples submitted as herein provided by the Contractor and approved by the Owner for conformance with the design concept shall be executed in conformity with the Contract Documents unless otherwise required by the Owner.
- C. Work performed in connection with the purchase, fabrication, manufacture, shipment, installation or erection of Material or Equipment prior to the Owner's review and approval, as specified herein, shall be at the Contractor's sole risk, responsibility, and expense.
- D. Shop Drawing and Sample submittals shall be accompanied by a letter of transmittal which shall list submittal numbers and dates of submittal, and shall be in the form required by the Owner. Shop Drawings shall be complete in every respect and bound in sets. Any resubmittals shall show submittal and resubmittal numbers as well as the dates for previous submittals and resubmittals.
- E. The Contractor shall submit all Shop Drawings and Samples sufficiently in advance of construction requirements to allow ample time for checking, correcting, resubmitting, rechecking and approving to avoid any delay in the progress of the Work.
- F. Shop Drawings or Samples submitted shall be marked with the name of the Project, and submittal number, and bear the stamp or specific written indication of approval of the Contractor as evidence that the Shop Drawings and Samples have been checked by the Contractor. Any Shop Drawings or Samples submitted without the Contractor's stamp of approval or specific written indication of approval shall not be considered by Owner and shall be returned to the Contractor for approval and resubmission.

- G. At the time of each submission, the Contractor shall give the Owner specific notice of each variation between the Shop Drawing or Sample and the requirements of the Contract Documents. The Contractor shall place a specific notation on the Shop Drawing or Sample and call such variation to the Owner's attention in the Contractor's letter of transmittal. If the variation as submitted is acceptable, the Owner will provide written approval of the variation to the Contractor. The Owner's review and approval of Shop Drawings or Samples shall not relieve the Contractor from responsibility for strict compliance with the requirements of the Contract Documents, unless the Contractor has, in writing, called the Owner's attention to each such variation at the time of submission, as required above, and the Owner has given unconditional written approval of each such variation to Contractor. The Owner's review and approval of any variation shall not extend to means, methods, techniques, sequences or procedures of the construction of the Work or to safety precautions or programs incident thereto.
- H. By approving and submitting Shop Drawings and Samples, the Contractor thereby represents that:
1. He has determined and verified all field dimensions and measurements, quantities of Work, field construction criteria and installation requirements, Materials and Equipment, catalog numbers, and similar data;
  2. He has checked, and coordinated such submittals with the requirements of the Work and the Contract Documents; and
  3. Data shown on the Shop Drawings are complete and accurate.
- I. All items of standard equipment shall be the latest model at time of delivery.
- J. When Shop Drawings are submitted for the purpose of showing the installation in greater detail, their approval shall not excuse the Contractor from requirements shown on the Plans and Specifications.
- K. Shop Drawing and Sample submittals not conforming completely with the above requirements shall be returned to the Contractor, without action by the Owner, for resubmittal. Any subsequent delay shall be entirely the responsibility of the Contractor.
- L. The Owner's review and approval of Shop Drawings and Samples submitted by the Contractor shall be only for general conformance with design concept, as otherwise provided, and shall not be construed as:
1. Permitting any departure from the Contract requirements;
  2. Relieving the Contractor of the responsibility for any error in details, dimensions, or otherwise that may exist in such submittals;
  3. Constituting a blanket approval of dimensions, quantities, or details of the Material or Equipment shown; or
  4. Approving departures from additional details or instruction previously furnished by the Owner. Such check or approval shall not relieve the Contractor of the full responsibility of meeting all of the requirements of the Contract Documents.

- M. Four (4) sets of bound operator's instructions shall be furnished by the Contractor for Equipment furnished under the Contract that is specially listed or that is considered to be of a special or complex nature. Operator's instruction shall include, in part, detailed lubrication drawings showing type and frequency of lubrication. Detailed parts drawings shall show location, name and catalog numbers of parts.
- N. Four (4) sets each of bound service parts manuals shall be furnished by the Contractor for all items of standard manufacture.
- O. All operator instructions, service, and parts manuals shall be bound in permanent binders satisfactory to the Owner and shall be furnished to the Owner before Initial Acceptance of the installation by the Owner.

**36. CERTIFICATES AND GUARANTIES**

Four (4) copies of any manufacturer's guaranty/warranty or certificate for any type of Material or Equipment provided shall be submitted to the Owner prior to Initial Acceptance of the Work by the Owner.

**37. DRAWINGS SHOWING CHANGES DURING CONSTRUCTION**

Throughout the progress of construction, the Contractor shall maintain a thorough up-to-date record of all changes on the Plans during actual construction. Prior to Initial Acceptance by the Owner, the Contractor shall file with the Owner one (1) set of complete reproducible drawings with all changes and Contractor's field construction notes neatly and legibly recorded thereon. Such drawings shall include but not be limited to, the exact routing, if changed from drawing location, of sewer, water, gas, oxygen supply, condenser water lines, fuel oil tanks and lines, fire protection lines, and any buried utility lines and routing of buried electrical feeder lines and changes to routing of conduit runs which are buried or concealed in concrete slabs. Such information shall be used to prepare record drawings for the Owner.

**38. MATERIALS, EQUIPMENT, SUPPLIES, SERVICES, FACILITIES**

- A. It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all Materials and Equipment, Construction Equipment including rental equipment, water, heat, light, fuel, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the Work in a Good and Workmanlike Manner within the specified Contract Time.
- B. No Materials, or Equipment, for the Work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

**39. WORKMANSHIP, MATERIALS, AND EQUIPMENT**

- A. All Material and Equipment furnished by the Contractor shall be new and unused and shall strictly conform to the Contract Documents. Competent labor, mechanics and tradesmen shall be used on the Work. Experienced manufacturer's representatives shall be used to supervise the installation of Equipment as may be required by the Owner. Any special tools or Construction Equipment which may be required shall be provided by the Contractor.

- B. The acceptance at any time of Materials or Equipment by or on behalf of the Owner shall not be a bar to future rejection if they are subsequently found to be Defective, inferior in quality, or uniformity to the Material or Equipment specified, or are not as represented to the Owner.

**40. QUALITY OF MATERIALS**

In the absence of detailed Specifications, all Materials and Equipment shall conform to the latest standards of the American Society for Testing Materials available at the time notice inviting Contractors to Bid is published (the Advertisement For Bids) unless otherwise indicated.

**41. REFERENCE TO STANDARD SPECIFICATIONS**

Any reference to standard specifications in any of the Contract Documents shall always imply the latest edition of such standard specification or specifications available at time notice inviting Contractors to Bid is published unless otherwise indicated.

**42. VARIATION FROM ESTIMATED QUANTITIES**

The Contractor may reasonably expect a variation in estimated quantities such that the total payment for the completed Work may range from seventy-five (75) to one hundred and twenty five (125) percent of the total amount of the Contract based on the estimated quantities. The Contractor shall not be allowed any claims for anticipated profits, for loss of profits, or for any damages because of a difference between the estimate of any Contract Item and the amount of the Contract Item actually required or for the elimination or reduction of the Contract Items of the Proposal or any of the Work as may be required to bring the cost of the Work within the limits of available funds.

**43. PROGRESS PAYMENTS**

- A. When monthly progress payments are authorized, the Contractor shall, on the date established by the Owner, submit to the Owner an itemized application for payment, on forms provided by the Owner, and supported by such data substantiating the Contractor's right to payment, as the Owner may require.
- B. If payments are to be authorized on account of Materials, and Equipment not incorporated in the Work, but delivered and suitably stored at the site which are necessary for the orderly prosecution of the Work, the Contractor shall furnish with his application for payment bills of sale, bills of lading, invoices or such other evidence as may be appropriate and satisfactory to the Owner that establishes:
  - 1. Actual cost, including transportation to the site, of such Materials, and Equipment;
  - 2. Titles thereof in Owner's name, upon payment;
  - 3. Appropriate insurance coverage to protect the Owner's interest therein upon payment.
- C. The Contractor warrants that title to all Materials, and Equipment covered by an application for payment, whether incorporated into the Work or not, shall pass to the Owner, upon receipt of payment by the Contractor. The Contractor further warrants that upon submittal of an application for payment all Work for which payment has been received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of all liens, claims, security



interests or encumbrances in favor of the Contractor, Subcontractors, suppliers, or other persons or entities making a claim by reason of having provided labor, Materials or Equipment relating to the Work; and that such Materials, or Equipment furnished or installed comply with the applicable requirements of the Contract Documents.

- D. The passing of title to the Owner as herein provided shall not be construed as relieving the Contractor of the sole and complete responsibility for:
1. The care and protection of the Work, Materials and Equipment, for which payment has been made.
  2. The restoration of any damaged or destroyed Work, Materials, or Equipment. Such responsibility shall continue until all Work under the Contract has been completed and accepted by the Owner.
- E. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's application for progress payments and shall make payment to Contractor within thirty (30) Days after the application for payment is approved by the Owner. All such payments will be measured by the schedule of values established in the Contract Documents (and in the case of unit price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the Special Conditions.

Prior to Substantial Completion, progress payments will be made in an amount up to the percentages indicated below, but in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold in accordance with General Conditions, Section 44 Payment Withheld:

1. Ninety five (95) percent of the Work complete (with the balance being retainage). If the Work has been fifty (50) percent completed as determined by the Owner, and if the character and progress of the Work have been satisfactory to the Owner, Owner may determine that as long as the character and progress of the Work remain satisfactory to it, there will be no additional retainage except as provided by the General Conditions for state law.
2. Ninety five (95) percent (with the balance being retainage) of Materials and Equipment not incorporated in the Work, but delivered, suitably stored and accompanied by documentation satisfactory to the Owner as provided by the Contract Documents.

Pursuant to Section 24-91-101, C.R.S., et. seq., Contractor may substitute acceptable securities for the whole or any portion of the retainage.

- F. Under no circumstances shall payment constitute a waiver of the Owner's right to require the Contractor to fulfill all of the terms and conditions of this Contract.

#### **44. PAYMENT WITHHELD**

- A. The Owner may withhold payment or, on account of subsequently discovered evidence, may nullify the whole or part of any payment certificate of such extent as may be necessary to protect the Owner from loss on account of any one or more of the following:

1. Defective Work not remedied.
  2. Claims filed or notice indicating probable filing of claims of other parties against the Contractor.
  3. Failure of the Contractor to make payments properly to Subcontractors or to make payments for labor, Material, Equipment, Construction Equipment or equipment rental.
  4. A reasonable doubt that the Contract can be completed for the balance then unpaid.
  5. Damage to a Subcontractor or another contractor.
  6. Failure or refusal by the Contractor to comply with an instruction of the Owner within a reasonable time.
  7. Unsatisfactory prosecution of the Work.
  8. Liquidated Damages payable by the Contractor.
  9. Any other violation of or failure to comply with the provisions of the Contract Documents.
  10. Being in arrears to the Owner for any invoices.
  11. Failure to supply or update the Contractor's Schedule of Work.
  12. Damage to the Owner's Property or Equipment.
- B. When the above grounds are removed, payment shall be made for amounts withheld because of them. The right to withhold payment however, shall not preclude the Owner from his right to declare the Contractor in default of his Contract for any of the reasons stipulated under General Conditions, Section 76 Contract in Default.

**45. FINAL MEASUREMENTS**

Final measurements, on unit price contracts, shall be made by the Owner, and the Contractor shall at his own expense provide help and other assistance as may be required for making same.

**46. PAYMENT, USE OR OCCUPANCY OF WORK**

No progress or final payment, nor any partial or entire use or occupancy of the Work or improvement, nor acceptance thereof, by the Owner shall be evidence of the performance of the Contract or construed to be acceptance of Defective Work or improper Materials or Equipment, either wholly or in part. The Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute.

- A. When the Contractor considers the Work to be substantially complete, the Contractor shall make a written request to the Owner for the issuance of a Certificate of Substantial Completion. The Owner upon receipt of the written request shall make an inspection of the Work and either issue a written Certificate of Substantial Completion or deny the Contractor's request in writing and provide the reasons for such denial.

- B. In the case of a denial of the issuance of a Certificate of Substantial Completion, the Contractor shall complete the Work so as to address the Owner's concerns and comply with the Contract Documents and shall again request in writing that the Owner issue a written Certificate of Substantial Completion. The Owner will handle any such subsequent requests as outlined above.
- C. If the Owner grants the Contractor's request and issues a Certificate of Substantial Completion, the Certificate shall list any remaining items to be completed as "Punch List" items and shall set a date certain by which the Contractor shall correct the items. If the Contractor does not provide a written request with good and sufficient reasons why the Punch List Work cannot be completed by the date established in the Certificate of Substantial Completion, the date shall be as established and the Punch List Work will be completed by that date. The Owner will grant an extension of the Punch List completion date in writing, if warranted. If the Contractor does not complete the items on the Punch List by the fixed date, the Owner, upon seven (7) Days notice, shall have the option to complete any uncompleted or deficient Work for the Contractor and deduct the cost from any amounts due the Contractor and or seek full compensation from the Surety.
- D. Upon completion of the Punch List items, the Contractor shall make written application to the Owner for inspection of the Work. The Owner will promptly make such inspection and, when the Owner finds the Work acceptable under the Contract Documents and Contract Work fully performed, the Owner will promptly advertise the Project for Final Settlement and establish a Final Settlement Date in accordance with CRS 38-26-107 as may be amended.
- E. The Contractor shall submit a final application for payment upon completion of the Punch List and prior to receiving final payment, the Contractor, if requested by the Owner, shall file with the Owner:
  - 1. A receipt showing payment in full, or
  - 2. A waiver of claim and/or lien, from each Subcontractor, materialman, supplier, manufacturer, and dealer for all labor, Material and Equipment used or furnished by each on the Work and
  - 3. A complete release of all claims and/or liens which may have arisen under the Contract.In lieu thereof, the Owner may request and the Contractor shall file statements showing the balance due on all accounts. The manner in which settlement is made by the Owner with the Contractor shall not release the Contractor or his Surety under the payment provisions of his bond.
- F. The Guaranty Period shall not begin until the date of Final Settlement. The Owner will issue a written acceptance for the Guaranty Period setting out the beginning and end dates for the Guaranty Period.
- F. The Contractor shall be responsible for the maintenance, security, heat, utilities, damages to the Work, and insurance until the date of Final Settlement. In addition, the Contractor shall be responsible for the provision of maintenance, security, heat, utilities, damages to the Work and insurance for the affected portion of the Work during any period in which the Contractor is called upon to perform guaranty Work.

**48. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE**

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- A. The acceptance of final payment by the Contractor shall operate as a release to the Owner of all claims by the Contractor for all things done or furnished in connection with the Contract and for every act and neglect of the Owner, and others relating to or arising out of the Work under the Contract, except for claims previously made in writing and still unsettled.
- B. No payment, final or otherwise, shall operate to release the Contractor or his Surety from any obligations under the Contract or under the Performance Bond or Labor and Materials Payment Bond, including, but not necessarily limited to any one or more of the following:
  - 1. Obligations arising from or relating to latent defects.
  - 2. Faulty Work or material appearing after any payment.
  - 3. Failure of the Work to perform efficiently in accordance with the requirements of the Contract Documents.
  - 4. Unsettled claims.
  - 5. Claims for non-payment of laborers, mechanics, materialmen, or suppliers, or for Construction Equipment used or rented.
  - 6. Claims under the maintenance requirements of the Contract Documents or any special guaranties provided for under the Contract Documents.

### **49. CONTRACTOR'S RESPONSIBILITY**

The Contractor agrees that the following are additional Contractor's responsibility, under the Contract Documents.

- A. Contractor shall supervise, inspect and direct the Work completely and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor shall be responsible to see that the complete Work complies accurately with the Contract Documents. If required by Owner, Contractor shall promptly, as directed, either correct all Defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Owner, remove it from the site and replace it with Work that is not Defective. Contractor shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including, but not limited to, all costs of repair or replacement of Work of others).
- B. The Contractor shall comply with all Federal, State, County, District, and Municipal Laws, Ordinances, Rules, Regulations, Construction Codes, and Safety Codes relating to or applicable to the Work and shall furnish certification of compliance at completion of the Work upon request of the Owner.
- C. The Contractor shall perform all Work and furnish all Materials and Equipment, Construction Equipment, labor, transportation, superintendence, testing, facilities, services, means, methods, techniques, insurance, bonding and utilities, except as otherwise specified in the Contract Documents, necessary or proper to perform and complete all Work required by and in accordance with the Contract Documents and pay all applicable taxes incidental to performing said Work and

furnishing such items.

- D. The Contractor alone shall be completely responsible for:
1. All construction means, methods, techniques, sequences, and coordination of all Work and services under the Contract Documents;
  2. All conditions at the job site, including in part safety of all persons and property;
  3. The supervision, direction, and control of all Work and services under the Contract; and
  4. All safety procedures and precautions necessary in connection with the Work and services.
- E. These responsibilities of the Contractor shall apply continuously and shall not be limited to normal working hours. Review of construction by the Owner shall not relieve the Contractor of such responsibilities.
- F. The Contractor shall furnish, erect, maintain, and remove all construction plant and all temporary works and facilities as may be required to perform the Contract.
- G. The Contractor alone shall be fully responsible for the safety, efficiency, and adequacy of his Construction Equipment, Material and Equipment, facilities and appliances, and for any damage which may result from their failure or their improper construction, maintenance, or operation.

**50. WEATHER**

During weather unsuitable for the proper execution of the Work in a first-class manner, all Work affected by such condition shall be properly protected from weather-related damage.

**51. OVERTIME**

Any Work necessary to be performed after regular working hours (7:00 a.m. to 4:00 p.m. Monday through Friday), on Saturdays or Sundays, or legal holidays, shall be performed without additional expense to the Owner unless otherwise provided in the Contract Documents. The Contractor must notify the Owner in writing, two (2) working Days in advance of any overtime Work being performed.

**52. MUTUAL RESPONSIBILITY OF CONTRACTORS**

If, through acts or neglect on the part of the Contractor, any other contractor or Subcontractor shall suffer loss or damage to his Work, the Contractor agrees to settle with such other contractor or Subcontractor by agreement or arbitration if such other contractor or Subcontractor shall so settle. If such other Contractor or Subcontractor asserts any claim against the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor who shall indemnify and save harmless the Owner against such claims and for any costs in connection with such claims.

**53. ACCIDENT PREVENTION - EMERGENCY - AUTHORITY TO ACT**

Precaution shall be exercised by the Contractor at all times for the protection of all persons, Work and property, and hazardous conditions shall be guarded against or eliminated. In an emergency affecting the

safety of life or property, the Contractor shall be allowed to act in a diligent manner, without special instruction or authorization from the Owner, at his discretion to prevent such threatened loss or injury, and he shall so act, without appeal, if so instructed or authorized. Contractor shall notify the Owner immediately thereafter. Any compensation, claimed by the Contractor on account of emergency Work affecting the safety of life or property, other than the Contractor's Work or property, shall be determined as provided under General Conditions, Section 60 Claims for Extra Cost subject to the approval of the Owner.

**54. PROTECTION OF WORK**

The Contractor, at no additional expense to Owner, shall at all times safely guard and protect the Work; provide, erect, and maintain suitable barriers around all excavations or obstructions to prevent accidents; and provide, place, and maintain during the night sufficient lights, signals, and signs for this purpose on or near the Work. The Contractor shall at all times, until its completion and Final Acceptance, protect his Work Equipment, and Material from accidental or any other damage; and make good any damages thus occurring at no additional cost to the Owner.

**55. PROTECTION OF PROPERTY**

A. The Contractor, at no additional expense to the Owner, shall at all times:

1. Safely guard the Owner's property and abutting or adjacent property from injury, loss, or damage in connection with the Contract;
2. Protect by false work, braces, shoring, or other effective means all buildings, foundations, walls, fences, and other property along his line of Work, or affected directly by his Work, including, but not limited to the Owner's property, against damage;
3. Cover or otherwise protect stockpiles of Materials to avoid damage to any property from such Materials; and/or
4. Repair, replace, or make good any such damage, loss or injury, unless such is caused directly by the Owner or his duly authorized representatives.

B. The Contractor shall exercise care to protect from injury all water lines, sanitary sewer lines, gas mains, telephone cables, electric cables, services pipes, and other utilities or fixtures which may be encountered during the progress of the Work. All utilities and other service facilities or fixtures if damaged, shall be repaired by the Contractor without additional compensation.

**56. PROTECTION OF PERSONS**

A. The Contractor shall:

1. At all times protect the lives and health of his employees under the Contract;
2. Take all necessary precautions for the safety of all persons on or in the vicinity of the Work site;
3. Comply with all applicable provisions of Federal, State, County and Municipal safety laws and building codes; and

- B. Contractor shall comply with all provisions of the "Williams Steiger Occupational Safety and Health Act of 1970", including any amendments thereto and rules and regulations issued pursuant thereto, applicable to the Work and performance of the Contract. Whereas the State in which the Work is performed has passed legislation bearing on Occupational Safety and Health, such legislation and amendments thereto, together with rules and regulations issued pursuant thereto shall be complied with by the Contractor.

**57. POTENTIALLY DANGEROUS WORK**

- A. When the use of explosives, driving, or removal of piles, wrecking, excavation Work or other similarly potentially dangerous Work is necessary for the prosecution of the Work, the Contractor shall exercise the utmost care so as not to endanger life or property. The Contractor shall be fully responsible for any and all damages, claims, and for the defense of any actions against the Owner resulting from the prosecution of such Work in connection with or arising out of the Contract.
- B. The Contractor shall notify each public utility company or other Owner of property having structures or improvements in proximity to the site of the Work, of his intent to perform potentially dangerous Work. Such notice shall be given sufficiently in advance to enable the companies or the Owners of property to take such steps as they may deem necessary to relieve the Contractor of responsibility for any damages, claims, or the defense of any actions against the Owner resulting from the performance of such Work in connection with or arising out of the Contract.
- C. All explosives shall be stored in a secure manner and all storage places shall be marked clearly "EXPLOSIVES - KEEP OFF", and shall be in the care of competent watchmen at all times.

**58. PATENTS, COPYRIGHTS, AND ROYALTIES**

- A. The Contractor shall protect, defend, indemnify, and save harmless the Owner and each of its officers, agents, servants, and employees from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the Owner, or the Owner's officers, agents, servants, or employees unless otherwise specifically stipulated in the Contract Documents.
- B. If the Contractor uses any design, device, or Materials and Equipment covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that without exception, the Contractor shall pay all royalty and license fees and the Contract Prices shall include all royalties or costs arising from the use of such design, device, or Materials and Equipment in any way involved in the Work. The Contractor and/or his Surety shall indemnify and save harmless the Owner of the Work from any and all claims for design, device, or Materials and Equipment, or any trademark or copyright in connection with the Work agreed to be performed under the Contract, and shall indemnify the Owner of the cost, expense, or damage which it may be obligated to pay by reason of such infringement at any time during the prosecution of the Work or after completion of the Work.

**59. CHANGED OR EXTRA WORK**

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- A. The Owner, reserves the right, at any time during the progress of the Work, to make necessary alterations of, deviations from, additions to, or deletions from the Contract, or to require the performance of Extra Work neither covered by the Plans and Specifications nor included in the Contractor's Proposal, but forming a part of the contracted Work.
- B. The Contractor shall not proceed with any Changed or Extra Work without a written Contract Change Order approved by the Owner. Any Changed or Extra Work performed by Contractor without approval from the Owner shall be done solely at the Contractor's risk; the Contractor hereby waives any claim for additional compensation.
- C. Changed or Extra Work shall in no way injuriously affect to invalidate the Contract or the Contractor's bonds, but the difference in cost shall be added to or deducted from the Contract Price, as the case may be. No anticipated profits shall be allowed for Work deleted. Adjustments, if any, in the Contract Price by reason of any such Changed or Extra Work shall be determined by one of the following methods in the order as listed. Adjustments, if any, in the Contract Time by reason of any such Changed or Extra Work shall be determined in accordance with General Conditions, Section 75 Extension of Contract Time.
1. Method A By unit prices contained in the Contractor's Proposal for the same type or class of Work.
  2. Method B If applicable unit prices are not included in the Contractor's Proposal, then by an acceptable unit sum price Proposal from the Contractor.
  3. Method C If unit prices are not available and a unit sum price Proposal cannot be agreed on, then by an acceptable lump sum price Proposal from the Contractor.
  4. Method D If the Owner and the Contractor cannot agree on pricing per Method B or C before the Owner requests the Contractor to begin Work on the Changed or Extra Work then the Contractor shall be paid the "actual field cost" (as defined by Paragraph F below) of the Work completed by his own forces plus a fifteen (15) percent markup.
- D. Method A -- Whenever any Changed or Extra Work is to be done, for which unit prices for the same type or class of Work are contained in the Contractor's Proposal, such Work shall be done, measured and paid for pursuant to Method A hereinabove set forth and the applicable portion of the Contract Documents.
- E. Methods B and C -- Methods B and C shall include an itemized cost breakdown for labor (including labor man-hours), Materials and Equipment, Construction Equipment (including rental equipment), Subcontractor costs, incidental expenses, overhead and profit. In determining the amount payable to the Contractor, an additional five (5) percent may be added to the amount payable to a Subcontractor, but no "pyramiding" or additional percentage shall be authorized for any Work done by a Subcontractor.
- F. Method D -- When any Changed or Extra Work is performed under Method D, the term "actual field cost" of such Changed or Extra Work is hereby defined to be and shall include:



1. The actual payroll cost, of all workmen such as foremen, equipment operators, carpenters, electricians, mechanics, and laborers, for the time actually performing the Changed or Extra Work.
2. The actual cost of all Materials and Equipment incorporated in the Changed or Extra Work.
3. The cost of all Construction Equipment for the time actually employed or used in the performance of the Changed or Extra Work based on the Colorado State Department of Transportation's Equipment Schedule in force at the date of the Contract Change Order Request.
4. Transportation charges necessarily incurred in connection with any Construction Equipment authorized by the Owner for use on said Changed or Extra Work but which is not already on site.
5. The actual cost of all power, fuel, lubricants, water, and similar operating expenses as well as other expendable materials.
6. All incidental expenses incurred as a direct result of such Changed or Extra Work, including payroll taxes, and a prorata portion of premiums related to the Contractor's bonds and where the premiums therefor are based on payroll costs, on insurance required by the Contract.

When any Changed or Extra Work is performed under Method D, the Owner may direct the form in which the accounts of the actual field costs shall be kept and may also specify in writing, before the Work commences, the method of doing the Work and the type and kind of Construction Equipment, if required, which shall be used in the performance of the Changed or Extra Work.

When any Changed or Extra Work is performed under Method D, the fifteen (15) percent markup of the "actual field cost" to be paid to the Contractor shall cover and be full compensation for the Contractor's general superintendence, field office expense, home office overhead, profits, and all other elements of cost not embraced within the "actual field cost" as defined herein. In determining the amount payable to the Contractor, an additional five (5) percent may be added to the amount payable to a Subcontractor, but no "Pyramiding" or additional percentage shall be authorized for any Work done by Subcontractors.

- G. The Contractor shall furnish satisfactory bills, payrolls, and vouchers covering all items of cost and when requested by the Owner, give the Owner access to accounts relating thereto.
- H. Any Changed or Extra Work shall be considered a part of the Contract, subject to all of its terms, conditions, stipulations, review, guaranties, and tests and may be performed without notice to the Surety on the Contractor's bonds. The Contractor and Surety hereby agree to these provisions.

#### **60. CLAIMS FOR EXTRA COST**

- A. In case any instructions, either oral or written, appear to the Contractor to involve Changed or Extra Work for which, in his opinion, he should receive extra compensation, the Contractor shall make a written request to the Owner for a Contract Change Order authorizing such Changed or Extra Work. Should a difference of opinion arise as to what does or does not constitute Changed or Extra Work, or concerning the payment thereof, and the Owner insists on this conformance, the Contractor shall proceed with the Work after presenting a written notice of its Claim for Extra

Cost to the Owner. Performance, by Contractor, of the Work in question shall not in any way prejudice the Contractor's ability to receive compensation per its Claim for Extra Cost.

The Contractor shall keep an accurate account of the "actual field cost" thereof as provided for in Method D under General Conditions, Section 59 Changed or Extra Work. The Contractor shall thereby not waive any right he might have to compensation for the Claim for Extra Cost in connection with the Changed or Extra Work. Upon receipt of the Contractor's Claim for Extra Cost, the Owner will make a final determination as to whether or not Changed or Extra Work was involved, and if so, the amount due to the Contractor.

- B. Any Claims for Extra Cost pursuant to this Section, together with supporting documents and receipts, must be filed within ten (10) consecutive Calendar Days after performing the Work for which Extra Cost is claimed. The Owner shall have the right to reject any Claim for Extra Cost if the foregoing procedure is not followed.
- B. In giving verbal instructions, the Owner shall have the authority to make minor changes that do not involve extra cost or time of performance and are not inconsistent with the design concept and purposes of the contracted Work; but otherwise, except in an emergency endangering life or property, no Changed or Extra Work shall be performed unless in pursuance of a Contract Change Order approved by the Owner, and no Claim for Extra Cost shall be valid unless so approved, except as otherwise provided herein.

## **61. CONCEALED OR UNKNOWN CONDITIONS**

If conditions are encountered at the site which are (1) sub-surface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then written notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than ten (10) Days after first observance of the conditions.

The Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, shall provide an adjustment in the Contract Price or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall so notify the Contractor in writing, stating the reasons. Opposition to the Owner's determination must be made in writing by the Contractor, stating his reasons therefor, within ten (10) Days after the Owner has given notice of the decision.

## **62. GUARANTY PERIOD**

- A. The Contractor hereby agrees to keep all Work constructed under the Contract in Good Repair for a period of two (2) years from the date of Initial Acceptance, unless a longer period is otherwise specified in the Contract Documents. Upon written notice by certified mail from the Owner or the Owner's representative to the Contractor of any aspect of the Work found by the Owner not to be in Good Repair, the Work shall be remedied by the Contractor. Such remedy shall be made without further cost to the Owner, including in part, all damages caused by such defect, deficiency, deterioration, or departure, and by its repair, replacement or correction.

- B. It is intended that this provision shall apply whether or not a bond is required, as a personal obligation of the Contractor. If the Contractor shall not proceed to remedy such defects, deficiencies, deteriorations, or departures called to his attention in the notice within seven (7) consecutive Calendar Days after mailing of notice, and diligently pursue such repairs, the Owner may cause the repairs to be made as the Owner deems best and the entire cost thereof shall be paid by the Contractor or its Surety or deducted from any amounts as are due to the Contractor from the Owner.
- C. The obligations of the Contractor as herein provided shall be in addition to and not in limitation of any obligations imposed upon by him by special guaranty or warranty required by the Contract Documents or otherwise prescribed by law.

**63. AUTHORITY OF OWNER**

- A. The Owner, or his duly authorized representative, shall furnish engineering services during construction of the Work to the extent provided in the Contract Documents. He shall observe and review the Work in the process of construction or erection. Compliance with the Contract Documents shall be the Contractor's responsibility notwithstanding such observation or review. The Owner has authority to recommend suspension of the Work when it appears such suspension may be necessary to accomplish the proper implementation of the intent of the Contract Documents.

The authority to observe, review, or recommend suspension of the Work, or exercise such other authority as may be granted by the Contract Documents, shall not be construed or interpreted to mean supervision of construction, which is the Contractor's responsibility, nor make the Owner responsible for providing a safe place for the performance of Work by the Contractor or by the Contractor's employees or those of suppliers or Subcontractors or for access, visits, use, work, travel, or occupancy by any other person. The Owner shall also have the authority to reject any or all Work, Materials, or Equipment which do not conform to the Contract Documents and to decide technical questions which arise in the execution of the Work.

- B. The Owner shall determine the amount, quality, acceptability, and fitness of the several kinds of Work, Materials, and Equipment which are to be paid for under the Contract and shall decide all questions which may arise in relation to said Work and the construction thereof.

The Owner's estimates and decisions shall be final and conclusive, except as otherwise expressly provided. In case any question shall arise between the parties to the Contract relative to the Contract Documents, the determination or decision of the Owner shall be a Condition Precedent to the right of the Contractor to receive any money or payment for Work under the Contract affected in any manner or to any extent by such question.

- C. The Owner shall decide the meaning and intent of any portion of the Contract Documents where the same may be found obscure or to be in disagreement.

**64. DECISIONS OF THE OWNER**

The Owner, through its duly authorized representatives, shall within a reasonable time after appropriate notice, make decisions in writing on requests, disagreements and claims between the Contractor and Owner. Such decisions shall be regarded as final.

**65. PERSONAL LIABILITY OF OWNER**

In carrying out any of the provisions of the Contract or in exercising any power or authority granted thereby, there shall be no liability upon the Owner or his duly authorized representatives, either personally or as an official of the Owner, it being understood that in such matters, they act as agent and representatives of the Owner.

**66. AUTHORITY AND DUTIES OF OWNER'S FIELD REPRESENTATIVE**

- A. Inspectors are placed on the Work to keep the Owner informed as to the progress of the Work and the manner in which it is being done; to keep records; act as liaison between the Contractor and the Owner; also to call the attention of the Contractor to any deviations from the Contract Documents, but failure of the Inspector to call the attention of the Contractor to Defective Work or deviations from the Contract Documents shall not constitute acceptance of said Work.
- B. The Inspector may reject or accept Materials and Equipment to be incorporated in the Work, and such specific items as he is authorized by the Owner to accept.
- C. When any Material or Equipment has been accepted by the Inspector, it passes from his control to the control of the Contractor and remains there until the Work, as a whole, is complete. Since the Inspector cannot control how the Material or Equipment is used, the responsibility for its safety and proper use shall be the Contractor's. Until the job is finally completed, the Contractor may do Work that changes or modifies Work previously done, and even though at any given time, a portion of Work might be well done and acceptable in quality, the responsibility for keeping it in that condition until the Work is complete is the sole responsibility of the Contractor. For this reason, it is impossible to accept, finally, any portion of the Work until the Project as a whole is acceptable and control of said Project is withdrawn from the Contractor by Final Acceptance by the Owner.
- D. Since one of the Inspector's primary interests is to see that Work on the Project progresses expediently and in a Good and Workmanlike Manner, he may at various times offer suggestions to the Contractor, which the Contractor may or may not follow, at his discretion. Such suggestions are never to be considered as anything but suggestions, and involve no assumption of responsibility, financial or otherwise, by either the Inspector himself, or the Owner.
- E. Any personal assistance which an Inspector may give the Contractor will not be construed as the basis of any assumption of responsibility in any manner, financial or otherwise, by the Inspector, or the Owner.
- F. The Inspector is not and does not purport to be a Safety Engineer and is not engaged in that capacity by the Owner and shall have neither authority nor the responsibility to enforce construction safety laws, rules, regulations, procedures, or the safety of persons on and about the construction site.
- G. The presence or absence of an Inspector on any job will be at the sole discretion of the Owner, and such presence, or absence of an Inspector will not relieve the Contractor of his responsibility to obtain the construction results specified in the Contract Documents.
- H. The Inspector shall not be authorized to approve or accept any portion of the Work or to issue instructions contrary to the Contract Documents. Such approvals, acceptance or instructions, when given, must be in writing and signed by the Owner. The Inspector shall have authority to reject Defective Materials and Equipment; however the failure of the Inspector to reject Defective

material or any other Work involving deviations from the Contract Documents shall not constitute acceptance of such Work.

- I. Nothing in this subsection shall in any way be so construed as to require or to place responsibility for the method, manner or supervision of the performance of the Work under this Contract upon the Inspector, or the Owner. Such responsibility rests solely with the Contractor.

**67. CONTRACTOR'S EMPLOYEES**

- A. The Contractor shall provide and maintain, continually on the site of the Work during its progress, adequate and competent superintendence of all operations for and in connection with the Work under the Contract. The Contractor shall either personally superintend his Work or shall cause it to be done by a capable Superintendent acceptable to the Owner. Such representative shall be able to read, write, and speak English fluently and shall be authorized to receive instructions from the Owner. Said Superintendent shall have authority to see that the Work is carried out in accordance with the Contract Documents and in a first class, thorough, and Good and Workmanlike Manner in every respect.
- B. Incompetent, disorderly, intemperate, or incorrigible employees shall be dismissed by the Contractor or his representative when requested by the Owner, and such person shall not again be permitted to return to the Work without the written consent of the Owner.
- C. The Contractor agrees to indemnify and hold the Owner harmless from any and all loss or damages arising out of jurisdictional labor disputes or other labor troubles of any kind that may occur during the construction and performance of the Contract.
- D. The Contractor shall provide, at the request of the Owner, such reasonable information about his employees as may be necessary, including in part, name address and social security number.

**68. CONSTRUCTION REVIEW AND TESTING**

- A. During the progress, the Work shall be subject to the review and observation of the Owner. The Contractor shall afford every reasonable facility and assistance to the Owner to make such review. If any Work is covered up without approval or consent of the Owner, it will be uncovered for examination at the Contractor's expense.
- B. The fact that the Owner is on the job site shall not be taken as an acceptance of the Contractor's Work or any part of it. The Contractor shall notify the Owner upon completion of his Contract, and the Work shall be given final construction review by the Owner, and any tests and re-tests shall be witnessed by the Owner or his representative. If all parts of the Work are acceptable and substantially comply with the intent of the Contract Documents, Initial Acceptance shall be made by the Owner. If parts of the Work are not acceptable and require additional Work by the Contractor to complete the Project, necessitating additional cost, the costs shall be paid for by the Contractor to the Owner.
- C. Contractor shall submit to the Owner, ten (10) Days in advance of construction and without charge, Samples or Specifications of Materials and Equipment he proposes to use and shall not use these Materials and Equipment until he has received approval from the Owner.
- D. Contractor shall furnish tests and reports on tests of all Materials and Equipment called for in the Contract Documents. The testing laboratory must be approved by the Owner and the Contractor shall

pay the cost of the test, and necessary re-tests, including all transportation charges unless otherwise provided by the Contract Documents.

- E. All tests and re-tests unless otherwise provided, shall be in accordance with the pertinent sections of the latest edition of the standards applicable to the material or devices to be tested. A partial list of the principal societies referred to and their abbreviations follows:

A.A.S.H.T.O.	American Association of State Highway and Transportation Officials
A.C.I.	American Concrete Institute
A.I.S.C.	American Institute of Steel Construction
A.N.S.I.	American National Standards Institute
A.S.T.M.	American Society of Testing Materials
A.W.W.A.	American Water Work Association
C.P.I.	Clay Pipe Institute
C.S.	Commercial Standards
F.S.	Federal Specifications
N.E.C.	National Electric Code
T.M.C.A.	Tile and Marble Contractors of America

- F. All parts of the Work and improvements shall conform to the standard of construction as given in detail under the various items of the Contract Documents, and in general, to the intent thereof and if they do not conform, shall be made to do so by rebuilding or replacing or otherwise as instructed by the Owner, without further cost to the Owner.

- G. If after the commencement of the Work the Owner determines that any Work requires special inspection, testing, or approval not otherwise provided for, the Owner shall issue written authorization instructing the Contractor to order such special inspection, testing, or approval, and the Contractor shall give timely notice of its readiness and of the date arranged so the Owner may observe such inspecting, testing, or approval. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents or with respect to the performance of the Work, with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof.

- H. Required certificates of inspection, testing, or approval shall be secured by the Contractor and promptly delivered by him to the Owner.

**69. USE OR OCCUPANCY OF COMPLETED PORTIONS**

- A. The Owner shall have the right to take possession of, use, or occupy any completed or partially completed portions of the Work, notwithstanding the time for completing the entire Work or any portions, may, or may not, have expired. Such taking possession, use or occupancy shall not be deemed an acceptance of any Work until all Work has been completed in accordance with the Contract Documents.

If such prior use or occupancy increases the cost, or delays the Work, the Contractor shall be granted an adjustment to the Contract Price or the Contract Time, or both, as Owner may recommend.

- B. Consent of Surety and endorsement from the insurance carrier or carriers permitting prior occupancy or use of any completed or partially completed portions of the Work by the Owner shall be secured by

the Contractor. Contractor and his Surety and enforcement from the insurance carrier or carriers permitting prior occupancy or use of any completed or partially completed portions of the Work by the Owner shall be secured by the Contractor. Contractor and his Surety and insurance carrier hereby agree that such consent shall not be unduly withheld.

**70. OWNER'S RIGHT TO CORRECT DEFICIENCIES**

If the Contractor should neglect to prosecute the Work properly in accordance with the Contract Documents or fails to correct Work which is not in accordance with the Contract Documents, the Owner, after seven (7) Calendar Days' written notice to the Contractor, may, without prejudice to any other remedy the Owner may have, correct such deficiencies in Work intended to become a permanent part of the Project, and may deduct the cost thereof from the payment then or thereafter due the Contractor.

**71. SUSPENSION OF WORK BY OWNER**

The Owner shall have the right to suspend and reinstate execution of the whole or any part of the Work contracted for without invalidating the provisions of the Contract in any way for such period or periods of time as the Owner may deem necessary due to unsuitable weather or such other conditions considered unfavorable for the suitable prosecution of the Work, including, in part, failure of the Contractor to supply labor, Materials, or Equipment meeting the requirements for the Contract Documents; or failure to carry out instructions or to perform such other provisions of the Contract considered unfavorable for the orderly or suitable prosecution of the Work. During periods of suspension, the Contractor shall properly protect the Work from possible damage. Orders for suspension or reinstatement of the Work shall be issued by the Owner to the Contractor in writing.

**72. RIGHT OF OWNER TO TERMINATE CONTRACT**

Should it appear any time that the Work is not being prosecuted with sufficient competence or rapidity to insure the proper completion of the Work within the Contract Time, and if upon seven (7) Calendar Days' written notice to the Contractor, he fails to increase the quality or the quantity of his Work or both, the Owner reserves the right to terminate the Contract and relet the Work or any part thereof, or at the Owner's option to complete it by day labor. The Contractor shall not be entitled to any claims for damages on account of such termination, and he will be held liable for costs and expenses incurred in reletting or completing the Work under the Contract. All money due the Contractor will be retained until the Work is completed and all expenses and costs have been deducted and any money due the Owner, after such deductions have been made, shall be paid by the Contractor or his Surety who hereby agrees to these provisions.

**73. TERMINATION FOR CONVENIENCE**

- A. Termination Notice - The Owner may terminate Work under this Contract in whole or in part if such determination is in the Owner's best interest. Contract termination will be initiated by the Owner's written Contract Termination Notice to the Contractor which will specify the effective date of termination.
- B. Canceled Commitments - The Contractor, after receiving the Contract Termination Notice, shall cancel any outstanding commitments for procurement of Materials and Equipment. In addition, the Contractor shall use reasonable effort to cancel or divert any outstanding subcontracted commitments to the extent they relate to any Work terminated unless otherwise requested by the Owner. With respect to such canceled commitments the Contractor shall:

1. Settle all outstanding liabilities and all claims arising out of these canceled commitments. Such settlements shall be approved by the Owner and shall be final; and
  2. Assign to the Owner all of the rights, title and interest of the Contractor under the terminated orders and subcontracts as directed by the Owner. The Owner will then have the right to settle or pay any or all claims arising out of the termination of these commitments.
- C. Termination Claim - The Contractor shall submit its termination claim to the Owner within ninety (90) Calendar Days after the effective date of the Contract Termination Notice. During the ninety Calendar (90) Day period, the Contractor may make a written request to the Owner for a time extension in preparing the claim. Any time extension must be approved by the Owner. If the Contractor fails to submit its termination claim within the time allowed, the Owner may determine the amount due the Contractor, if any, by reason of the termination.
- D. Payment - Subject to Paragraph C above, the Contractor and Owner may agree upon the whole or any part of the amount to be paid the Contractor as a result of the termination. The amount may include reasonable cancellation charges incurred by the Contractor. The amount may also include any reasonable loss upon outstanding commitments for subcontracts which the Contractor is unable to cancel, provided the Contractor has proven reasonable effort to divert the commitments to other activities. The amount agreed upon shall be embodied in a Contract Change Order and the Contractor shall be paid that amount. Payments claimed and agreed to pursuant to termination shall be based on the Contract Unit Prices. Payment for partially completed lump sum items may be made in the proportion that the partially completed Work is to the total lump sum item. Where Work performed is of a nature that it is impossible to separate the costs of uncompleted Work from completed units, the Contractor shall be paid the actual cost incurred for the necessary preparatory Work and other Work accomplished.
- The Owner may from time to time, under the terms and conditions it may prescribe, make partial payment against costs incurred by the Contractor in connection with the Contract termination. The total of such payments shall not exceed the amount, as determined by the Owner, the Contractor will be entitled to hereunder.
- E. Disposition of Work and Inventory - The Contractor shall transfer title and deliver to the Owner, such items which, if the Contract had been completed, would have been furnished to the Owner including:
1. Completed and partially completed Work; and
  2. Materials or Equipment produced or in process or acquired in connection with the performance of the Work terminated by the notice.

Other than the above, any termination inventory resulting from the Contract termination may, with written approval of the Engineer, be sold or acquired by the Contractor under the conditions prescribed by and at prices approved by the Engineer. The proceeds of any such disposition shall be applied to reduce any payments to the Contractor under this Contract, or shall otherwise be credited to the cost of Work covered by this Contract, or paid in a manner as directed by the Engineer. Until final disposition, the Contractor shall protect and preserve all the Material and Equipment related to this Contract which is in his possession and in which the Owner has or may have an interest.



- F. Cost Records - The Contractor agrees to make cost records available to the extent they are necessary to determine the validity and amount of each item claimed.
- G. Contractual Responsibilities - Termination of a Contract or portion thereof shall not relieve the Contractor of contractual responsibilities for the Work completed, nor shall it relieve the Surety of its obligation for and concerning any just claim arising out of the Work performed.

**74. LIQUIDATED DAMAGES - TIME AN ESSENTIAL ELEMENT**

- A. It is mutually understood and agreed by and between the parties to the Contract that in the execution of the same, time is an essential element of the Contract, and it is important that the Work progress vigorously to completion.
- B. The Contractor agrees that said Work shall be prosecuted regularly, diligently, and uninterrupted at such rate of progress as will insure Substantial Completion thereof within the Contract Time. It is expressly understood and agreed, by and between the Contractor and the Owner, that the completion time set forth in the Contract Documents is a reasonable time for the completion of the Work, taking into consideration the average of the preceding ten (10) years' climatic range during the specified Contract Time based on U.S. Weather Bureau statistics for the locality where the Work is performed and the usual industrial conditions prevailing in that locality.
- C. If the Contractor neglects, fails, or refuses to complete the Work within the Contract Time, then for each Calendar Day after the end of the Contract Time, Substantial Completion of the Work is not achieved, the amount per Calendar Day specified in the Special Conditions shall be assessed by the Owner, not as a penalty, but as a predetermined and agreed upon liquidated damage.
  - 1. If no amount for Liquidated Damages is set forth in the Special Conditions, or if no Special Conditions are attached hereto, the default amount of Liquidated Damages is hereby agreed to be five hundred U.S. Dollars (\$500.00) per day for the first week after the end of the Contract Time; the default amount of Liquidated Damages is hereby agreed to be one thousand U.S. Dollars (\$1,000.00) per day for the second week after the end of the Contract Time, and for all other weeks thereafter.
- D. The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would sustain in the event the Work is not completed within the Contract Time.
- E. The Owner shall have the right to deduct said Liquidated Damages from any money due, or to become due to said Contractor and to sue for and recover any additional compensation for damages for non-performance of the Contract at the time stipulated and provided for in the Contract Documents.
- F. The assessment of Liquidated Damages for failure to complete the Work within the Contract Time shall not constitute a waiver of the Owner's right to collect any additional damages which the Owner may sustain by failure of the Contractor to carry out the terms of this Contract.
- G. If Liquidated Damages for milestones are specified in the Special Conditions, all conditions as set forth for Liquidated Damages shall apply to each and every milestone specified. All milestones represent independent damages the City will suffer and shall therefore be viewed independently. All milestones shall be accumulative, increasing by the amount specified for each date the Contractor does not achieve

substantial completion for each specific milestone. If the Contractor fails to obtain Substantial Completion within the allowed Contract Time, the Liquidated Damages for milestone dates shall cease to accrue and Liquidated Damages for failure to complete the Work will commence.

**75. EXTENSION OF CONTRACT TIME**

- A. The Contractor expressly covenants and agrees that in undertaking to complete the Work within the Contract Time, he has taken into consideration and made allowances for all delays and hindrances incidental to such Work, whether growing out of delays in securing Materials and Equipment or workmen, normal inclement weather, or otherwise.
- B. If the Contractor is delayed at any time in the progress of the Work by an act or omission of the Owner, or its designated representative, any separate contractor employed by the Owner, or by Changed or Extra Work, industry-wide labor strikes, fire, epidemics, quarantine restrictions, freight embargoes, unavoidable casualties, abnormal weather conditions, any causes beyond the Contractor's control, or by any other cause which the Owner determines may justify the delay, then the Contract Time shall be extended for such reasonable time as the Owner may determine based on the timing and submittal requirements of this Section provided, however, that such delay could not have been avoided by the exercise of due diligence by the Contractor.
- C. No extension of the Contract Time will be granted for:
  - 1. Variations between original Contract quantities and actual quantities which cannot be predetermined and which variance (plus or minus) is less than twenty five (25) percent of the Contract quantities.
  - 2. Rain, snow, wind, flood, or natural phenomena of normal intensity for the locality where the Work is performed.
  - 3. Acts or omissions of the Contractor or its Subcontractors.
  - 4. Delays occurring concurrently (either at the same time, on the same critical path or on a concurrent critical path) with delays attributable to acts or omissions of the Contractor or its Subcontractors.
  - 5. Delays occurring to activities which are not on the then-current critical path.
- D. A Request for an Extension of the Contract Time shall be made in writing to the Owner not later than seven (7) Days after the commencement of the delay. In the case of a continuing delay for the same cause only one request is necessary.

The Contractor shall support its Request for an Extension of the Contract Time with a supplemental submittal, which shall be filed with the Owner within fourteen (14) Days of making the Request. The Contractor's supplemental submittal shall include:

- 1. A description of the activities that were delayed, the reasons for the delay, an explanation of how they were delayed and a detailed factual statement relative to all relevant dates, locations, etc.

2. A schedule analysis (based on the critical path method) which shows in graphic form how and where a delay on the then-current critical path occurred and its effect on the Contract Time.
  3. An explanation of the Contractor's efforts to reschedule the Work in order to mitigate the effect of the delay and/or prevent further delays resulting from such cause.
- E. If abnormal weather conditions are the basis for a Request for an Extension of the Contract Time, such Request shall be supported by data substantiating that weather conditions during the period of time impacted were unusually severe for the time period, and could not have been reasonably anticipated. To establish the existence of abnormal weather, the Contractor must submit documentation which shows that the weather conditions experienced fall outside of the extreme ranges of weather data for the Denver area published by the National Climatic Data Center during the same month over the prior ten (10) year period. The existence of abnormal weather shall not relieve the Contractor of the burden of proving that the abnormal weather delayed specific activities that were on the then-current critical path that controlled the overall completion of the Work.
- F. Failure to strictly comply with the timing and submittal requirements of this Section shall constitute a waiver of any Request for an Extension of the Contract Time. All extensions to the Contract Time shall be by Contract Change Order. No oral time extensions shall be granted by the Owner or relied upon by the Contractor.
- G. Notwithstanding anything to the contrary in the Contract Documents, an Extension to the Contract Time, to the extent permitted under this Section, shall be the sole and exclusive remedy of the Contractor for any delay in the commencement, prosecution or completion of the Work; hindrance, interference, or obstruction in the Contractor's performance of the Work; loss of productivity; or other similar claims, whether or not such delays are foreseeable. IN NO EVENT SHALL THE CONTRACTOR OR ITS SUBCONTRACTORS BE ENTITLED TO ANY COMPENSATION OR RECOVERY OF ANY DAMAGES, IN CONNECTION WITH ANY DELAY TO THE CONTRACT WORK. THE CONTRACTOR HEREBY WAIVES ANY AND ALL CLAIMS PAST, PRESENT OR FUTURE FOR MONETARY DAMAGES ARISING OUT OF OR RELATED TO ANY DELAY OR INTERFERENCE INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL DAMAGES, LOST OPPORTUNITY COSTS, IMPACT DAMAGES, ACCELERATION DAMAGES, LOSS OF LABOR PRODUCTIVITY DAMAGES, ALL OTHER TIME-RELATED DAMAGES, OR OTHER SIMILAR REMUNERATION AGAINST THE OWNER. The Owner's exercise of any of its rights or remedies under the Contract Documents regardless of the extent or frequency of the Owner's exercise of such rights of remedies shall not be construed as active interference with the Contractor's performance of the Work.

## 76. CONTRACT IN DEFAULT

The Owner may declare the Contract in default for any one or more of the following reasons as determined by the Owner in his sole discretion:

- A. Failure to complete the Work within the Contract Time or any proper extension thereof granted by the Owner.
- B. Failure or refusal to comply with an instruction of the Owner within a reasonable time.
- C. Failure or refusal to remove rejected Materials or Equipment.

- D. Failure or refusal to perform any Work or repair any Defective or unacceptable Work.
- E. Bankruptcy or insolvency, or the making of an assignment for the benefit of creditors.
- F. Failure to provide a qualified Superintendent, or sufficient and competent workmen or Subcontractors to carry on the Work in a satisfactory and Good and Workmanlike Manner; or failure to prosecute the Work in accordance with the Contractor's Schedule of Work.
- G. Failure to provide proper Materials, and Equipment.
- H. Failure to comply with any important provisions of the Contract Documents as determined by the Owner.
- I. Disregard of laws, ordinances, rules, or regulations or order of any public body having jurisdiction, or the violation of any construction or safety codes.
- J. Failure to prosecute the Work with sufficient competence or rapidity to insure the proper completion of the Work within the Contract Time.

**77. CONTRACT IN DEFAULT - PROCEDURE FOR DECLARING**

The Owner may declare the Contract in default by giving written notice to the Contractor and his Surety to that effect. Said notice shall contain the reason or reasons for default and shall fix a day certain, not less than seven (7) Calendar Days after the date of said notice, when the Contract shall be declared in default, unless the Contractor or his Surety remedies the default to Owner's satisfaction or makes satisfactory arrangements with the Owner for its remedy prior to the day certain fixed in said notice for declaring the Contract in default. The Owner may, at its sole option, extend the day certain for declaring the Contract in default without prejudice to the Owner's right to thereafter declare the Contract in default. If the Contractor or his Surety fail to remedy the default or make arrangements for its remedy prior to the date set for declaring the Contract in default, or any extension thereof, the Contract shall be declared in default.

**78. CONTRACT IN DEFAULT - COMPLETION OF**

- A. If for any reason a Contract is declared in default, the Surety shall have the right to take over and perform the Contract; provided however, if the Surety does not commence performance thereof within seven (7) consecutive Calendar Days after the date of notice to the Contractor and his Surety that the Contract has been declared in default, the Owner, without process or action at law, may take over all or any portion of the Work and complete it at Owner's option whether by reletting or by day labor, for the account and at the expense of the Contractor or his Surety.
- B. Whether the Surety takes over and completes the Contract, or the Owner takes over and completes it by reletting or day labor, the Contractor and his Surety shall be liable to the Owner for any cost in excess of the original Contract Price expended in completing the Work, including in part, any direct and indirect costs and the professional services, and any Liquidated Damages stipulated in the Special Conditions, together with such other damages which the Owner may suffer on account of the Contractor's nonperformance of his Contract. The Owner may waive such portion of the Liquidated Damages as may occur after the Work is in condition for the safe, convenient and beneficial use or occupancy by the Owner for all of the purposes for which it was intended.

- C. In the event the Owner takes over the Work and prosecutes the same to completion, either by reletting or by day labor, the Contractor shall peaceably relinquish possession of said Work or the parts thereof specified in the above notice of declared default to the Contractor and his Surety.
- D. The Owner may, at Owner's option and at a rental which it considers reasonable, take possession of and utilize in completing the Work such Material, Equipment, and Construction Equipment on the site of the Work and suitable therefor until the Work is complete.
- E. All money due the Contractor shall be retained until the Work is completed and all expenses and costs have been deducted and any money due the Owner after such deductions or adjustments have been made as herein provided shall be paid by the Contractor or his Surety who hereby agree to all provisions herein.
- F. Neither the Owner, nor any of its officers, agents, or employees shall be in any way liable or accountable to the Contractor or his Surety for the method by which the completion of the said Work, or any portion thereof, may be accomplished or for the price paid therefor. Should the cost of the Contract completion, including all proper charges, be less than the original Contract Price, the amount so saved shall be paid to the Contractor.
- G. The Owner, notwithstanding the method used in completing the Contract, shall not forfeit the right to recover damages from the Contractor or his Surety for the Contractor's failure to complete his entire Contract. The Contractor shall not be entitled to any claim for damages on account of the method used by the Owner in completing the Contract.
- H. Maintenance of the Work shall continue to be the Contractor's and his Surety's responsibilities as provided for in the bond or guaranty requirements of the Contract Documents or any special guaranties provided under the Contract Documents.

**79. WARRANTY**

In addition to other promises and warranties contained herein the Contractor specifically warrants to the Owner that Materials and Equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirement of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered Defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of Materials and Equipment.

Neither the final certificate of payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by the Owner shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any expressed or implied warranties or responsibility for faulty Materials or Equipment or workmanship.

**80. OWNER'S REMEDIES CUMULATIVE AND NONWAIVER**

No right or remedy conferred upon or reserved to the Owner by the Contract shall be considered exclusive of any other remedy or contractual right, but the same shall be distinct, separate, and cumulative, and shall be in

addition to every other remedy existing at law or in equity or by statute; and every remedy given by the Contract to the Owner may be exercised from time to time as often as the occasion may arise, or as may be deemed expedient. No delay or omission on the part of the Owner to exercise any right or remedy arising from any default on the part of the Contractor shall impair such right or remedy or shall be construed to be a waiver of any such default or an acquiescence thereto, or otherwise affect the right of the Owner to enforce the same in the event of any subsequent breach or default by the Contractor.

**81. DISPUTE VENUE**

In the event of any dispute arising under these Contract Documents, venue shall lie in the District Court in and for the County of Montrose, State of Colorado, notwithstanding that either of the parties hereto may find it necessary to take some action in furtherance hereof outside said County.

**82. SEVERABILITY CLAUSE**

The provisions of this Contract shall be deemed to be severable, and if any term, phrase or portion of the Contract shall be determined to be unlawful or otherwise unenforceable, the remainder of the Contract shall remain in full force and effect, so long as the clause severed does not affect the intent of the parties.

**83. INDEMNIFICATION**

The Contractor agrees to indemnify and hold harmless Montrose, and its officers and its employees, from and against all liability, claims, demands, and expenses, including court costs and attorney fees, on account of any injury, loss, or damage, which arise out of or are in any manner connected with the Work to be performed under this Contract, if 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 negligent acts, errors, or omissions of the Contractor, any Subcontractor of the Contractor, or any officer, employee, or agent of the Contractor. The obligations of this Section shall not apply to damages which Montrose shall become liable by final judgment to pay to a third party as the result of the negligent act, error, or omission of Montrose.

**84. INSURANCE**

1. The Contractor agrees to procure and maintain in force during the term of this Contract, at its own cost, the following coverages:
  - a. Workers' Compensation Insurance as required by the Labor Code of the State of Colorado and Employer's Liability Insurance.
  - b. Commercial General Liability Insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards.
  - c. Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) for any one

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occurrence, with respect to each of Contractor's owned, hired or non-owned vehicles assigned to or used in performance of the services or Work under this Contract.

2. Contractor shall procure and maintain, and shall cause any Subcontractor of the Contractor to procure and maintain, the minimum insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to Montrose. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant to Paragraph 1 of this Section. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
3. A Certificate of Insurance shall be completed by the Contractor's Insurance Agent(s) as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect and shall be subject to review and approval by Montrose **prior to commencement of any services under this Contract**. The Certificate shall identify this Contract and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) Days prior written notice has been given to Montrose. **The Certificate shall name Montrose, its officers and its employees as additional insured with respect to the General Liability Insurance**. The completed Certificate of Insurance shall be sent to:

City of Montrose  
Public Works Department  
P.O. Box 790  
Montrose, CO 81402-0790
4. Failure on the part of the Contractor or Subcontractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of Contract upon which Montrose may immediately terminate this Contract, or at its discretion, Montrose may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by Montrose shall be repaid by Contractor to Montrose upon demand, or Montrose may offset the cost of the premiums against any monies due to Contractor from Montrose.
5. Montrose reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Contractor agrees to execute any and all documents necessary to allow Montrose access to any and all insurance policies and endorsements pertaining to this particular job.
6. Every policy required above shall be primary insurance, and any insurance carried by Montrose, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor. The Contractor shall be solely responsible for any deductible losses under the policies required above.
7. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Contract by reason of its failure to procure and maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
8. As an independent contractor the Contractor is not entitled to Worker's Compensation benefits under Montrose's plan. Further the Contractor is obligated to pay federal and state income tax on any monies earned pursuant to this contractual relationship.

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9. The parties hereto understand and agree that Montrose, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time to time amended, or otherwise available to Montrose, its officers, or its employees.

### **85. NON-DISCRIMINATION**

Contractor, its agents, employees, and Subcontractors shall not discriminate on the basis of race, color, creed, national origin, ancestry, age, sex, religion, or disability in any policy or practice.



**EXHIBIT A**

**Title**

**EXHIBIT B**

**Title**

**EXHIBIT C**

**Title**

**EXHIBIT D**

**Title**