



INVITATION FOR BIDS

PROJECT MANUAL

including

**CONTRACT DOCUMENTS
and
SPECIFICATIONS**

for the

Lake Nighthorse Fishing Access

CITY OF DURANGO, COLORADO

April 2019

City of Durango, Colorado
ADVERTISEMENT FOR BIDS
Lake Nighthorse Fishing Access

Sealed bid for the **Lake Nighthorse Fishing Access** project will be received by the City of Durango until **3:00 PM (Local Time) on June 13, 2019**. The City of Durango Parks and Recreation Department is seeking to make improvements to the Lake Nighthorse Fishing Access.

There will be an on-site Mandatory pre-bid at 1:00 P.M. (Local Time) on Tuesday May 14, 2019 County Road 210 Durango, Colorado to familiarize bidders with the project. Failure to attend the pre-bid will result in disqualification from the bid process.

Bids must be submitted via Rocky Mountain E-Purchasing, www.bidnetdirect.com/colorado. It is the sole responsibility of the bidder to see that the bid is received before the submission deadline. Late bids will not be considered.

Bid documents and/or supporting information may be downloaded, at no charge, from the following web site: www.bidnetdirect.com/colorado Click on “Vendor Registration” or “Vendor Login”, as applicable.

The City of Durango reserves the right to reject any and all bids, to waive any informalities and minor irregularities in bids, and to accept the bid deemed, in the opinion of the City, to be in the best interest of the City of Durango.

This project is being bid in accordance with the City of Durango Purchasing Policy.

Published: 4/27 & 5/1, 2019

INFORMATION FOR BIDDERS

Bids will be received by the City of Durango (herein called the “Contracting Agency”) until **June 13, 2019 at 3:00 PM (Local Time)**. Bids must be delivered electronically, via Rocky Mountain E-Purchasing Systems (RMEPS), www.bidnetdirect.com/colorado. It is the sole responsibility of the bidder to see that the bid is received before the submission deadline. Late bids will not be considered.

There will be an on-site, Mandatory pre-bid conference at 1:00 P.M. (Local Time) on Tuesday May 14, 2019 at the project site County Road 210, Durango, Colorado to familiarize bidders with the project.

Each bidder, before submitting his bid, shall become fully informed as to the extent and character of work required. All questions must be submitted in writing via RMEPS, www.bidnetdirect.com/colorado, prior to the deadline stated in the Bidding Procedure Timetable. The City will respond to all questions in the form of an Addendum uploaded to www.bidnetdirect.com/colorado.

All Bids must be made on the required Bid form. All blank spaces for Bid prices must be filled in, in ink or typewritten, and the Bid form must be fully completed and executed when submitted. Only one copy of the bid form is required. Any improperly completed bids will not be accepted.

The Contracting Agency may waive any informalities or minor defects or reject any and all Bids. Any Bid may be withdrawn prior to the above scheduled time for the opening of Bids or authorized postponement thereof. Any Bid received after the time and date specified shall not be considered and will be returned unopened. No Bidder may withdraw a Bid within 30 days after the actual date of the opening thereof. Should there be reasons why the Contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the Contracting Agency and the Bidder.

Bidders must satisfy themselves as to the accuracy of the estimated quantities in the Bid Schedule by examination of the site and review of the drawings and specifications including Addenda. After Bids have been submitted, the Bidder shall not assert that there was a misunderstanding concerning the quantities of Work or the nature of the Work to be done.

The Bid Documents and any Addenda issued contain the provisions required for the construction of the Project. Information otherwise obtained from an officer, agent or employee of the Contracting Agency, or any other person shall not affect the risks or obligations assumed by the Contractor or relieve him from fulfilling any of the conditions of the contract.

The Successful Contractor shall be subject to the Federally Required Clauses included at the end of this document.

Each Bid **must** be accompanied by a Bid Bond payable to the Contracting Agency for five percent (5%) of the total amount of the Bid.

A Performance Bond and a Labor and Material Payment Bond, each in the amount of 100 percent (100%) of the Contract Price (Base Bid plus Force Account Items), with a corporate surety approved by the Contracting Agency, will be required for the faithful performance of the Contract.

Attorneys-in-fact who sign Bid Bonds or Labor and Material Payment Bonds and Performance Bonds must file with each Bond a certified and effective dated copy of their Power of Attorney.

Each Bid **must** include the provided List of Subcontractors to be assisting in the project.

The party to whom the Contract is awarded will be required to execute the Agreement and obtain the Performance Bond and Labor and Material Payment Bond within fifteen (15) calendar days from the date when Notice of Award is delivered to the Bidder. The Notice of Award shall be accompanied by the necessary Agreement and Bond forms. In case the Bidder fails to execute the Agreement, the Contracting Agency reserves the right to exercise its option to consider the Bidder in default, in which case, the Bid Bond accompanying the Proposal shall become the property of the Contracting Agency.

Within fifteen (15) calendar days of receipt of acceptable Performance Bond, Labor and Material Payment Bond, proof of insurance, W9, any other required documents, and an Agreement signed by the party to whom the Agreement was awarded, the Contracting Agency shall sign the agreement and return to such party an executed duplicate of the Agreement. Should the Contract Agency not execute the Agreement within such period, the Bidder may, by Written Notice, withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the Contracting Agency.

The Contracting Agency shall issue the Notice to Proceed within ten (10) calendar days of the execution of the Agreement. Should there be reasons why the Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement between the Contracting Agency and Contractor. If the Notice to Proceed has not been issued within the ten (10) calendar day period or within the period mutually agreed upon, the Contractor may terminate the Agreement without further liability on the party of either party.

The Contracting Agency reserves the right to reject any or all Bids and to waive informalities when such action is deemed to be in the best interest of the Contracting Agency.

A conditional or qualified Bid may be cause for rejection.

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Projects, shall apply to the Contract throughout.

Each Bidder is responsible for inspecting the site and for reading and being thoroughly familiar with the Contract Documents. The failure or omission of any Bidder to do any of the foregoing shall in no way relieve any Bidder from any obligation in respect to his Bid.

BIDDING PROCEDURE TIMETABLE

Project Publication (Durango Herald)	April 27 th & May 1 st , 2019
Pre-Bid Conference	May 14, 2019 at 1:00 p.m. Project Site: Lake Nighthorse County Road 210, Durango CO 81301
Contractor Questions Due	May 29, 2019 3:00 p.m. (Local Time)
Addendum Issued by Purchasing (if necessary)	June 4, 2019 4:30 p.m. (Local Time)
Bid Deadline	3:00 p.m. on June 13, 2019 (Local Time) via : www.bidnetdirect.com/colorado
Notice of Award	Estimated June 17, 2019
Notice to Proceed	Estimated week of July 8 th , 2019
Anticipated Project Completion	July/ August TBD, 2019

I. INVITATION

The City of Durango invites all interested, qualified persons, firms, companies and/or teams capable of providing the required construction services, to submit proposals for the construction of an accessible concrete walkway, shade shelter and associated grade work at Lake Nighthorse in Durango, Colorado. The City is requesting proposals from a proven company capable of constructing the accessible route.

The City reserves the right to negotiate any and all elements of this proposal.

It is the intent of the City to negotiate a fixed sum contract for supply and installation with the selected company, to include the work defined in this document.

II. BACKGROUND

Lake Nighthorse was recently constructed by the United States Bureau of Reclamation (USBR) as part of the Animas La Plata Project. Recreational services is managed by the City of Durango and opened to the public in 2018. To better meet the needs of the public this IFB is seeking the construction of a paved accessible route to an owner installed accessible fishing dock. Associate work will include a 16’x24’ steel shade shelter, site work, boulder retaining walls, railing, revegetation and general demolition.

Scheduling of the construction can begin after award of the project. Beginning March 30th Lake Nighthorse will be open to the public on Fridays, Saturdays and Sundays from 9 a.m. to 4 p.m. Beginning May 1st Lake Nighthorse will open daily. It is the contractors responsibility to secure the work zone, materials and equipment as they see fit to protect the health safety and welfare of the public during work hours.

III. SCOPE OF WORK

The Scope of Work for this phase of work includes, but is not limited to:

1. **Lake Nighthorse Fishing Access** and affected/related activities as indicated in the Bidding Documents (see agreement).
2. **Lake Nighthorse Fishing Plans** The project consists of the improvements shown on the Lake Nighthorse Accessible Fishing Plans dated 3/22/2019.
3. City of Durango Construction Standards and Irrigation and Landscape Standards

IV. INSURANCE

- A. The Successful Contractor shall not commence work under this Agreement until it has obtained all insurance required by the contract documents and such insurance has been approved by the City. The Contractor shall not allow any subcontractor to commence work on this project until all similar insurance required of the subcontractor has been obtained and approved. For the duration of this Agreement, the Contractor must maintain the insurance coverage required in this section.
- B. The Successful Contractor shall procure and maintain, at its own cost, the following policy or policies of insurance. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the contract documents 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.
- C. Successful Contractor shall procure and maintain, and shall cause each Subcontractor of the Contractor to procure and maintain (or shall insure the activity of Contractor's Subcontractors in Contractor's own policy with respect to), the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained from the date of commencement of the Work. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Worker's Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract.
 2. Comprehensive General Liability insurance with minimum single limits of One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) 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.
 3. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than Five Hundred Thousand Dollars (\$500,000) each occurrence and One Million Dollars (\$1,000,000) aggregate with respect to each of Contractor's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.
- D. The policies required above, except for the Workers' Compensation insurance and Employer's Liability insurance, shall be endorsed to include the City of Durango and the State of Colorado and their officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City and Colorado Department of Transportation, their officers or their employees, shall be excess and not contributory insurance to that provided by Contractor. The additional insured endorsements for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under each of the policies required above.
- E. Certificates of insurance 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 copies of such certificates shall be forwarded to the City prior to start of Work. Each certificate shall identify the Project 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 the City and State. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- F. 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 contract upon which the City may immediately terminate the contract, or at its discretion

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 the City shall be repaid by the Contractor to the City upon demand, or the City may offset the cost of the premiums against any monies due to Contractor from the Owner.

V. ILLEGAL ALIEN CERTIFICATION

Per State Statute, all City of Durango contracts for services are now required to include certification that the contractor does not knowingly contract with illegal aliens.

HB 1343 requires certification from the contractor that the contractor has registered with, or certified that they are in compliance with, the E-Verify Program, formerly known as the Basic Pilot Program. While this program is not new, it is unknown to most people doing business with municipalities in the State of Colorado. The E-Verify Program is a free program run by the Federal Government within the Department of Homeland Security. The program requires an employer to apply for entry into the program and make certain agreements with the Department of Homeland Security and Social Security programs.

An employer must apply to participate in the E-Verify Program over the internet. Following is the website: <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES>. A set of instructions will appear and the applicant should follow those instructions to apply.

Therefore, effective immediately, every Successful Contractor shall be required to:

- 1) Fill out the Certification Statement Regarding Illegal Aliens form and return it to the City of Durango Grants/Contracts Division, and
- 2) Apply to participate in the E-Verify Program with the Division of Homeland Security.

The City will not make payments on any contract until the required form is on file in the office of the Grants/Contracts Division.

VI. BIDDER QUALIFICATIONS

In evaluating each bidder, consideration shall be made utilizing the following criteria. Deficiency in any of the areas listed below may be adequate cause for bid rejection.

- A. The ability, capacity and skill of the bidder to perform the contract or provide the service required.
- B. The total cost of the service to the City of Durango

VII. BID SUBMISSION

- **Bids are to be completed on the form furnished and any exceptions to the specifications must be attached hereto and made a part of the contract. Retain one copy for your records.**
- Certification Regarding Lobbying
- Certification Regarding Debarment, Suspension, and Other Responsibility Matters
- Successful Contractor must have or obtain a current City Business License.
- Successful Contractor must complete a W-9 form (Taxpayer Identification No.).
- The City of Durango is exempt from all local, state and federal taxes.
- The City of Durango reserves the right to reject any and all bids.

VIII. FEDERAL CLAUSES

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR, 1964–1965 Comp., p. 339), as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

2. *Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and sub-grants in excess of \$2000 for construction or repair awarded by recipients and sub-recipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

5. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33U.S.C. 1251 et seq.)*, as amended—Contracts and subgrants of amounts in excess of

\$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C.1251 *et seq.*). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

6. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

7. *Debarment and Suspension (E.O.s 12549 and 12689)*—A contract award with an amount expected to equal or exceed \$25,000 and certain other contract awards (see 2 CFR 180.220) shall not be made to parties listed on the government-wide Excluded Parties List System, in accordance with the OMB guidelines at 2 CFR part 180 that implement E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

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IX. FEDERAL CERTIFICATIONS

CERTIFICATION REGARDING LOBBYING

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

X. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the City of Durango. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Colorado, and the City of Durango, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date: _____

XI. ATTACHMENTS

1. Construction Bid Set
2. Construction Bid Drawings
3. Appendices
4. Special Conditions
5. Bid Tab

BID

Proposal of _____ (hereinafter called "Bidder"), organized and existing under the laws of the State of _____, doing business as _____ * to the City of Durango (hereinafter called "Contracting Agency").

In compliance with your Advertisement for Bids, Bidder hereby proposes to perform all work for the **Lake Nighthorse Fishing Access** in strict accordance with the Bid Documents, within the time set forth therein, and at the prices stated below.

By submission of this Bid, the Bidder certifies, and in the case of joint Bid, each party thereto certifies as to his own organization, that this Bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this Bid with any other Bidder or with any competitor.

Bidder hereby agrees to commence work under this contract on or before a date to be specified in the Notice to Proceed and to fully complete the Project by July 1, 2019. Bidder further agrees to pay as liquidated damages, and not as penalty, a sum based on the original contract amount as specified in Invitation to Bid.

Bidder acknowledges receipt of the following Addendum:

ADDENDUM NUMBER	DATE	ACKNOWLEDGEMENT
Addendum No. 1		
Addendum No. 2		
Addendum No. 3		
Addendum No. 4		
Addendum No. 5		

* Insert "a Corporation", "a Partnership", "an Individual", as applicable.

Signature: _____

Print Name & Title: _____

Company: _____

Address: _____

Telephone: _____

Email: _____



NOTICE OF AWARD
City of Durango, Colorado

Date _____

CONTRACTOR'S NAME

Re:

Dear CONTRACTOR:

You are hereby notified that the City of Durango has accepted your bid for the above-referenced project in the amount of \$ _____. Within fifteen (15) calendar days, you are required to provide the following items to the Grants/Contracts Division, 949 East 2nd Avenue, Durango CO 81301:

- a. Executed Agreement/Contract (2 originals);
- b. Certificate of Insurance **NAMING THE CITY OF DURANGO AND STATE OF COLORADO AS ADDITIONAL INSUREDS** and which contains a Notice of Cancellation clause which is absolute and does **not** contain language such as "endeavor to" notify or "failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives." If standard certificate is used with such language crossed out, representative shall **initial and date said deletions**.
- c. Payment and Performance bonds, if required by Request for Proposal/Invitation to Bid;
- d. Proof of Workers' Compensation coverage;
- e. Executed Acceptance of Notice of Award (Page 2 of this Notice of Award); and
- f. Completed W-9.
- g. City of Durango Business License

If you fail to return the above-described items within fifteen (15) calendar days from the date of this Notice, the City of Durango will be entitled to consider all your rights arising out of the acceptance of your bid as abandoned and as a forfeiture of your Bid Bond. The City of Durango will be entitled to such other rights as may be granted by law.

Sincerely,

April Zion
Grants/Contracts Manager

Enclosures: Agreement/Contract, W-9 Form

ACCEPTANCE OF NOTICE OF AWARD

Receipt of the Notice of Award is hereby acknowledged on this ____ day of _____, 2019.

By _____

Signature _____

Title _____

Company _____

Please execute and return this form with the contracts, bonds, Certificates of Insurance, required licenses, and completed W-9 in one envelope to:

City of Durango
Grants/Contracts Division
949 East 2nd Avenue
Durango CO 81303



**STANDARD FORM OF AGREEMENT
BETWEEN
CITY AND CONTRACTOR
FOR
CONSTRUCTION SERVICES**

AGREEMENT

Made as of the _____ day of _____ in the year 2019

BETWEEN the City: **City of Durango**
949 E 2nd Avenue
Durango CO 81301

And the Contractor:

For the following Project: **Lake Nighthorse Fishing Access**

PART 1
CONTRACT DOCUMENTS

- 1.1 The Contract Documents consist of the following:
- (a) This Agreement;
 - (b) The Invitation for Bids, and all addenda and attachments;
 - (c) The Contractor's Bid;
 - (d) Information for Bidders, if applicable;
 - (e) Project Special Conditions
 - (f) Other documents, plans, or drawings listed in the Invitation for Bids;
 - (i) Notice of Award;
 - (j) Acceptance of Notice of Award;
 - (k) Notice to Proceed;
 - (l) Change Orders, and
 - (m) Modifications issued after execution of the Agreement
- 1.2 All of the above-listed Contract Documents are incorporated by reference as though set forth in full herein, whether or not attached hereto, and shall form an integral part of this Agreement. If there is any conflict between this Agreement and the other Contract Documents, the specifications, terms and conditions indicated in the Invitation for Bids shall control.
- 1.3 The Contract Documents represent the entire and integrated agreement between the parties hereto and supersede any and all prior negotiations, representations or agreements, either written or oral. Except as provided herein, this Contract may not be modified or amended except by written agreement signed by the parties.
- 1.4 The Agreement is this executed Standard Form of Agreement between City and Contractor.

PART 2
CONTRACT SUM

- 2.1 The City shall pay the Contractor, in current funds, for the Contractor's performance of the Contract in the total lump sum amount of \$_____, subject to additions and deductions as provided in the Contract Documents.
- 2.2 Based upon Invoices submitted by the Contractor, the City shall make payments to the Contractor for actual work performed. Invoices shall indicate a description of the work performed and percentage completion, as specified in the Contract Documents.

- 2.3 The appropriated funds for this project are equal to or exceed the amount of the contract stated in Paragraph 4. Pursuant to C.R.S. § 24-91-103.6(2), any change order or change directive requiring additional compensable work to be performed which work causes the aggregate amount available under the contract to exceed the amount appropriated for the original contract shall be agreed to in writing, signed by both parties and shall assure that the City has made lawful appropriations to cover the costs of the additional work. Any change order or directive made by the City requiring additional compensable work to be performed shall be performed at the hourly rates and/or unit pricing set forth in the contractor's bid and shall be reimbursed at the contractor's costs on a monthly basis for all additional directed work performed until a change order is finalized. However, in no instance shall the periodic reimbursement be required before the contractor has submitted an estimate of cost to the City for the additional compensable work to be performed.

PART 3
SCOPE OF SERVICES

- 3.1 The Contractor shall execute the entire Scope of Services described in the Bid Documents dated _____, any Addenda issued, and the Contractor's Bid, submitted _____, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

PART 4
CITY'S RESPONSIBILITIES

- 4.1 The City shall provide full information regarding requirements for Work to be performed.
- 4.2 The City shall designate, when necessary, a representative authorized to act in the City's behalf with respect to the Project or Project Documents.
- 4.3 The City shall furnish required information as expeditiously as necessary for the orderly progress of the Work, and the Contractor shall be entitled to rely upon the accuracy and completeness thereof.

PART 5
DATE OF COMMENCEMENT

- 5.1 The date of commencement is the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the City.

PART 6
TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- 6.1 The date of beginning and the time for completion of the work are essential conditions of the Contract Documents and the work embraced shall be commenced on the date specified in the Notice to Proceed.
- 6.2 The Contractor will proceed with the work at such a rate or progress to insure full completion within the Contract time. It is expressly understood and agreed, by and between the Contractor and the Contracting Agency, that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.
- 6.3 Should the Contractor fail to complete the work within the Contract time, or extension of time granted by the Contracting Agency, the Contractor shall pay the Contracting Agency the a sum based on the original contract amount as specified in CDOT Standard Special Provisions, Revision of Section 108 for each consecutive calendar days thereafter as provided in the General Conditions.
- 6.3.1 The Contractor shall not be charged with liquidated damages provided the delay in completion of the work is due to the following and the Contractor has promptly given written notice of such delay to the Contracting Agency or Engineer.
- 6.3.1.1 To any preference, priority or allocation order duly assigned by the Contracting Agency.
- 6.3.1.2 To unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of omission of the Contracting Agency, floods, epidemics, quarantine restrictions, strikes, material or fuel shortages due to governmental regulations or allocations, freight embargoes and abnormal or unusually severe weather.
- 6.3.1.3 Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time fixed for its completion may have been extended, will in no way operate as a waiver on the part of the Contracting Agency of any of its rights under the Contract.

PART 7
FINAL INSPECTION AND FINAL PAYMENT

- 7.1 **Final Inspection.** The Contractor shall notify the City when the Work is complete and ready for final inspection by means of a letter of completion. Within ten (10) working days thereafter, the City shall make a final inspection to determine whether the Work has been completed in accordance with the Contract Documents and shall submit a written

list of any defects to the Contractor. The Contractor shall promptly correct any defects without additional cost to the City within ten (10) working days after receipt of the list of defects. If any defects cannot be corrected within ten (10) working days, the Contractor shall initiate corrective measures within said period of ten (10) working days, and shall thereafter pursue correction of such defects promptly and with due diligence. The Contractor shall also deliver to the City all guarantees and warranties, all statements to support state sales and use tax refunds, final plan set, record sets, as-constructed plans, geotechnical reports, documentations and calculations, approved shop drawings, and material testing records as a complete package. The Contractor shall provide the City with a letter of approval for contract closure from any surety furnishing bonds for the Work provided on AIA Form G707 (Consent of Surety Letter).

- 7.2 **Final Acceptance and Final Payment.** If the Contractor has completed the Work in a manner finally acceptable to the City (“Final Acceptance”), the City may authorize final payment (“Final Payment”) from the Retained Amount upon written request by invoice of the Contractor and completion of the following conditions:
- (a) The City shall determine that satisfactory and substantial reasons exist for the Final Payment;
 - (b) The City shall require written approval from any surety furnishing bonds for the Work;
 - (c) The City may require the Contractor to provide evidence that payment has been made to all subcontractors, consultants, and suppliers;
 - (d) A notice of contractor’s settlement shall have been published in accordance with C.R.S. §38-26-107.

PART 8

CITY’S RIGHT TO STOP THE WORK

- 8.1 If the Contractor fails to correct defective Work or fails to carry out the Work in accordance with the Contract Documents, the City, by a written order, may order the Contractor to stop the Work or any portion thereof, until the cause for such order has been eliminated.
- 8.2 The City may order the Contractor in writing to suspend all or any part of the Work for such period of time as the City may determine to be appropriate for the City’s convenience.
- 8.3 Upon receipt of any such suspension order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the Work covered by the order during the period of Work suspension.
- 8.4 If the City, pursuant to paragraph 8.2, suspends the performance of all or any part of the Work, the Contractor may make application for an adjustment in Contract Time and/or Contract Price, as applicable.

PART 9
CITY'S RIGHT TO CARRY OUT THE WORK

- 9.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to any other remedies it may have, initiate and complete the necessary work to cure such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to Contractor, the cost of correcting such deficiencies, including compensation for the any additional services of the City's consultant's made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City by way of reimbursement.

PART 10
UNCOVERING THE WORK

- 10.1 If any portion of the Work should be covered contrary to the request of the City or contrary to requirements specifically expressed in the Contract Documents relative to inspection by the City, it must, if required in writing by the City, be uncovered for its observation and inspection and shall be replaced at the Contractor's expense.
- 10.2 If any other portion of the Work has been covered, the City may request to see such Work and the Contractor shall uncover it. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall be charged to the City by appropriate Change Order. If such Work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that the City caused this condition, in which event the City shall be responsible for the payment of such costs.

PART 11
CORRECTION OF WORK

- 11.1 The Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, plans, reports, drawings, and other services rendered by the Contractor; and shall, without additional compensation, promptly remedy and correct any errors, omissions, or other deficiencies which may occur.
- 11.2 The Contractor shall promptly correct all Work rejected by the City as defective or as failing to conform to the Contract Documents observed before Final Acceptance and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the City's additional services made necessary thereby. This obligation shall survive termination of the Contract. The City shall give such notice promptly after discovery of the condition.

- 11.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected, unless the City waives such removal, in writing.
- 11.4 If the Contractor fails to correct defective or non-conforming Work, the City may correct it in accordance with Part 9 (City's Right to Carry Out the Work).
- 11.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the City, the City may remove such work and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days after billing from the City for such costs, the City, upon ten (10) additional days' written notice, may sell such Work (materials and equipment) at auction or at private sale and shall account to the Contractor for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the City's additional services made necessary thereby. If such proceeds of sale do not cover all costs that the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City by way of reimbursement.
- 11.6 The Contractor shall bear the cost of making good all work of the City or separate contractors destroyed or damaged by such correction or removal, unless in the City's sole discretion, the City agrees to a percentage deduction of the total contract payment, in lieu of said correction or removal of Work.

PART 12 **CHANGES IN THE WORK**

- 12.1 The City may from time to time, by written notice to the Contractor, extend the Start or Completion Dates or make changes in the Work necessary or convenient to accomplish the purpose intended by the Contract Documents. The City shall have such further authority, if any, as may be specifically granted or authorized by the City to initiate or process administrative Change Orders affecting the price or quantity of the Work to be performed. A Change Order is a written order to the Contractor signed by the City, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Completion Date or Contract Price. By signing the Change Order, the Contractor indicates agreement with the Change Order, including, without limitation, the adjustment in the Contract Price or the Period of Performance set forth within such Change Order. The Contractor agrees to minimize the cost of all Change Order to the extent possible.
- 12.2 The cost or credit to the City resulting from a change in the Work shall be determined in one or more of the following ways:
- (a) by mutual acceptance of a lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation;

- (b) by unit prices stated in the Contract Documents or subsequently agreed upon; or
- (c) by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

PART 13
TERMINATION OF AGREEMENT

- 13.1 This Agreement may be terminated by either party upon seven (7) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
- 13.2 This Agreement may be terminated by the City upon at least seven (7) days written notice to the Contractor in the event that the Project is permanently abandoned.

PART 14
NONDISCRIMINATION

- 14.1 The Contractor shall, in all hiring or employment made possible or resulting from this agreement, take affirmative action to ensure that there shall be no unlawful discrimination against any employee or applicant for employment because of sex, race, age, color, creed, national origin, marital status or the presence of any sensory, mental or physical handicap, unless based upon a bonafide occupational qualification, and this requirement shall apply to but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- 14.2 No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, age except minimum age and retirement provisions, marital status, or the presence of any sensory, mental or physical handicap.

PART 15
HOLD HARMLESS/INDEMNIFICATION

- 15.1 To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the City of Durango, and its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the Work, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the negligent act, omission, or other fault of the Contractor or any subcontractor of the Contractor, or any officer, employee, or agent of the Contractor or any subcontractor, or any other person for whom Contractor is responsible. The Contractor shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands, and to bear all other costs and expenses related thereto, including court costs and attorneys' fees. The Contractor's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City of Durango.

PART 16
INDEMNIFICATION, BONDS, INSURANCE, AND WARRANTIES

- 16.1 **Indemnification.** To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the City, and its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the Work, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the negligent act, omission, or other fault of the Contractor or any subcontractor of the Contractor, or any officer, employee, or agent of the Contractor or any subcontractor, or any other person for whom Contractor is responsible. The Contractor shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands, and shall bear all other costs and expenses related thereto, including court costs and attorneys' fees. The Contractor's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City.
- 16.2 **Performance and Payment Bonds.** For the construction portion of the Work, the Contractor shall furnish, at the Contractor's expense, a performance bond and a separate labor and materials payment bond, each for an amount not less than 100% of the Contract Price. The bonds shall be issued by a qualified corporate surety licensed to transact business in Colorado. If at any time during performance of the Work, the surety on the bonds shall be disqualified from doing business in Colorado, or shall become insolvent or otherwise impaired, the Contractor shall furnish bonds from an alternate surety acceptable to the City. The bonds shall be delivered to the City's Purchasing Agent prior to the commencement of the Work and shall remain in effect until one year from completion of the Work. The Contractor shall secure an increase in the bonds in an amount equal to the cost of any additional work authorized pursuant to a duly executed Change Order or contract amendment.
- 16.3 **Insurance.** The Contractor and any subcontractors or subconsultants shall purchase and maintain insurance coverage in a company or companies licensed to do business in the State of Colorado in not less than the minimum limits set forth in the Invitation for Bids. Certificates evidencing such coverage shall be delivered to the City's Purchasing Agent prior to the start of Work. Such certificates shall name the City of Durango and CDOT as additional insureds and which shall further provide that coverage may not be discontinued or materially modified without at least 15 days prior written notice to the City of Durango.

PART 17
COMPLIANCE WITH LAWS

- 17.1 It is assumed that Contractor is familiar with all federal, state, and local laws, codes, ordinances, and regulations which in any manner affect those engaged or employed in the Work or the material or equipment used in or upon the site, or in any way affect the conduct of the work or construction of the project. No pleas or claims of misunderstanding or ignorance by Contractor shall in any way serve to modify the

provisions of the Agreement. Contractor shall at all times observe and comply with all federal, state, county, local, and municipal laws, codes, ordinances, and regulations in any manner affecting the conduct of the Work or the project. It is not the responsibility of Contractor to determine that this Agreement and the contract documents are in accordance with applicable laws, statutes, building codes, and regulations; however, if Contractor knows, or should have reason to know, that any of the contract documents are at variance therewith in any respect, Contractor shall promptly notify the City of Durango in writing, and any necessary changes shall be made as provided herein.

PART 18
FUTURE SUPPORT

- 18.1 The City makes no commitment and assumes no obligations for the support of Contractor's activities except as set forth in this Agreement.

PART 19
INDEPENDENT CONTRACTOR

- 19.1 There is no employment relationship created pursuant to this Agreement and the Contractor is and shall remain an independent contractor for all purposes hereunder.

PART 20
MISCELLANEOUS PROVISIONS

- 20.1 This Agreement shall be governed by the laws of the State of Colorado.
- 20.2 The City and the Contractor respectively bind themselves, their partners, agents, successors, assigns and legal representatives to the other party to this Agreement and to the partners, agents, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the City nor the Contractor shall assign, sublet or transfer any interest in this Agreement without the prior written consent of the other.
- 20.3 Contractor shall be required to comply with the City of Durango Code of Conduct and Code of Ethics Policy
- 20.4 Contractor shall be required to comply with applicable safety regulations.
- 20.5 This project is being conducted in accordance with the City of Durango Purchasing Policy.
- 20.6 Prior to start of any phase of Work, the following documents must be on file in the City's Purchasing Department.
- 20.6.1 Certificates of Insurance, as required by the Contract Documents
 - 20.6.2 Completed W-9 Form

- 20.6.3 City of Durango Business License
- 20.6.4 City of Durango Sales Tax License, as required
- 20.6.5 Illegal Alien Certification Form
- 20.6.6 Performance Bond, if required
- 20.6.7 Labor and Material Payment Bond, if required

PART 21
OWNERSHIP

- 21.1 Regardless of the future services retained by the successful contractor, all of the products of this project, including recommendations, drawings, artwork, photos, and similar materials used to produce the required submittals, shall become the property of the City of Durango. Any furnished materials shall remain the property of the City of Durango. All such items shall be delivered to the City of Durango in usable condition after completion of the work, and prior to submission of the invoice for payment.
- 21.2 Any materials excavated from the project site shall be used on the project where possible. The City reserves the right to maintain possession of any unused excavated materials at the City's discretion.

(The remainder of this page is intentionally left blank)

PART 22
SEVERABILITY

22.1 If any provision in the Contract shall be declared by a court of competent jurisdiction to be invalid, such decision shall not invalidate any other part of provision hereof.

THIS AGREEMENT is entered into as of the date and year first written above and is executed in at least two original copies of which one is to be delivered to the Contractor and one to the City.

CITY:
CITY OF DURANGO

By: _____
Ron LeBlanc
City Manager
949 E 2nd Avenue
Durango CO 81301

(SEAL)

ATTEST:

Amy Phillips
City Clerk

CONTRACTOR:

(Insert name of corporation, limited liability company, partnership or sole proprietorship)

Firm Name: _____

(insert trade name or name under which corporation, company, partnership or proprietorship is doing business, if different from legal name of entity or proprietor)

doing business as _____

By: _____
Signature

Title

Date



NOTICE TO PROCEED

(DATE)

(CONTRACTOR)

Re:

Dear (CONTRACTOR):

The date of Notice to Proceed for the above project is _____, 2019.

In accordance with the Agreement dated _____, 2019, you are hereby notified to commence work within ten calendar days after the Notice to Proceed, hence on or before _____, 2019.

You are to complete the work by TBD, 2019.

Sincerely,

ACCEPTANCE OF NOTICE TO PROCEED

Receipt of the Notice to Proceed is hereby acknowledged on this ____ day of _____, 2019.

By _____

Title _____

Company _____

Please complete and return this form within ten days to:

City of Durango
Grants/Contracts Division
949 East 2nd Avenue
Durango, CO 81301

GENERAL CONDITIONS

001 **ABBREVIATIONS AND DEFINITIONS**

001.1 **SCOPE:** Many commonly used abbreviations appear in these specifications and the project drawings. These abbreviations normally require no explanation of definition beyond that contained in standard dictionaries and many technical handbooks.

Abbreviations of technical and construction terms used in these specifications and the project drawings are explained or defined in Section 001.2.

Technical and construction terms used in these specifications and the project drawings are defined in Section 001.3.

001.2 **ABBREVIATIONS:** Wherever the following abbreviations are used in these specifications, standard details or on the plans, they are to be construed the same as the respective expressions represented.

Abbreviations of technical or construction terms not defined herein shall be construed as defined in the most recent addition of CONSTRUCTION DICTIONARY, published by Greater Phoenix, Arizona Chapter #98 of the National Association of Women in Construction.

AASHTO	American Association of State Highway & Transportation Officials
ACI	American Concrete Institute
ACPA	American Concrete Pipe Association
AGC	Associated General Contractors of America, Inc.
AIA	American Institute of Architects
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
ANSI	American National Standards Institute
APA	American Plywood Association
APHA	American Public Health Association
APWA	American Public Works Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing Materials
AWSC	American Welding Society Code
AWWA	American Water Works Association
CDH	Colorado Department of Highways
IEEE	Institute of Electrical and Electronic Engineers
NBS	National Bureau of Standards
NCPI	National Clay Pipe Institute
NEC	National Electrical Code
NEMA	National Electrical Manufacturer's Association
NFPA	National Fire Protection Association
NIC	Not in Contract
SAE	Society of Automotive Engineers
USC&GS	United States Coast and Geodetic Survey
USGS	United State Geological Survey

001.3 **DEFINITIONS:** Technical and construction terms used in these specifications and the Project drawings shall have the meanings indicated, applicable to both the singular and plural thereof.

ADDENDA Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the Contract Documents, Drawings and Specifications, by additions, deletions, clarifications or corrections.

AGREEMENT OR CONTRACT

The formal or written agreement or contract executed by the authorized representatives of the Contracting Agency and the Contractor for the complete performance of the Project in accordance with the Contract Documents.

AWARD The formal action of the Contracting Agency in accepting a proposal.

BID The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the work to be performed.

BIDDER Any qualified individual, firm partnership, corporation or combination thereof, acting directly or through a duly authorized agent submitting a bid for the work.

BONDS Bid, Performance and Labor or Material Payment Bonds and other instruments of security furnished by the contractor and his surety in accordance with the contract documents.

CHANGE ORDER

A written order to the contractor authorizing an addition, deletion or revision in the work within the general scope of the contract documents, or authorizing an adjustment in the contract price or contract time.

CONTRACT DOCUMENTS

All of the integral documents of the contract, including but not limited to, Advertisement for Bids, Information for Bidders, Plans, Drawings, Construction Standards and Standard Details, Project Special Provisions, Proposal/Bid, Bid Bond, Agreement, Labor and Material Payment Bond, Performance Bond, Notice of Award, Notice to Proceed, Certificates of Insurance, Change Order and Addenda or documents incorporated by reference therein.

CONTRACT PRICE

The total monies payable to the Contractor under the terms and conditions of the Contract Documents.

CONTRACT TIME

The number of calendar days stated in the Contract Documents for the completion of the work.

CONTRACTOR The individual firm, partnership, corporation or combination thereof with whom the Contracting Agency has executed the agreement.

CONTRACTING AGENCY (OWNER)

The legal entity that has contracted for the performance of the work or for whom the work is being performed.

DRAWINGS (PLANS)

The part of the contract documents which show the characteristics and scope of the work to be performed and which have been prepared or approved by the engineer.

ENGINEER The person, firm or corporation named as such in the contract documents and licensed to perform such services in the State of Colorado.

FIELD ORDER A written order effecting a change in the work not involving an adjustment in the contract price or an extension of the contract time, issued by the Engineer to the contractor during construction.

NOTICE OF AWARD
The written notice of the acceptance of the bid from the contracting agency to the successful bidder.

NOTICE TO PROCEED
Written communication issued by the contracting agency to the contractor authorizing and directing him to proceed with the work and establishing the date of commencement of the work.

OWNER (CONTRACTING AGENCY)
A public or quasi-public body or authority, corporation, association, partnership or individual for whom the work is to be performed.

PROJECT The undertaking to be performed as provided in the Contract Documents.

RESIDENT PROJECT REPRESENTATIVE
The authorized representative of the contracting agency who is assigned to the project site or any part thereof.

SHOP DRAWINGS
All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the contractor, a subcontractor, manufacturer, supplier, or distributor, which illustrate how specific portions of the work shall be fabricated or installed.

SPECIAL PROVISIONS
The special conditions, requirements, additions and/or revisions to the construction standards, applicable to the work, to cover conditions or requirements peculiar to the project under consideration.

SPECIFICATIONS (CONSTRUCTION STANDARDS)
A part of the contract documents consisting of these General Conditions, special conditions and written descriptions of a technical nature relating to materials, equipment, construction systems, standards and workmanship.

SUBCONTRACTOR
An individual firm or corporation having a direct contact with the contractor or with any other subcontractor for the performance of a part of the work at the site.

SUBSTANTIAL COMPLETION

The date as certified by the engineer when the construction project or a specified part thereof is sufficiently completed, in accordance with the contract documents, so that the project or specified part can be utilized for the purposes for which it is intended.

SUPPLIER

An individual, firm or corporation having a direct contract with the contractor or with any subcontractor for the manufacture or furnishing of any part of the supplies and/or materials to be used at or incorporated in part of the work at the site.

WORK

All labor necessary to produce the construction required by the contract documents, and all materials and equipment incorporated in the project.

WRITTEN NOTICE

Any written notice from one party of the agreement to any other party of the agreement relative to any part of the contract documents, which notice shall be deemed to have been properly served and delivered when posted by the sending party by Certified or Registered Mail to the receiving party at the receiving party's last given address or when delivered in person to the receiving party or to his or its authorized representative.

002 **BIDDING REQUIREMENTS AND CONDITIONS**

002.1 **ELIGIBILITY AND PREFERENCE**

The employment of contractors and subcontractors on this work shall be governed by these General Conditions and Specifications and any applicable provisions included in the Special Provisions.

002.2 **CONTENTS OF PROPOSAL**

The prospective bidder may examine and/or obtain plans, specifications, and proposal documents at the location specified in the advertisement.

The proposal document will state the location of the contemplated construction; give the description of the various quantities of work to be performed or materials to be furnished, and have a Bid Schedule of pay items for which unit bid prices are invited. The proposal documents shall also state the form and amount of the proposal guarantee, the time in which the work shall be completed and may include additional instructions not included in these specifications.

The Plans, Construction Standards, Standard Details, Special Provisions, and all supplementary documents are essential parts of the contract documents and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of discrepancy or conflict, Plans shall govern over both Standard Details and Construction Standards. Special Provisions will govern over standard specifications, standard details and plans.

Each and every provision of law and clause required by law to be inserted in the Contract Documents shall be deemed to be inserted herein, and the Contract Documents shall be read and enforced as though they were included herein.

002.3 **INTERPRETATION OF QUANTITIES IN PROPOSAL**

The quantities appearing in the proposal are approximate only and are to be used for the comparison of bids. Payment to the contractor will be made only for the actual quantities of work performed and accepted, or for materials furnished in accordance with the Contract Documents at the unit bid price in the Proposal.

Any or all items in the signed agreement may be increased or decreased not more than 20% at the discretion of the Contracting Agency without invalidating the unit price in any way. Changes greater than 20% shall be considered to be an alteration to the work and shall be paid for in accordance with the provisions of Section 009.4.

002.4 EXAMINATION OF PLANS, SPECIAL PROVISIONS AND SITE OF WORK

The Contracting Agency shall prepare plans and special provisions in accordance with acceptable engineering standards, giving such direction as will enable the contractor to carry them out.

The Bidder shall examine the site of the proposed work and all documents pertaining to the work. It is mutually agreed that the submission of a proposal shall constitute an acknowledgement that the Bidder has made such examination and is familiar with the character, quality and quantity of the work to be performed and material to be furnished.

Logs of test holes, ground water levels and accompanying soil reports furnished by the Contracting Agency are furnished for their general information only. Field conditions so set forth shall not constitute a representation or warranty, expressed or implied, that such conditions are actually existent. Bidders shall make their own investigations and form their own estimates of the site conditions.

No complaint or claim that there was any misunderstanding as to the quantities, conditions or nature of the work will be entertained after submission of the proposal, except as set forth in Section 004.2.

002.5 PREPARATION OF PROPOSAL

The Bidder shall submit his proposal on the forms provided by the Contracting Agency. The Bidder shall specify a unit bid price for each pay item where units and approximate quantities are given.

The Bidder shall specify a lump sum price for each pay item where a lump sum price is requested by the Contracting Agency.

The total proposal will be obtained by adding the amount bid on the individual pay items. All information shall be in ink or typewritten. In case of a conflict between unit prices and total prices, unit prices shall govern.

The following shall also become a part of the Bidder's proposal:

(A) Acknowledge receipt of and agreement that the proposal is based on the list addenda received with and/or after the receipt of the proposal documents.

(B) Complete all portions of the proposal documents relating to escalation terms and limits if defined in the Special Provisions.

(C) Bidders' signatures will be in ink; attested or witnessed as required by the Bid Form.

002.6 SUBCONTRACTORS' LIST

A list of Subcontractors shall be attached to the proposal. The Bidder shall submit this list showing each specialty Subcontractor to whom he proposed to subcontract any portion of the work.

002.7 IRREGULAR PROPOSALS

Proposals shall be considered irregular and may be rejected for any one of the following reasons:

- (A) If the proposal is on a form other than that furnished by the Contracting Agency; or if the form is altered or any part thereof is detached.
- (B) If there are unauthorized additions, statements, conditional or alternate bids, or irregularities of any kind.
- (C) If the Bidder adds any provisions reserving the right to accept or reject an award, or to enter into a Contract pursuant to an award.
- (D) If the proposal does not contain a unit price for each pay item listed except in the case of authorized alternate pay items.
- (E) If the Bidder fails to submit the List of Subcontractors.
- (F) If more than one proposal for the same work is submitted by an individual, partnership or corporation under the same or different names.
- (G) If there is evidence of collusion among Bidders or assistance from any officer of the Contracting Agency or of any department thereof.

002.8 BID BONDS

No proposal will be considered unless accompanied by Bid Bond or certified check in the form and amount stated in the Advertisement for Bids. The bond or certified check shall be made payable to and shall be acceptable to the Contracting Agency as a guarantee that the Bidder shall execute the contract documents upon award of the Contract.

002.9 SUBMISSION OF PROPOSAL

The proposal and Bid bond or certified check shall be submitted in a sealed envelope. The outside, lower left hand corner of which shall be marked as follows:

Bid of _____, Contractor
For _____
Project No. _____
Contracting Agency _____

Envelopes shall be mailed or delivered to the office of the Contracting Agency and must be received before the time and date specified in the Call for Bid or any Addenda.

Proposals received after the time and date specified will be returned, unopened, to the Bidder.

002.10 WITHDRAWAL OR REVISION OF PROPOSAL

Any Bidder may withdraw or revise a proposal after it has been deposited with the Contracting Agency, provided his request is received by the Contracting Agency, in writing or by telegram, before the time specified for opening proposals as stipulated herein.

002.11 PUBLIC OPENING OF PROPOSALS

Proposals will be opened and read publicly at the time and place specified in the Advertisement for Bids, or any Addenda. Bidders, their authorized agents and other interested parties are invited to be present.

Should proposals for more than one project be scheduled to be opened at the same time, and Bidder may, after the time set for opening proposals, request to withdraw his second or succeeding proposal prior to the opening of proposals for that project. Should this occur, there will be a brief delay in the opening of Proposals for the second project to permit the Bidder to submit his request. The Contracting Agency shall return the unopened Proposal for the second project of any Bidder submitting a personal or written request.

003 **AWARD AND EXECUTION OF CONTRACT**

003.1 **CONSIDERATION OF PROPOSALS**

All proposals received shall be publicly opened and read, as provided for in these specifications. After reading, the respective totals shall be checked and compared by the Contracting Agency. The accuracy of the total proposal shall be checked by verifying the extensions and additions. The Unit Bid Price shall govern in all cases. The results of such comparison shall be considered public information. The right is reserved to award the Contract to the lowest responsible Bidder, or to reject all proposals and re-advertise for any reason the Contracting Agency determines.

Should all proposals be rejected, any and all subsequent changes, additions, addenda, or new sets of plans and Special Provisions shall be provided to all purchasers of the first issue of the plans and Special Provisions at no additional charge, except that out of town bidders will pay shipping charges.

003.2 **RETURN OF BID BONDS**

Bid Bonds or certified checks submitted by the three lowest responsible Bidders shall be retained by the Contracting Agency until the Contract has been executed by all parties. Retained Bid Bonds or certified checks shall be returned to Bidders upon execution of the Agreement.

All other Bid Bonds or certified checks shall be returned to Bidders immediately following the Bid opening and the checking of proposals submitted has been completed.

003.3 **AWARD OF CONTRACT**

The Contracting Agency shall award the Contract or all proposals will be rejected within 30 days after bid opening. The Contracting Agency's award of Contract shall be considered an acknowledgement that funding appropriations exist.

No proposal shall be withdrawn for a period of 30 days after opening without consent of the Contracting Agency.

The successful Bidder shall execute and deliver the prescribed Agreement to the Contracting Agency within 15 days after receipt of notice of award, provided that acceptance of the proposal is delivered to the Bidder within the time limit prescribed and prior to withdrawal of the proposal. Required Bonds shall be delivered with the executed Contract. Otherwise the Bidder's Bid Bond or certified check shall be forfeited.

003.4 REVOCAION OF AWARD

The Contracting Agency reserves the right to revoke the Award at any time prior to execution of the Contract without liability to the Contracting Agency.

003.5 CONTRACT SECURITY

The Contractor shall furnish the Contracting Agency a Performance Bond and a Labor and Material Payment Bond, each in penal sums equal to the amount of the Contract. Bonds shall be furnished with the executed Contract. The expense of the Bonds shall be borne by the Contractor.

Bonds shall be executed by the Contractor and a Corporate Bonding Company licensed to transact such business in the State of Colorado and named on the current "Surety Companies Acceptable on Federal Bonds" as published in the U.S. Treasury Department Circular #570. Bonds acceptable to the Contracting Agency shall be substituted in the event the original surety loses its right to transact business in the State of Colorado, is declared bankrupt, or is removed from U.S. Treasury Department Circular #570. Substitute Bonds shall be furnished within 10 days after notice from the Contracting Agency. Substitute Bonds shall conform to all requirements and sums established for the original Bonds. All premiums for the substitute Bonds shall be borne by the Contractor.

All payments due the Contractor may be deferred until the substitute bonds have been delivered to the Contracting Agency.

003.6 CONTRACTOR'S INSURANCE – insurance requirements are detailed in the Bid Documents for this solicitation. The limits below are general requirements only.

(A) 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 007.15 of this Contract. 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 007.15 of this Contract 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.

(B) 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 from insurers licensed by the State of Colorado and acceptable to the Contracting Agency. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant to Section 007.15 of this Contract. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

(1) 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. If the Contractor elects to provide coverage through self-insurance, the Contracting Agency may require financial statements to assure that the Contractor has sufficient financial capability, as

determined by the Contracting Agency in its sole discretion, to underwrite such self-insurance. If the Contracting Agency determines that the Contractor's financial capabilities are insufficient, contractual insurance coverage shall be required of the Contractor.

(2) General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) 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 contracts, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

(3) 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 TWO MILLION DOLLARS (\$2,000,000) aggregate with respect to each of Contractor's owned, hired, or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

(C) The policy required by this Section shall be endorsed to include the Contracting Agency and its officers and employees as additional insureds. Every policy required shall be primary insurance, and any insurance carried by the Contracting Agency, its officers, and its employees, or carried by or provided through any insurance pool of the Contracting Agency, shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement to the policy required by this Section 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.

(D) The Certificate of Insurance shall be provided to the Contracting Agency and 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 the Contracting Agency prior to commencement of the contract. 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 the Contracting Agency. The completed certificate of insurance shall be sent to the City Engineer, 949 E. Second Avenue, Durango, CO 81301.

(E) 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 contract upon which the Contracting Agency may immediately terminate this contract or, at its discretion, the Contracting Agency 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 the Contracting Agency shall be repaid by the Contractor to the Contracting Agency upon demand, or the Contracting Agency may offset the cost of the premiums against any monies due to the Contractor from the Contracting Agency.

(F) The Contracting Agency reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

(G) The parties hereto understand and agree that the Contracting Agency is relying on, and does 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, §24-10-101 et seq.,

10 C.R.S., as from time to time amended, or otherwise available to the Contracting Agency, its officers, or its employees.

003.7 EXECUTION AND APPROVAL OF CONTRACT

The Contractor shall execute and deliver the Agreement to the Contracting Agency within 15 calendar days following receipt of the Notice of Award from the Contracting Agency.

The Contracting Agency shall approve and execute the Agreement within fifteen (15) calendar days following receipt of signed Agreement and acceptable Bonds and Certificates of Insurance.

No Contract shall be considered in effect until the Agreement has been fully executed by all parties concerned.

003.8 FORFEITURE OF PROPOSAL GUARANTEES

Failure of the Contractor to execute the Agreement, within the time stated, shall be just cause for revocation of the Award and the forfeiture of the proposal guarantee which shall become property of the Contracting Agency, not as a penalty, but as liquidation of damages sustained.

004 **SCOPE OF WORK**

004.1 **WORK TO BE DONE**

The Contractor shall perform all work as may be necessary to complete the Contract in a satisfactory and acceptable manner in full compliance with the plans, specifications and terms of the Contract.

The Contractor shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all work for the construction of the project within the time specified.

004.2 **ALTERATION OF WORK**

The Contracting Agency may order changes within the scope of the work without invalidating the Contract. Such changes may be made without notice to the Surety and the Surety shall not be released therefrom. An increase or decrease in the unit cost or completion time requiring an equitable adjustment and a Change Order shall be authorized by the Engineer.

Payment for work occasioned by these changes shall be made in accordance with provisions of Section 009. Completion time adjustment required by these changes shall be made in accordance with the provisions of Section 008.

004.2.1 **SUBSURFACE CONDITIONS**

004.2.1.1 The Contractor shall promptly notify the Contracting Agency or the Engineer in writing of any subsurface or latent physical condition at the site that differs materially from that indicated in the Contract Documents. Notification shall precede disturbing such conditions.

004.2.1.2 The Contractor shall promptly notify the Contracting Agency in writing of any unusual physical conditions at the site which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. Notification shall precede disturbing such Conditions.

004.2.1.3 The Contracting Agency shall promptly investigate the conditions. An equitable adjustment shall be made and the Contract Documents modified by a Change Order should the investigation reveal that the conditions do differ materially and cause an increase or decrease in the cost or time required for performance of the work.

004.2.1.4 Adjustment in compensation because of a change or changes resulting from one or more of the conditions described shall be made in accordance with the provisions of Section 009. Adjustment in Contract time because of such change or changes shall be made in accordance with the provisions of Section 008.

004.3 **EXTRA WORK**

The Contractor shall perform unforeseen work, for which there is no unit price included in the Contract, whenever it is deemed necessary or desirable in order to fully complete the work as contemplated. Such work shall be governed by all applicable provisions of the Contract documents and payment shall be made in accordance with the provisions of Section 009.5.

The Contractor may claim that instructions received involve extra work under the Contract. If so, he shall give the Contracting Agency written notice thereof within 48 hours after receipt of such instructions. In any event, written notice shall precede execution of the work, except in emergencies endangering life or property. No claim shall be valid unless such written notice is given.

004.4 CHANGES AT CONTRACTOR'S REQUEST

The Contractor may request changes in the plans or specifications which do not materially affect the work or the interests of the Contracting Agency. Requests shall be in writing and submitted to the Contracting Agency for approval. Such requests may be granted to facilitate the work. The Contracting Agency reserves the right to receive an equitable adjustment in the contract price or contract time for authorizing change.

004.5 MAINTENANCE OF TRAFFIC

The Contractor shall insure the only portion of the project being used by the public be maintained in such condition that vehicular and pedestrian traffic shall be adequately accommodated. He shall also provide and maintain safe temporary approaches, crossing and intersection with Agencies and facilities that provide emergency services to the public.

The Contractor shall not interfere with traffic on streets adjacent to off-street projects. Traffic upon street projects shall be maintained in accordance with the Special Provisions. Detours to by-pass traffic shall be used only after approval by the Contracting Agency.

004.6 CLEAN UP AND DUST CONTROL

Throughout all phases of construction, and until final acceptance of the project, the Contractor shall keep the work area clean and free from rubbish, excess materials and debris.

Failure of the Contractor to comply with the Engineer's cleanup orders may result in an order to suspend work until the condition is corrected. No additional compensation or time will be allowed as a result of such suspension.

The Contractor shall take whatever steps, procedures or means required to prevent abnormal dust conditions due to his construction operations. The dust control measures shall be maintained at all times, to the satisfaction of the Engineer.

004.7 FINAL CLEANING UP

All private or public property and grounds occupied by the Contractor in connection with the work shall be cleaned of all rubbish, excess materials, temporary structures and equipment, and, all parts of the work area shall be left in a condition acceptable to the Contracting Agency.

005 **CONTROL OF WORK**

The Contractor will be held strictly to the intent of the Contract Documents in regard to the quality of materials, workmanship and execution of the work.

005.1 **AUTHORITY AND RESPONSIBILITY OF THE ENGINEER**

The Engineer shall be the Contracting Agency's representative during the construction period. He shall decide questions which may arise as to quality and acceptability of materials furnished and work performed. He shall interpret the intent of the Contract Documents in a fair and unbiased manner. The Engineer shall make visits to the site and determine if the work is proceeding in accordance with the Contract Documents.

The Engineer shall not be responsible for the construction means, controls, techniques, sequences, procedures or construction safety nor shall he direct the Contractor's operations in any manner.

The Contractor shall be furnished additional instructions and detail drawings, by the Engineer, as necessary to carry out the work required by the Contract Documents.

The additional drawings and instructions thus supplied shall become a part of the Contract Documents. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.

The Engineer may suspend the work, wholly or in part, for any of the following reasons:

- (A) For such period of time deemed necessary due to unsuitable weather conditions.
- (B) Contractor's failure to perform according to the provisions of the Contract.
- (C) Contractor's failure to provide safe working conditions.
- (D) For reasons deemed to be in the public interest.

005.2 **DRAWINGS AND SPECIFICATIONS**

Drawings will show details of all structures, utilities, lines, elevations, grades, typical cross sections and location and design of all work.

The intent of the specifications and drawings is that the Contractor shall furnish all labor, materials, tools, equipment and transportation necessary for the proper execution of the work in accordance with the Contract Documents and all incidental work necessary to complete the project in an acceptable manner, ready for use, occupancy or operation by the Contracting Agency.

In case of conflict between the drawings and Specifications, the drawings shall govern. Figure dimensions on drawings shall govern over scale dimensions and detailed drawings shall govern over general drawings.

Discrepancies found between the Drawings and Specifications and site conditions or any inconsistencies or ambiguities in the Drawings or Specifications shall be immediately reported, in writing, to the Engineer. The Engineer shall promptly correct such inconsistencies or ambiguities in writing. Any work

performed by the Contractor after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the Contractor's risk, until or unless authorized by the Engineer.

005.3 SHOP DRAWINGS

The Contractor shall provide shop drawings as may be necessary for the prosecution of the work as required by the Contract Documents. The engineer shall promptly review all shop drawings. The engineer's approval of any shop drawing shall not release the Contractor from responsibility for deviations from the Contract Documents. The approval of any shop drawing which substantially deviates from the requirements of the Contract Documents shall be evidenced by a Change Order.

When submitted for the Engineer's review, Shop Drawings shall bear the Contractor's certification that he has reviewed, checked, and approved the Shop Drawings and that they are in conformance with the requirements of the Contract Documents.

Portions of the work requiring a shop drawing or sample submission shall not begin until the shop drawing or submission has been approved by the Engineer. A copy of each approved shop drawing and each approved sample shall be kept in good order by the Contractor at the site and shall be available to the Engineer.

The number of copies of shop drawings required by the Contracting Agency will be six (6) unless otherwise specified in the special provisions. The cost of furnishing all shop drawings shall be considered as included in the amount bid for one or more of the pay items.

005.4 CONFORMITY WITH DRAWINGS AND SPECIFICATIONS

All work performed and all materials furnished shall comply with the lines, elevations, grades, cross sections, dimensions and material requirements, including tolerances, shown on the plans or indicated in the specifications.

Materials or finished products incorporated in the work that do not conform to the plans and specifications may be accepted and remain in place. However, the engineer shall determine if reasonably acceptable work has been produced or that the finished product substantially complies with the Contract Documents. Acceptance shall be documented by a Change Order providing for an appropriate adjustment in the Contract price.

005.5 COOPERATION OF CONTRACTOR

The Contractor shall be supplied with two (2) sets of Contract Documents. The Contractor shall keep one set available at the work site at all times.

The Contractor shall have on the work site at all times his agent, a competent superintendent capable of reading and understanding the plans and specifications. The superintendent shall have full authority to stop or delay work as directed by the Engineer for testing or inspection or for any reason as specified in Section 005.1.

Emergencies may arise during the progress of the work which may require special effort or require extra shifts of men to continue the work beyond normal working hours. The Contractor shall be prepared to do all such work promptly in case of such emergencies arising. If such emergencies arise out of or as a result of any improper or negligent act or omission of the Contracting Agency, the Contractor shall not

be paid for all of his work costs actually incurred in excess of normal working hours and normal equipment use.

005.6 COOPERATION WITH UTILITIES

The Contracting Agency will notify all municipal agencies, utility companies, all pipeline owners, or other affected parties, and have all necessary adjustments made of the public or private utility fixtures, pipelines, and other appurtenances within or adjacent to the limits of construction as soon as practical.

Water lines, gas lines, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cable ways, signals and all other utility appurtenances within the limits of the proposed construction which are to be relocated or adjusted are to be moved by their owners at their expense, except as otherwise provided for in the Special Provisions or as noted on the plans. Existing services found to be in a location different than shown on the plans which require additional cost on the part of the Contractor, shall require issuance of a Change Order in accordance with the proposal Section 009.5.

It is understood and agreed that the Contractor has considered in his proposal all of the permanent and temporary utility appurtenances in their present or relocated positions as shown on the plans and that no additional compensation will be allowed for any delays, inconvenience or damage sustained by him due to any interference from the said utility appurtenance or the operation of moving them. If delays are encountered because utility owners fail in their responsibility to relocate or adjust their facilities, the contract time will be adjusted in accordance with Section 008.

The Contractor has considered the location of all permanent and temporary utilities and has included allowance for any delay, inconvenience or damage sustained by the operation of moving of said utility. Delays encountered due to utility owner's failure to relocate or adjust their facilities shall result in an extension of the Contract time in accordance with Section 008.7.

005.7 SEPARATE CONTRACTS

The Contracting Agency reserves the right to let other contracts in connection with this project. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work with his. If the proper execution or results of any part of the Contractor's work depends upon the work of any other Contractor, the Contractor shall inspect and promptly report to the engineer any defects in such work that render it unsuitable for such proper execution and results.

The Contracting Agency may perform additional work related to the project itself. The Contractor will afford the Contracting Agency reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly coordinate his work with theirs.

The Contracting Agency will not honor any claim for extra compensation due to delays, extra work or extensions of time caused by any other contractors working within the limits of the same project.

Performance of additional work by other Contractors or the Contracting Agency that was not noted in the Contract Documents prior to the execution of the Contract shall be subject to written notice to the Contractor prior to starting any such additional work.

The Contractor shall give all utility companies, all pipeline owners and other parties affected the maximum notice possible when their underground or overhead services interfere with his work. The Contractor shall resolve all problems with the utility owners concerned.

005.8 SURVEYS

The engineer shall furnish construction stakes and establish all base lines for locating the principal component parts of the work, together with a suitable number of bench marks adjacent to the work. The contractor shall develop and make all detail surveys needed for construction, such as slope stakes, batter boards, stakes for pile locations and other working points, lines, elevations and cut sheets.

The Contractor shall carefully preserve bench marks, reference points and stakes and in case of willful or careless destruction, shall be charged with the replacement expense.

005.9 INSPECTION OF WORK

Inspection of the work by the Engineer or his authorized representative shall not be considered as direct control of the work. The direct control of the work shall be the sole responsibility of the Contractor's supervisor.

All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the Contract Documents.

The Contractor shall provide the testing and inspection services required by the Contract Documents and other such tests necessary to assure the quality of the work.

Any law, ordinance, rule, regulation or order of a public authority having jurisdiction may require inspections or tests by someone other than the Contractor. If so, the Contractor will give the Engineer timely notice of readiness for such inspections or tests. The Contractor will furnish the Engineer copies of certificates of inspection, testing or approval resulting from such inspections or tests.

Inspections, tests or approvals by the Engineer shall not relieve the Contractor from his obligations to perform the work in accordance with the requirements of the Contract Documents.

The Engineer and his representatives will at all times have access to the work.

Authorized representatives or agents of a participating local, federal or state agencies shall be permitted to inspect the work. The Contractor will provide access to the work for inspection or testing thereof.

The Engineer may order that portions of the work be uncovered, exposed or made available for observation, inspection or testing. The Contractor shall provide all necessary labor, materials, tools and equipment to comply with the Engineer's order. If such portion of the work is determined to be defective, the Contractor shall bear all costs involved, including the cost of reconstruction. If such portion of the work is determined to be in substantial compliance with the Contract Documents, the Contractor shall be compensated in accordance with Section 009.5(B). The Contract time shall be extended in accordance with Section 008.6.

005.10 DUTIES OF INSPECTOR

Inspectors employed by the Contracting Agency will be authorized to inspect all work done and materials furnished. Such inspection may extend to all or any part of the work and the preparation, fabrication or manufacture of the materials to be used.

The inspector will not be authorized to alter or waive the provisions of the Contract. The inspector will not be authorized to issue instructions contrary to the plans and specifications or to act as foreman for the Contractor.

The inspector will have authority to suspend acceptance of work or materials until any disagreement between the Contractor and the inspector can be referred to and decided upon by the Engineer.

005.11 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK

The Contractor shall remove from the premises all work rejected by the Engineer for failure to comply with the Contract Documents, whether incorporated in the construction or not. The Contractor shall promptly replace or re-execute the work in accordance with the Contract Documents and without expense to the Contracting Agency. The Contractor shall also bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

All removal and replacement work shall be done at the Contractor's expense within the Contract period.

No work shall be done without lines and grades having been given by the Engineer. Work done contrary to the instructions of the Engineer, work done beyond the lines shown on the plans, or any extra work done without authority, will be considered as unauthorized work to be removed and to deduct the costs for any monies due or to become due the Contractor.

005.12 MAINTENANCE OF PUBLIC ROADWAYS DURING CONSTRUCTION

The Contractor shall maintain the work during construction and until the project is accepted. This maintenance shall require continuous and effective work prosecuted day by day, with adequate equipment and forces so that the roadway or structures are kept in satisfactory condition at all times.

The Contractor shall maintain the previous course or subgrade during all construction operations. All cost of maintenance work during construction and before the project is accepted shall be included in the unit bid price on the various pay items.

005.13 FAILURE TO MAINTAIN PUBLIC ROADWAY OR STRUCTURE

If the contractor fails to perform maintenance during construction, the Engineer will immediately notify the Contractor of such noncompliance. If the Contractor fails to comply within 24 hours after receipt of such notice the Engineer may immediately proceed to maintain the project at the expense of the Contractor. The entire cost of this maintenance will be deducted from monies due to the Contractor on this or other contracts with the Contracting Agency.

005.14 PARTIAL USE OR OCCUPANCY

Should an urgent or unforeseen need occur, the Contractor agrees to let the Contracting Agency use or occupy a unit or portion of the project, such as a structure, utility service or a section of road or pavement prior to final acceptance.

The Contracting Agency will prepare a written agreement with the Contractor and accomplish a partial acceptance inspection. The written agreement will include a revised construction schedule, responsibilities for maintenance of the portion of the project partially accepted and continued construction of the original project to final acceptance, payments, insurance and bond requirements.

005.15 ACCEPTANCE

(A) PARTIAL ACCEPTANCE: During the prosecution of the project, the Contractor may substantially complete a unit or portion of the Project. The Contractor may request the Engineer to make final inspection of that portion of the work. If the Engineer finds, upon inspection, that the work has been satisfactorily completed in compliance with the Contract, he shall accept the work as being completed

and the Contractor shall be relieved of further responsibility for that work. Such partial acceptance shall in no way void or alter terms of the Contract.

(B) FINAL ACCEPTANCE: Upon due notice from the Contractor of presumptive completion of the entire project, the Engineer shall make an inspection. If all construction provided for by the Contract is found completed, that inspection shall constitute the final inspection and the Engineer shall make the final acceptance. The Contractor shall be notified in writing of acceptance as of the date of the final inspection.

If the inspection discloses any work, in whole or in part, as being unsatisfactory, the Engineer shall give the Contractor the necessary instructions for correction of same, and the Contractor shall comply with and execute such instructions within the same contract period. Upon correction of the work, another inspection shall be made which shall constitute the final inspection provided the work has been completed. In such event, the Engineer shall make the final acceptance and notify the Contractor in writing of acceptance as of the date of the final inspection.

006 **CONTROL OF MATERIALS**

006.1 **SOURCE OF MATERIALS AND QUALITY**

All construction materials to be used on the work or incorporated into the work shall be subject to the inspection and approval or rejection of the Engineer.

The materials shall meet all quality requirements of these specifications. The Contractor shall notify the Engineer of his proposed source of materials prior to delivery. The Engineer may approve materials at the source of supply or point of manufacture prior to movement to the job site. Such approval does not waive the Engineer's right to inspect the materials at the job site or to reject materials that do not conform to specifications.

006.2 **MATERIALS, SERVICES AND FACILITIES**

The Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction and all other services and facilities necessary to execute, complete and deliver the work within the specified time.

Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as recommended by the manufacturer.

Materials, supplies and equipment shall be substantially equal to samples submitted by the Contractor and approved by the Engineer.

Materials, supplies or equipment to be incorporated into the work shall not be purchased by the Contractor or the Subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

006.3 **SAMPLES AND TESTS OF MATERIALS**

All materials to be incorporated into the work may be subject to sampling, testing and approval. Samples furnished shall be representative of the materials to be used. The Engineer may select samples, or may require that samples be delivered by the Contractor to a certified laboratory.

The procedures and methods used to sample and test materials will be determined by the Engineer. Unless otherwise specified samples and tests will be made in accordance with the standard methods of Quality Standards which were in effect and published at the time of advertising for Bids. Copies of tests accomplished by the Contracting Agency will be furnished the Contractor at his request.

The Engineer may permit the use of some manufactured materials prior to sampling and testing provided they are delivered with either a Certificate of Compliance or a Physical and Chemical Analysis conforming to Quality Standards requirements, stating that the materials comply with the requirements of the specifications. The certificates shall clearly identify each delivery of materials to the work area. The certificates shall be signed by a person having legal authority to bind the supplier or manufacturer. Copies of the certificate shall be delivered to the Engineer.

006.4 **PLANT INSPECTION**

The Engineer may authorize inspection of materials at the source, point of storage or point of manufacture. The following conditions shall apply in all cases:

(A) The Contractor shall submit a written request for the plant inspection. The request shall include a list of the materials to be inspected, detailed locations of inspection point and listing of responsible persons at location of inspection.

(B) The Contractor shall also insure that the Engineer shall have access to any part of the plant engaged in the manufacturing, production or assembly of the material to be inspected. Access shall be subject to normal work schedules, safety procedures and security of the plant.

Materials delivered to job site that have been damaged or altered subsequent to the plant inspection may be rejected by the Engineer.

006.5 TRADE NAMES AND SUBSTITUTIONS

Plans and specifications may contain references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number. Such references shall be regarded as establishing a standard of quality, finish, appearance, performance or as indicating a selection based upon compatibility with existing equipment or materials. Such reference shall not be construed as limiting the selection to a specified item or source, unless specifically designated.

The use of an alternate item or source may be permitted, subject to the following:

(A) No consideration will be given a request for an alternate prior to bid opening.

(B) The Contractor may submit a written request for approval of an alternate item or source after Notification of Award of Contract. The request shall include all information necessary for evaluation of quality and suitability for purpose intended. The Contractor shall submit samples when required.

(C) The Engineer shall evaluate the information, perform tests when necessary and make a final decision as to the acceptability of the proposed alternatives. The Engineer shall give the Contractor written notification of his decision within 10 days after receipt of request.

006.6 PATENTS

The Contractor shall pay all applicable royalties and license fees. He shall defend all lawsuits or claims for infringement of any patent rights and save the Contracting Agency harmless from loss on account thereof. The Contracting Agency shall be responsible for any loss when a particular manufacturer or manufacturers is specified in the Contract documents.

006.7 STORAGE OF MATERIALS

The Contractor shall provide storage facilities and exercise such measures as will insure the preservation of the quality and fitness of all materials and/or equipment approved for storage. Stored items shall be located so as to facilitate their prompt inspection. Portions of the right-of-way easements not required for public travel may be used for storage purposes when approved by the Engineer. Any additional storage area required must be provided by the Contractor. Private property shall not be used for storage purposes without written permission of the owner or lessee. The Engineer may request copies of such written permission. All storage sites shall be restored to their original condition by the Contractor at his expense.

006.8 HANDLING MATERIALS

Materials and/or equipment shall be handled in such a manner as to preserve their quality and fitness for the work. Manufacturers' written requirements shall be followed if different than accepted local practice.

006.9 UNACCEPTABLE MATERIALS

All materials and/or equipment not conforming to the requirements of the specifications, in place or not, may be rejected. Rejected materials and/or equipment shall be removed immediately from the site of the work otherwise permitted by the Engineer. No rejected materials and/or equipment, the defects of which have been subsequently corrected, shall be used until approved in writing by the Engineer.

Materials which may have been rejected for failure to comply with accepted national standards on any other project shall not be incorporated into this project without written approval of the Contracting Agency.

006.10 CONTRACTING AGENCY FURNISHED MATERIALS

Materials and/or equipment furnished by the Contracting Agency will be delivered to the Contractor as indicated in the Special Provisions. The cost of handling and placing shall be included in the appropriate Contract pay sum. The Contractor shall be held responsible for any shortages, deficiencies and damages which may occur after his acceptance.

007 **LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

007.1 **PROTECTION OF WORK, PROPERTY AND PERSONS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. He shall take precautions necessary to provide for the safety of the employees on the work. He shall protect **materials and equipment that are to be incorporated into the work. He shall provide** protection to prevent damage to other property at or adjacent to the site. Property to be protected shall include pavements, roadways, structures, utilities, trees, lawns, shrubs and walks designated to be incorporated into the completed project.

The Contractor shall comply with all legally applicable laws, orders, ordinance, rules or regulations enacted by the public body having jurisdiction over the work. He will erect and maintain all necessary safeguards for safety and protection as required by the progress of the work. He shall notify owners of adjacent utilities at such time as progress of the work may directly affect them. The Contractor shall remedy all damage, injury or loss to any property caused directly, in whole or in part, by the Contractor, his Subcontractors, or anyone directly employed by any of them.

The Contractor shall act promptly in emergencies to prevent threatened damage, injury or loss to the work or persons or property at, or immediately adjacent to the site. The Contractor is expected to act promptly and without special instruction or authorization from the Contracting Agency or Engineer. The Contractor shall submit prompt written notice to the Engineer defining significant changes to the work or to the Contract Documents that resulted from the emergency. The Engineer shall promptly issue a change order covering the changes and deviations involved.

007.2 **SUPERVISION BY CONTRACTOR**

The Contractor will supervise and direct the work. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction.

The Contractor shall give the work the constant attention necessary to facilitate the progress thereof, and shall cooperate with the Engineer, his inspectors and other Contractors in every way possible.

All phases of the Project such as concrete work, pipe work, etc. shall be under the direct supervision of a foreman or the superintendent's designated representative on the site who shall have authority to accept instructions with respect to that particular phase of the project, and take action required to properly carry out the work.

The Engineer may require the Contractor to stop work on a specific part of the project until the required supervision is present.

The Contractor shall file with the Engineer the names, addresses and telephone numbers of representatives who can be contacted at any time in case of emergency. These representatives must be fully authorized and equipped to correct unsafe or excessively inconvenient conditions on short notice.

007.3 **PERMITS**

Permits and licenses of a temporary nature and necessary for the prosecution of the work shall be secured and paid for by the Contractor unless otherwise stated in Special Provisions. Easements for permanent

structures or permanent changes in existing facilities shall be secured and paid for by the Contracting Agency.

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the contract documents are at variance therewith, he shall promptly notify the Engineer in writing, and any necessary changes shall be adjusted as provided in Section 009.4.

The Contractor shall notify the appropriate permit agencies of actions undertaken as required by the permit.

007.4 TAXES

The Contractor must apply for, and receive, a Certificate of Exemption from the Colorado Department of Revenue for construction materials to be physically incorporated into the work. This Certificate of Exemption provides that the Contractor shall neither pay nor include in his bid prices, Sales and Use Taxes on those building and construction materials physically incorporated into the work.

All applicable Sales and Use Taxes (including State collected taxes), on any items other than construction and building materials physically incorporated into the work are to be paid by the Contractor and are to be included in appropriate bid items.

007.5 ARCHAEOLOGICAL REQUIREMENTS

When the Contractor's excavating operations encounter remains of prehistoric people's dwelling sites or artifacts of historical or archaeological significance, the operations shall be temporarily discontinued. The Engineer will contact archaeological authorities to determine the disposition thereof. When directed, the contractor shall excavate the site in such manner as to preserve the artifacts encountered and shall remove them for delivery to the custody of the proper state authorities. Such excavation will be considered and paid for as extra work.

007.6 RESERVED -- ARCHAEOLOGICAL REPORTS

007.7 SAFETY, HEALTH AND SANITATION PROVISIONS

The Contractor shall provide and maintain neat, sanitary accommodations for his employees' use as may be necessary to comply with the requirements and regulations of the Colorado State Department of Health. Full use of the Contractor's accommodations shall be provided to the employees of the Contracting Agency or the Engineer who might be assigned to the project.

The Contractor shall provide all safeguards, safety devices and protective equipment and take any other actions reasonably necessary to protect the life and health of employees on the job, the safety of the public and to protect property in connection with the performance of the work covered by the Contract.

Precautions shall be exercised by the Contractor at all times for the protection of persons (including employees) and property. The Contractor shall comply with the provisions of all applicable laws pertaining to such protection, including all Federal and State occupational safety and health acts, standards and regulations promulgated thereunder.

007.8 PUBLIC CONVENIENCE AND SAFETY

The Contractor shall at all times conduct his work so as to assure the least possible obstruction to traffic and adjacent residents. The safety and the protection of persons and property of the general public and residents along the street, highway and areas adjacent to the work shall be provided for by the Contractor.

007.9 BARRICADES AND WARNING SIGNS

The Contractor shall provide, erect and maintain all necessary barricades, sufficient lights, danger signals and other traffic control devices and shall take all necessary precautions for the protection of the work and safety of the public. Roads partially or fully closed to traffic shall be protected by effective barricades. Obstructions shall be illuminated during hours of darkness. Suitable warning signs shall be provided to properly control and direct traffic.

The Contractor shall erect warning signs in advance of any place where operations may interfere with the use of the road by traffic. Warning signs shall be placed at all intermediate points where the new work crosses or coincides with an existing road.

All barricades, lights, control devices, signs and warning devices shall conform in all respects to the provisions of the Manual on Uniform Traffic Control Devices for Streets and Highways, which is hereby made a part of these Specifications.

007.10 USE OF EXPLOSIVES

The use of explosives will be permitted only when authorized in writing by the Engineer and after the Contractor has obtained the necessary permit from the Contracting Agency.

The Contracting Agency reserves the right to order the discontinuance of blasting operations at any time.

Explosives shall be transported, stored, handled and used in accordance with the provisions and requirements of all applicable laws, ordinance and regulations. Work shall be done in accordance with the recommendations of the AGC Manual of Accident Prevention in Construction and Institute Makers of Explosives.

The approval by the Engineer for the use of explosives shall not relieve the Contractor from his responsibilities. When explosives are used the Contractor will:

- (A) Exercise the utmost care not to endanger life or damage property.
- (B) Be responsible for any and all damages resulting from their use.
- (C) Furnish and erect special signs to warn the public of his blasting operations. They shall be located and maintained so as to be clearly evident to the public during all critical periods of blasting operations.
- (D) Notify each public utility company having structures adjacent to the work of his intention to use explosives. Such notice shall be given sufficiently in advance to enable the companies to advise the Contractor of any precautions that should be taken to protect their structures from damage.
- (E) Make a survey of adjacent properties, before commencing blasting operations, locating on drawings and by photographs all existing cracks and damages to structures. A copy shall be filed with the Engineer, including a report of any property owners who refused to cooperate and permit entry and inspection.

007.11 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE

The Contractor shall be responsible for the preservation of all public and private property within the limits of the work. He shall protect and prevent disturbance or damage to all land monuments and property marks until the Engineer has witnessed or otherwise referenced their location, nor shall he move them until directed.

Access to private property shall be maintained to minimize inconvenience to the property owner or lessee. The Contractor shall notify the property occupant 24 hours in advance of any construction across driveways and sidewalks shall be minimized by restoring serviceability as quickly as possible.

007.12 CONTRACTOR'S RESPONSIBILITY FOR WORK

The Contractor shall protect and take all necessary precautions against injury or damage to all finished or partially finished work, including protection against action of the elements or from any other cause until the entire project is completed and accepted by the Engineer. Partial payment for completed portions of the work shall not release the Contractor from such responsibility.

The Contractor shall be responsible for the project in case the work is suspended. The Contractor shall take appropriate precautions to prevent or minimize damage to the project. Erection of temporary structures, signs or other facilities may be required to provide the necessary protection.

007.13 CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES

The Contractor shall cooperate with the owners of underground or overhead utilities in order that the work may progress in a reasonable manner and that duplication of work may be minimized. The Contractor shall not commence work at points adjacent to the property, equipment or service facilities of utilities until arrangements for protection, removal or movement thereof have been made. The Contractor shall not undertake work adjacent to fire hydrants until the local fire authority has approved provisions for continued use and service.

The Contractor shall be responsible for all damage or injury to property of any character, during the prosecution of the work, resulting from any action, omission, neglect or misconduct in his manner or method of executing the work, or at any time due to defective work or materials, and said responsibility will not be released until the project shall have been completed and accepted.

The Contractor shall immediately notify the proper authority if any utility service is interrupted as a result of the Contractor's operations. The Contractor shall assist and cooperate with the utility in the restoration of the service.

Utility service interruptions caused by the Contractor's negligence, carelessness or failure to utilize the utility's capabilities in locating services shall be the sole responsibility of the Contractor. If water service is interrupted, repair work shall be continuous until the service is restored.

In case of utility service interruptions caused by the failure or refusal of the utility to identify and/or locate existing utilities, the Contractor shall immediately provide the Engineer written notification of the utility's non-cooperation and proceed only as instructed by the Engineer.

007.14 RIGHT-OF-WAY

Prior to issuance of Notice to Proceed, the Contracting Agency shall obtain all land and rights-of-way necessary for carrying out and for the completion of the work to be performed pursuant to the Contract Documents.

007.15 INDEMNIFICATION

The Contractor agrees to indemnify and hold harmless the Contracting Agency, 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 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. 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.

007.16 NO WAIVER OF LEGAL RIGHTS

The Contracting Agency will expeditiously make a final inspection and notify the Contractor of acceptance, upon completion of the work. Such final acceptance shall not preclude or prevent the Contracting Agency from correcting any measurement, estimate or certificate made before or after completion of the work. Nor shall the Contracting Agency be precluded or prevented from recovering from the Contractor, his surety, or both, any overpayment made or for a failure by the Contractor to fulfill his obligations under the Contract. A Contracting Agency waiver on a single part of the work shall not be deemed to be a waiver on any other part of the work.

The Contractor shall be liable to the Contracting Agency for any fraud or latent defects or gross mistakes as may amount to fraud and the Contracting Agency's rights under any warranty or guaranty.

008 **COMMENCEMENT, PROSECUTION AND PROGRESS**

008.1 **NOTICE TO PROCEED**

Neither the Contractor nor any Subcontractor shall commence work on the project prior to receipt of the written Notice to Proceed issued by the Contracting Agency. The Contractor shall commence work as soon as practicable after the starting date specified in the Notice to Proceed. All work under the Contract shall be completed within the number of calendar days stated in the proposal, plus extensions stipulated in Change Orders, beginning with the day following the starting date specified in the Notice to Proceed.

The Contractor shall notify the Engineer 24 hours in advance of the time and place where work will begin. Two working days advance notice is required for surveying and staking.

008.2 **SUBLETTING OR ASSIGNMENT OF CONTRACT**

The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of all or any part of the Contract or Contracts, or of his right, title or interest therein, without prior written consent of the Contracting Agency.

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.

The Contractor shall not award work to Subcontractor(s), in excess of fifty (50) percent of the Contract Price, without prior written approval of the Contracting Agency.

The Contractor shall be fully responsible to the Contracting Agency for the acts and omissions of his Subcontractors, and of persons directly employed by them, as he is for the acts and omission of persons directly employed by him.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind Subcontractors to the Contractor by the terms of the Contract Documents and to give the Contractor the same power as regards terminating any subcontract that the Contracting Agency may exercise over the Contractor under any provision of the Contract Documents. All subcontracts shall be in writing.

Nothing contained in this Contract shall create any contractual relation between any Subcontractor and Contracting Agency.

008.3 **SCHEDULES, REPORTS AND RECORDS**

The Contractor shall submit information on the work to be performed to the Contracting Agency relating to quantities, progress schedules, payrolls, reports, estimates, records and other data as are required by the Contract Documents.

Prior to the commencement of construction, the Contractor shall submit construction progress schedules showing the order in which he proposes to carry on the work.

The progress schedules shall include starting and completion dates of the various parts of this project.

The Special Provisions shall detail requirements for submission of schedules and reports relating to Special Detail Drawings, Shop Drawings, manufacturing schedules, testing and/or inspection of materials purchased for the project and any other specific schedule, report or record.

008.4 LIMITATION OF OPERATIONS

The Contractor shall not perform any work after regular working hours, on weekends or legal holidays without written permission from the Engineer, except for emergencies. The Contractor and the Engineer shall arrange for continuous or periodic inspection of the work, surveys and tests when such work is necessary.

The Engineer may require the Contractor to increase his operations to insure that the construction schedule is attained, should the rate of construction fall behind schedule. The Contractor may be required to increase personnel, shifts and/or overtime operations as well as quantity of equipment until such time as the work is back on schedule. Increased operations required shall be at the Contractor's expense unless such increased operations arise out of or are as a result of any improper or negligent act or omission of the Contracting Agency in which latter event, the Contractor shall be paid for all of his or its costs actually incurred in excess of normal working hours and normal equipment usage.

008.5 CHARACTER OF WORKMEN: METHODS AND EQUIPMENT

The Contractor shall at all times employ sufficient labor and equipment, for prosecuting the work to full completion in the manner and time required by the Contract Documents.

All workmen shall be competent and have sufficient skill, knowledge and experience their class of work and operation of equipment, to perform all work properly and satisfactorily.

The Engineer may provide the Contractor a written opinion that a specific person or persons are not performing in a proper and skillful manner. Further, the Engineer may request that such person or persons be removed from the work by the Contractor or Subcontractor. The request may also require that persons so removed shall not again be employed in any portion of the work without written approval of the Engineer. The Contractor shall hold the Contracting Agency harmless from damages or claims for compensation that may occur in the enforcement of this paragraph.

Should the Contractor fail to remove such person as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the work, the Engineer may suspend the work by written notice until such orders are complied with.

All equipment which is proposed to be used on the work shall be of sufficient size and in such mechanical condition as to meet requirements of the work and to produce a satisfactory quality of work. Equipment used on any portion of the project shall be such that it will not damage property adjacent to the work area.

The Contractor shall be responsible for the construction means, methods, controls, techniques, scheduling, sequences, procedures, construction safety and operations throughout the term of the Contract. Should work so produced not conform to the Specifications, the Contractor shall remove the defective work and replace it with work of the specified quality or take such corrective action as approved by the Engineer. No change in basis of payment or Contract Time shall be authorized for defective work replaced or corrective work required.

When the Contract specifies that construction be performed by the use of certain methods and equipment, should work so provided not conform to the Specifications, the Contractor may be required to remove the defective work and replace it with work of the specified quality or take such corrective action as approved by the Engineer.

008.6 DETERMINATION AND EXTENSION OF CONTRACT TIME

The number of calendar days allowed for the completion of the work included in the Contract will be as stated in the proposal. The Contract time shall consist of the number of calendar days specified, including all weekends and legal holidays. All calendar days elapsing between the effective dates of any written notice from the Engineer to suspend work and to resume work following suspension shall be excluded. Completion date of the project shall be determined as the date of final inspection on which all deficiencies have been corrected.

The Contractor may submit a written request for an extension to the completion time. The request must set forth specific reasons or conditions beyond the control of or through no fault of the Contractor. The Engineer shall evaluate the request and may extend the time for completion as the conditions justify. If granted, the extended time for completion shall be in full effect the same as though it were the original time for completion.

008.7 WARRANTY

This section does not apply to this project.

008.8 TIME FOR COMPLETION AND LIQUIDATED DAMAGES

The date of beginning and the time for completion of the work are essential conditions of the Contract Documents and the work embraced shall be commenced on the date specified in the Notice to Proceed.

The Contractor will proceed with the work at such a rate or progress to insure full completion within the Contract time. It is expressly understood and agreed, by and between the Contractor and the Contracting Agency, that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.

Should the Contractor fail to complete the work within the Contract time, or extension of time granted by the Contracting Agency, the Contractor shall pay the Contracting Agency the amount of liquidated damages specified in the Bid or \$500 per day if not specified in the Bid for each calendar day the Contractor may be in default of the time stipulated in the Contract Documents.

008.8.1 The Contractor shall not be charged with liquidated damages provided the delay in completion of the work is due to the following and the Contractor has promptly given written notice of such delay to the Contracting Agency or Engineer.

(A) To any preference, priority or allocation order duly assigned by the Contracting Agency.

(B) To unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of omission of the Contracting Agency, floods, epidemics, quarantine restrictions, strikes, material or fuel shortages due to governmental regulations or allocations, freight embargoes and abnormal or unusually severe weather.

Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time fixed for its completion may have been extended, will in no way operate as a waiver on the part of the Contracting Agency of any of its rights under the Contract.

008.9 SUSPENSION OF WORK, TERMINATION AND DELAY

008.9.1 The Contracting Agency may suspend all or any portion of the work for not more than 90 days by written notice to the Contractor. The notice shall include the date on which work shall be resumed, and the contractor, shall resume work on that date. The Contractor shall be allowed an increase in the Contract Price or an extension in time of completion, or both, directly attributable to any suspension.

008.9.2 The Contracting Agency may terminate the services of the Contractor, and take possession of the project and all materials, equipment, tools, construction equipment and machinery thereon that may be owned by the Contractor. The termination shall be effective ten days after the Contracting Agency has delivered written notice to the Contractor. The termination may be initiated for any of the following reasons and shall not prejudice any other right or remedy available to the Contracting Agency:

- (A) The Contractor is adjudged bankrupt or insolvent.
- (B) The Contractor makes a general assignment for the benefit of his creditors.
- (C) A trustee or receiver is appointed for the Contractor or for any of his property.
- (D) The Contractor files a petition to take advantage of any debtor's act or to reorganize under any bankruptcy law.
- (E) The Contractor repeatedly fails to supply sufficient skilled workmen, materials or equipment to maintain the construction schedule.
- (F) The Contractor repeatedly fails to make prompt payments to Subcontractors, or for labor, materials or equipment.
- (G) The Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the work.
- (H) The Contractor disregards the authority of the Engineer.
- (I) The Contractor violates any provision of the Contract Documents.

After termination notice is served, the Contracting Agency may proceed to finish the work by whatever method it deems most expedient.

The Contractor shall not be entitled to receive any payment from time of termination until the work is finished. All direct and indirect costs incurred in completing the project shall be assessed against the Contract Price. Any residue shall be paid the Contractor. Any unpaid balance shall be immediately paid to the Contracting Agency by the Contractor.

008.9.3 The Contracting Agency may elect to suspend or abandon the project and terminate the Contract. The action shall be effective ten days after the Contracting Agency has delivered written notice to the Contractor. This action may be initiated for any reason, without cause, and shall not prejudice any other right or remedy available to the Contracting Agency. The Contractor shall be paid for all work executed. No claim for loss of profits will be considered.

008.9.4 The Contractor may terminate the Contract for any of the following reasons. The termination shall be effective ten days after the Contractor has delivered written notice to the Contracting Agency.

(A) The Contracting Agency has suspended the work for more than 90 days.

(B) The work is suspended for more than 90 days under the order of the court or other public authority.

(C) The Engineer fails to act on any request for payment within 30 days after its submittal.

(D) The Contracting Agency fails to pay the Contractor within 30 days the sum approved by the Engineer or awarded by arbitrators.

The Contractor shall be entitled to payment for all work executed. The Contract will be terminated by the Contractor ten days after receipt of the Contractor's written notification.

009 **MEASUREMENTS AND PAYMENTS**

009.1 **MEASUREMENT OF QUANTITIES**

Measurement for pay items in the Contract shall be defined in the applicable standards or in the Special Provisions.

All work completed under the Contract will be measured by the Engineer according to United States standard measures. The methods of measurement and computation to be used in determination of quantities of materials furnished and of work performed under the Contract will be those methods generally recognized as conforming to good engineering practice.

Longitudinal and transverse measurement for area computations will be made horizontally, and no deductions will be made for individual fixtures having an area of one square yard or less. The neat dimensions shown on the plans or ordered in writing by the Engineer, shall be used for area computation.

The term "lump sum," when used as a pay item, will mean complete payment for the work described.

Sundry items which are incidental to or required in the construction of the work but are not included as items in the bid schedule shall be considered an integral part of the Contract, and all labor, materials, etc. required for such items shall be furnished by the Contractor and included in the appropriate unit price bid.

009.2 **SCOPE OF PAYMENT**

Payment for pay items in the Contract shall be as indicated in the applicable Standards or in the Special Provisions.

Payment for the various items in the Contract shall be made at the unit price Bid in the proposal. Payment shall be compensation in full for furnishing all labor, materials, equipment, and appurtenances necessary to complete the work as shown on the plans and as required in the Specifications. Each item, fixture, piece of equipment, etc., shall be complete with all necessary connections and appurtenances, for the satisfactory use and operation of said item. No additional payment will be made for work related to any item unless specifically called for in the Contract.

Payment may be specified to be made on the basis of weight. The weighing shall be done on certified platform scales sealed by the State Inspector. The Contractor shall furnish the Engineer with duplicate Weighmaster's Certificates showing the actual net weights. The Contracting Agency will accept the certificates as evidence of the weight delivered.

The Engineer and Contractor may agree to use a weight/volume factor in computing payment for materials to be measured by the cubic yard. An acceptable method of computing volumes of excavation is to determine a weight/volume factor and convert weights to volumes by means of the factor. The weight/volume factor shall be determined by Colorado Test Procedures CP22 or CP80 as described in the Colorado State Highway Division's Materials Manual. The number of tests used to determine the material weight/volume factor shall be determined by the Engineer. The locations where the tests are taken shall be those locations specified in the "Method of Measurement" for the particular Bid item, i.e., Unclassified Excavation - in its original position: Fill Construction - in its final compacted position, or as agreed upon by the Engineer and the Contractor.

009.3 **ASSIGNMENTS**

Neither the Contractor nor the Contracting Agency shall sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of his right, title or interest therein, or his obligations thereunder, without written consent of the other party.

009.4 COMPENSATION FOR ALTERATION OF WORK

This section does not apply to this project.

009.5 EXTRA, ALTERED, OR FORCE ACCOUNT WORK

This section does not apply to this project. See CDOT Standard Specifications.

009.6 ELIMINATED ITEMS

Should any items contained in the proposal be found unnecessary for the proper completion of the work, the Engineer shall notify the Contractor in writing to eliminate the item. Such action will not invalidate the Contract. The Contractor, by Change Order, will be reimbursed for actual work done and all costs incurred, including mobilization of materials and equipment prior to the elimination of such items.

009.7 CHANGE ORDERS

The Contract Price may be changed only by a Change Order. The value of any work covered by a Change Order or of any claim for increase or decrease in the Contract Price shall be determined by one or more of the following methods in the order of precedence listed below:

- (A) Unit prices previously approved.
- (B) An agreed lump sum.
- (C) The procedure set forth in Subsection 009.5.

009.8 PAYMENTS TO THE CONTRACTOR

Payments will be made in the manner and at such times as set forth in the Special Provisions of the Contract Documents.

The Contractor will indemnify and save the Contracting Agency, its agents and employees harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, suppliers and furnishers of machinery, parts, equipment, tools and all supplies incurred in the furtherance of the performance of the work. The Contractor shall, at the Contracting Agency's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged or waived. If the Contractor fails to do so, the Contracting Agency may, after having notified the Contractor, either pay undisputed unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payment to the Contractor shall be resumed in accordance with the terms of the Contract Documents. In paying undisputed bills of the Contractor, any payment so made by the Contracting Agency shall be considered as payment made under the Contract Documents by the Contracting Agency to the Contractor and the Contracting Agency shall not be liable to the Contractor for any such payments made in good faith.

009.9 ARBITRATION

Unless prohibited by local charter, ordinance or other law, all claims, disputes and other matters in question arising out of, or relating to, the Contract Documents or the breach thereof, and aggregating not more than \$50,000 or 10% of the original contract price, whichever is greater, except for claims which have been waived by the making and acceptance of final payment as provided by Section 009.8, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. This provision to arbitrate shall be specifically enforceable under applicable statutes or laws. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

Claims, disputes or other matters in question and aggregating more than \$50,000 or 10% of the original contract price may be decided by arbitration, as defined above, provided both parties mutually agree in writing to submit such claims, disputes or other matters to arbitration.

Notice of the demand for arbitration shall be filed in writing with the other party to the Contract Documents and with the American Arbitration Association, and a copy shall be filed with the Engineer. Demand for arbitration shall in no event be made on any claim, dispute or other matter in question which would be barred by an applicable statute of limitations.

The Contractor will carry on the Work and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

009.10 ACCEPTANCE OF FINAL PAYMENT AS RELEASE

The acceptance by the Contractor of final payment shall be and shall operate as a release to the Contracting Agency of all claims and all liability to the Contractor other than claims in stated amounts as may be specifically excepted by the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Contracting Agency and others relating to or arising out of this work. Any payment, however, final or otherwise, shall not release the Contractor or his sureties from any obligations under the Contract Documents or the Performance Bond and Labor and Material Payment Bonds, as hereinabove more fully described.