

**SECTION 00 72 00**  
**GENERAL CONDITIONS**

**THIS PAGE INTENTIONALLY LEFT BLANK**

**00 72 00**  
**GENERAL CONDITIONS**

**01 SCOPE**

These GENERAL CONDITIONS consist of general items of information and requirements needed for the many and varied construction contracts of OWNER. The intent of this part of the CONTRACT DOCUMENTS is to provide for a body of information and directions to CONTRACTOR, which will decrease the chances for misunderstanding between CONTRACTOR and OWNER.

**02 DEFINITIONS**

Wherever used in the CONTRACT DOCUMENTS, the following terms will have the meanings indicated which will be applicable to both the singular and plural thereof:

- ADDENDA and/or CHANGE ORDER- That part of the CONTRACT DOCUMENTS, which contains instructions, issued to clarify, revise, add, or delete bidding terms and requirements. The ADDENDA is issued during bidding.
- AGREEMENT and/or CONTRACT- the legal contract between CONTRACTOR and OWNER.
- AMENDMENT - A written order to CONTRACTOR authorizing an addition, deletion, or revision in the WORK the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the AGREEMENT PRICE and/or AGREEMENT TIME.
- BID(s) - The offer or BID of BIDDER(s) submitted on the prescribed form setting forth the prices for the WORK to be performed.
- BIDDER(s) - Any person, firm, or corporation submitting a BID for the WORK.
- BID GUARANTEE – Either a certified or cashiers check made payable without condition to the order of OWNER or a BID BOND written by any approved corporate surety in favor of OWNER, in the amount stated in the INVITATION TO BID.
- BOND(s) – BID, PERFORMANCE BOND, PAYMENT BOND, and other instruments of security, furnished by CONTRACTOR and the surety in accordance with the CONTRACT DOCUMENTS.
- CONTRACT DOCUMENTS and/or CONTRACT and/or AGREEMENT and/or DRAWINGS and SPECIFICATIONS - The entire CONTRACT consists of several documents and instruments, some of which may be bound separately or which are incorporated by reference. The CONTRACT DOCUMENTS consist of, but are not necessarily limited to:
  - INVITATION TO BID
  - INSTRUCTIONS TO BIDDERS
  - AVAILABLE PROJECT INFORMATION
    - BID FORM
    - BID BOND
  - NOTICE OF AWARD
  - AGREEMENT
  - NOTICE TO PROCEED
  - EMPLOYMENT OF ILLEGAL ALIENS
  - PAYMENT BOND
  - PERFORMANCE BOND
  - LETTER OF DAMAGE GUARANTEE
  - INSURANCE CERTIFICATES
  - FIELD ORDER FORM
  - AMENDMENT FORM

- LETTER OF FINAL ACCEPTANCE
- CONTRACTOR STATEMENT CONCERNING CLAIMS
  - WITHDRAWAL OF STATEMENT OF CLAIM
- NOTICE OF FINAL PAYMENT
- FINAL RECEIPT
- GENERAL CONDITIONS
- SUPPLEMENTARY CONDITIONS
- PERMITS
- REVISIONS AND MODIFICATIONS
- ADDENDA
  - DIVISION 01: GENERAL REQUIREMENTS
  - DIVISION 02: EXISTING CONDITIONS
  - DIVISION 03: CONCRETE
  - DIVISION 05: METALS
  - DIVISION 07: THERMAL AND MOISTURE PROTECTION
  - DIVISION 09: FINISHES
  - DIVISION 31: EARTHWORK
  - DIVISION 32: EXTERIOR IMPROVEMENTS
  - DIVISION 33: UTILITIES
- DRAWINGS (may also be referred to as PLANS)
- OTHER DOCUMENTS AS MAY BE INCLUDED BY REFERENCE

The CONTRACT DOCUMENTS may not necessarily be assembled in the order listed above. All of said instruments, DRAWINGS, and documents taken together as a whole constitute the entire set of CONTRACT DOCUMENTS.

- REVISIONS AND MODIFICATIONS - That part of the CONTRACT DOCUMENTS, which contains instructions issued to clarify, revise, add, or delete contracting requirements issued either before or after the execution of the AGREEMENT, but after the bidding.
- AGREEMENT PRICE - The total monies payable to CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.
- AGREEMENT TIME - The number of consecutive calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.
- CONTRACTOR - The person, firm, partnership, corporation, or joint venture with which OWNER has executed the AGREEMENT.
- DRAWINGS - The part of the CONTRACT DOCUMENTS that show the characteristics and scope of the WORK to be performed and which have been prepared or approved by ENGINEER and/or OWNER. May also be referred to as PLANS.
- DISTRICT - Urban Drainage and Flood Control District.
- ENGINEER - The person, firm, or corporation named as such in the CONTRACT DOCUMENTS and acting as an authorized representative of OWNER.
- EXECUTIVE DIRECTOR - The person in charge of the administrative and contractual functions of DISTRICT.
- FIELD ORDER - A written order effecting a change in the WORK not involving an adjustment in the AGREEMENT PRICE or an extension of the AGREEMENT TIME, issued to CONTRACTOR during construction.

- GENERAL CONDITIONS - That part of the CONTRACT DOCUMENTS which defines and describes the rights, responsibilities, and relationships of the parties to a construction contract; and outlines the duties and limits of authority for the design professional or construction manager in performance of contract administration.
- Hazardous Environmental Condition - The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
- Hazardous Waste - The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
- AVAILABLE PROJECT INFORMATION - Information available, which is not contained within the CONTRACT DOCUMENTS, but may be available at OWNER's or ENGINEER's office as defined.
- NOTICE OF AWARD - The WRITTEN NOTICE of the acceptance of the BID from OWNER to the successful BIDDER.
- NOTICE TO PROCEED - Written communication issued by OWNER authorizing CONTRACTOR to proceed with the WORK, establishing the date of commencement of the WORK, and establishing the date of completion of the WORK.
- OWNER - The DISTRICT or another public or quasi-public body, authority or governmental entity identified in the CONTACT DOCUMENTS.
- PLANS - See DRAWINGS.
- PROJECT - The undertaking to be performed as provided in the CONTRACT DOCUMENTS.
- RESIDENT ENGINEER and/or RESIDENT PROJECT REPRESENTATIVE - The authorized representative of OWNER who is assigned to the PROJECT SITE or any part thereof.
- SHOP DRAWINGS - Supplemental DRAWINGS, diagrams, layouts, schematic or descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by CONTRACTOR, a SUBCONTRACTOR, manufacturer, SUPPLIER or distributor, which illustrate in detail specific portions of the WORK.
- SPECIFICATIONS - A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards, and workmanship.
- STANDARD TECHNICAL SPECIFICATIONS - A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards, and workmanship developed and approved by the DISTRICT for use on all projects. Current versions of the Standard Technical Specifications can be downloaded from the DISTRICT website at [www.udfed.org](http://www.udfed.org).
- SUBCONTRACTOR - An individual, firm, or corporation having a direct contract with CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the WORK at the Site.
- SUPPLEMENTARY CONDITIONS (Federal-State-Local Regulations) - That part of the CONTRACT DOCUMENTS which contains modifications to GENERAL CONDITIONS required by a Federal agency for participation in the PROJECT, or such requirements that may be imposed by applicable state or local laws, codes, ordinances or regulations. Requirements unique to a specific project are also found in this section.

- **SUPPLIER** - Any person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the SITE.
- **WORK** - All labor necessary to produce the construction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT.
- **WRITTEN NOTICE** - Any notice to any party of the AGREEMENT relative to any part of this AGREEMENT in writing and considered delivered and the service thereof completed, when mailed by certified or registered mail to the said party or last given address, or delivered in person to said party or an authorized representative on the WORK.

### **03 THE CONTRACT, DRAWINGS, AND SPECIFICATIONS**

The AGREEMENT between CONTRACTOR and OWNER will be deemed to have been made in the State of Colorado and will be governed, interpreted and construed in accordance with the laws of the State of Colorado. Thus, CONTRACTOR shall at all times comply with the provisions of the Charters, Ordinances, Rules and Regulations of the local jurisdiction authority where the WORK is to be performed as well as those of the State of Colorado, and those Federal Laws, Rules and Regulations which in any manner limit, control, or apply to the actions or operations of CONTRACTOR, its SUBCONTRACTOR(s), or their employees, agents or servants engaged upon the WORK or affecting the materials supplied to or by them.

.01 **General.** DRAWINGS and SPECIFICATIONS are integral parts of the CONTRACT. These are intended to provide details adequate to permit full understanding between CONTRACTOR and OWNER of WORK to be performed under the CONTRACT. The DRAWINGS and SPECIFICATIONS are intended to be complementary and must be interpreted in that sense.

If in the opinion of CONTRACTOR, any discrepancies are found between the DRAWINGS, SPECIFICATIONS, and SITE conditions or any inconsistencies or ambiguities are found in the DRAWINGS or SPECIFICATIONS; CONTRACTOR shall immediately report them to ENGINEER and/or OWNER in writing. ENGINEER and/or OWNER shall promptly review such reported discrepancies, inconsistencies, or ambiguities and determine if they exist. If ENGINEER determines a discrepancy, inconsistency or ambiguity exists, a AMENDMENT or FIELD ORDER will be issued as specified in DIVISION 01: GENERAL REQUIREMENTS, SECTION 01 26 00, Contract Modification Procedures. WORK done by CONTRACTOR prior to issuance of a AMENDMENT or FIELD ORDER will be done at CONTRACTOR's risk.

If WORK, although not described by the DRAWINGS and SPECIFICATIONS, appears to be necessary for the successful completion of the CONTRACT and if the necessity for such WORK can reasonably be implied from the CONTRACT DOCUMENTS, CONTRACTOR shall perform that WORK as if it were specified.

In case of conflict between the DRAWINGS and SPECIFICATIONS, the SPECIFICATIONS will govern. Figure dimensions on DRAWINGS will govern over scale dimensions, and detailed DRAWINGS will govern over general DRAWINGS.

.02 **SPECIFICATIONS Designations.** Whenever reference is made in the CONTRACT DOCUMENTS to specifications, methods of testing materials, codes, practices and requirements, it will be understood that the latest edition or revision in effect as of the date of the BID opening will govern unless a specific revision is referred to.

.03 **“Approved Equal” Clause.** Whenever a specific material, equipment, process, or product is referred to by a proprietary name, brand name or by the name of its manufacturer, it will be understood that such designation is further qualified by the phrase “or approved equal,” whether or not such phrase actually appears with the material, equipment, process or product being specified. Such specification is not intended to limit the material and equipment selection process but rather to indicate a standard of quality and capability that will be acceptable.

**.04 Ownership of DRAWINGS and SPECIFICATIONS.** Neither CONTRACTOR nor any SUBCONTRACTOR, manufacturer, fabricator, SUPPLIER or distributor shall have or acquire any title to or ownership rights in any of the DRAWINGS, SPECIFICATIONS or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER; and they shall not reuse any of them on extensions of the PROJECT or any other project without written consent of OWNER and ENGINEER and specific written verification or adaptation by ENGINEER.

**.05 DRAWINGS and SPECIFICATIONS Issued to CONTRACTOR.** Upon receiving NOTICE OF AWARD, CONTRACTOR may request as many additional copies of the DRAWINGS and SPECIFICATIONS as CONTRACTOR may desire. These will normally be available at the place where the BID documents were issued. Up to six (6) sets of these DRAWINGS and SPECIFICATIONS will be issued at no cost to CONTRACTOR. At OWNER's discretion, and based upon the availability thereof, additional sets of DRAWINGS and SPECIFICATIONS may be made available to CONTRACTOR in excess of six (6) sets at no cost, however, OWNER may require CONTRACTOR to purchase sets of DRAWINGS and SPECIFICATIONS in excess of six (6) sets at the price stated in the INVITATION TO BID, if OWNER so chooses.

Of the six (6) sets of DRAWINGS and SPECIFICATIONS issued free to CONTRACTOR, one (1) set must be maintained in good condition at the WORK SITE for the purpose of recording "as-built" conditions as necessary to develop an "As Constructed Record." On this set of DRAWINGS and SPECIFICATIONS, CONTRACTOR shall record all changes and deviations in a neat and legible manner. Any deviation between the DRAWINGS and SPECIFICATIONS and the WORK actually done, no matter how insignificant, must be recorded. Of special concern is that all underground utility structures encountered in the process of doing the WORK be correctly located on the DRAWINGS. When the WORK is completed, CONTRACTOR shall deliver this single set of DRAWINGS and SPECIFICATIONS to OWNER or ENGINEER. These DRAWINGS must be submitted to OWNER or ENGINEER before final payment will be made.

**.06 Supplemental DRAWINGS and SPECIFICATIONS.** DRAWINGS and SPECIFICATIONS, which were provided by OWNER at the time of bidding, will, when needed, be supplemented by CONTRACTOR who shall provide SHOP DRAWINGS, equipment setting drawings, reinforcement steel placement drawings, erection schedules, material samples, performance charges, manufacturer's brochures, and other needed information. If any of the above mentioned information is required, CONTRACTOR shall, as soon as the WORK begins, prepare a schedule for its submission to ENGINEER. The purpose of the schedule is to establish at an early date the needs and dates of needs so that the approval process does not delay the WORK. No WORK based on such supplemental DRAWINGS and SPECIFICATIONS will be performed until such supplemental DRAWINGS and SPECIFICATIONS have been reviewed as herein provided.

Since this supplemental data may be needed to evaluate whether ENGINEER's concepts, as expressed by the DRAWINGS and SPECIFICATIONS are correctly interpreted and that the final WORK product satisfied the design intent, review of the supplemental data will be the responsibility of ENGINEER. Submittal of this data will follow the normal channels of communication. CONTRACTOR must endorse all submittals, regardless of sources.

Reviews of supplemental DRAWINGS and SPECIFICATIONS are based only on whether or not these indicate that the subject of the supplemental data satisfies the basic design concept and intent. Such review by ENGINEER will never be used by CONTRACTOR to claim relief from CONTRACTOR's ultimate responsibility of providing to OWNER the end product for which it contracted. When submitted for review, SHOP DRAWINGS will bear CONTRACTOR's certification that CONTRACTOR has reviewed, checked, and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.

**.07 Additional Instructions and Detail DRAWINGS Issued by ENGINEER or OWNER.** CONTRACTOR may be furnished additional instructions and detail DRAWINGS, by ENGINEER and/or OWNER as necessary to carry out the WORK required by the CONTRACT DOCUMENTS.

The additional DRAWINGS and instruction thus supplied will become a part of the CONTRACT DOCUMENTS. CONTRACTOR shall carry out the WORK in accordance with the additional detail DRAWINGS and instructions.

#### **04 AUTHORITY OF THE EXECUTIVE DIRECTOR**

The EXECUTIVE DIRECTOR of DISTRICT is charged with duties of administering the official policies and directives of its Board of Directors. In this capacity, the EXECUTIVE DIRECTOR is vested with full authority to contract for and administer the construction of certain public improvements on behalf of DISTRICT. The EXECUTIVE DIRECTOR shall decide any differences between ENGINEER and CONTRACTOR.

When DISTRICT is jointly involved with another public agency on a PROJECT, it will be stipulated in the SUPPLEMENTARY CONDITIONS as to which agency will administer the PROJECT and the administrative extent.

The SUPPLEMENTARY CONDITIONS may designate an onsite EXECUTIVE DIRECTOR's representative who has been delegated the duties of the EXECUTIVE DIRECTOR to administer the construction of the PROJECT. In the absence of such delegation, the EXECUTIVE DIRECTOR shall administer the construction of the PROJECT.

#### **05 ENGINEER**

.01 **General.** If OWNER retains an ENGINEER to design a facility and to describe that design by the preparation of DRAWINGS and SPECIFICATIONS, the SUPPLEMENTARY CONDITIONS will name that ENGINEER. ENGINEER shall participate in CONTRACT administration. This participation will include the interpretation of DRAWINGS and SPECIFICATIONS and approval of supplemental DRAWINGS and SPECIFICATIONS. ENGINEER shall participate in the preparation and approval of progress and final payment estimates and shall participate in inspections while the WORK is in progress and especially prior to final acceptance by OWNER.

.02 **Authority of ENGINEER.** ENGINEER shall act as OWNER's representative during the construction period. ENGINEER shall decide questions that may arise as to quality and acceptability of materials furnished and WORK performed. ENGINEER shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. ENGINEER shall make visits to the SITE and to determine if the WORK is proceeding generally in accordance with the CONTRACT DOCUMENTS.

CONTRACTOR shall be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship, and execution of the WORK. Inspections may be made at the factory or fabrication plant of the source of material supply.

ENGINEER shall not be responsible for the construction means, methods, controls, techniques, sequences, procedures, or construction safety.

ENGINEER shall promptly make decisions relative to interpretation of the CONTRACT DOCUMENTS when requests are directed to ENGINEER in writing.

.03 **Approval by ENGINEER.** Approval by ENGINEER of any drawing, specification, material, equipment, product or process will only be construed to mean approval in accordance with the overall design concept and the intent of the DRAWINGS and SPECIFICATIONS and will not relieve CONTRACTOR of the responsibility to ensure that all dimensions, grades, and the quality and compatibility of any material, equipment, process or product furnished are suitable for the purpose intended and are in compliance with all requirements of the CONTRACT DOCUMENTS.

## **06 CONSTRUCTION MANAGER**

The Construction Manager is the person or administrative organization identified in the SUPPLEMENTARY CONDITIONS as the entity retained by OWNER to supplement ENGINEER's design and construction administration capabilities. If a Construction Manager is employed, the degree of participation in the administration of the CONTRACT will be specified in the SUPPLEMENTARY CONDITIONS.

## **07 LAND AND RIGHTS-OF-WAY**

Prior to issuance of NOTICE TO PROCEED, OWNER 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, unless otherwise stated in the SUPPLEMENTARY CONDITIONS.

OWNER shall provide to CONTRACTOR information that delineates and describes the lands owned and rights-of-way acquired.

CONTRACTOR will provide at CONTRACTOR's own expense and without liability to OWNER or ENGINEER, any additional land and access hereto that CONTRACTOR may desire for temporary construction facilities, or for storage of materials. Copies of any separate agreements between CONTRACTOR, municipal agencies, cities and private landowners, will be furnished to OWNER together with subsequent releases.

## **08 SUGGESTIONS TO CONTRACTOR**

Any plan of action, method of WORK or construction procedure suggested to CONTRACTOR by ENGINEER or OWNER or any of their representatives, whether orally or in writing, if adopted or followed by CONTRACTOR in whole or in part, will be at the sole risk and responsibility of CONTRACTOR.

## **09 GENERAL SERVICE AND FACILITIES REQUIREMENTS**

.01 **General.** Except as may be modified otherwise in the SUPPLEMENTARY CONDITIONS, CONTRACTOR shall provide and pay for all PERMITS and licenses, materials, labor, tools, equipment, water, sanitary, facilities, heat, light, power, transportation, supervision, field office facilities, telephone and other related services and facilities of whatsoever nature necessary to execute and complete the WORK in accordance with the CONTRACT DOCUMENTS.

.02 **Regulations.** CONTRACTOR shall give all notices and comply with all laws, ordinances, codes, rules, and regulations bearing on the conduct of the WORK. If CONTRACTOR observes that any DRAWINGS or SPECIFICATIONS are at variance therewith, or if CONTRACTOR performs any WORK under any circumstances where CONTRACTOR knows or should have known it to be contrary to any such laws, ordinances, codes, rules, or regulations, and without giving such notice to ENGINEER and/or OWNER, CONTRACTOR shall bear all costs arising there from. However, it will not be CONTRACTOR's primary responsibility to make certain that the DRAWINGS and SPECIFICATIONS are in accordance with such laws, ordinances, rules, and regulations.

.03 **Public Relations.** CONTRACTOR shall carry on the WORK in such manner as to minimize inconvenience to the public, particularly occupants of property adjacent to the PROJECT, as is consistent with good workmanship.

CONTRACTOR shall notify all affected persons at least forty-eight (48) hours before starting WORK, which may block entrances, or otherwise cause undue difficulty to occupants of property affected and shall restore such entrances to a usable condition as soon as possible. CONTRACTOR, SUBCONTRACTOR(s) and employees shall be courteous at all times to the public during the performance of the WORK.

.04 **PERMITS and Licenses.** All PERMITS, licenses, and approvals required in the prosecution of the WORK will be obtained and paid for by CONTRACTOR. CONTRACTOR shall also be responsible for the payment of any applicable taxes, tap fees, development fees, or other charges and fees imposed by utility

companies or governmental agencies responsible for imposing such fees or taxes and/or providing such services to the facility or facilities to be constructed hereunder. If CONTRACTOR fails to obtain all PERMITS, licenses, and approvals required in the prosecution of the WORK, CONTRACTOR shall defend, indemnify and hold harmless OWNER and any and all PROJECT partners of OWNER.

.05 **Temporary Construction and Security Facilities.** CONTRACTOR shall provide all materials, tools, equipment, and labor necessary for dewatering, water control, temporary pumping facilities, bypassing of sewage, traffic control, pedestrian and vehicular barricades, detours, signing, temporary fencing, and all other related temporary construction and security facilities necessary to perform the WORK in accordance with CONTRACT DOCUMENTS.

.06 **Supervision by CONTRACTOR.** CONTRACTOR shall supervise and direct the WORK and manage any SUBCONTRACTOR's work, if any. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be solely responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence, or procedure of construction, which is indicated in and required by the CONTRACT DOCUMENTS. CONTRACTOR shall employ and maintain, on the PROJECT WORK, a qualified supervisor or superintendent who will have been designated in writing to ENGINEER by CONTRACTOR as CONTRACTOR's representative at the SITE. The supervisor will have full authority to act on behalf of CONTRACTOR and all communications given to the supervisor will be as binding as if given to CONTRACTOR. The supervisor will be present on the SITE at all times as required to perform adequate supervision and coordination of the WORK and shall be able to communicate in fluent English with the ENGINEER and all other OWNER's representatives. CONTRACTOR's supervisor or superintendent will be able to execute any change in WORK documents that affect either changes in the WORK or CONTRACT costs.

.07 **Construction Staffing.** CONTRACTOR shall assign an adequate number of persons to each task so that an optimum rate of progress is maintained. The number of assigned personnel is especially critical whenever an operation is begun which requires that the activity be pursued at a rate needed to avoid the manufacture of an inferior product.

.08 **Construction Machines.** CONTRACTOR shall have available for use when needed all necessary construction machinery and equipment that is safe, in good working condition, and adequate for the task and in numbers needed to maintain an optimum rate of progress.

.09 **Costs.** Except as may be otherwise provided for in the BID, no separate payment will be made for any of the items or requirements set forth under the GENERAL CONDITIONS and all costs incurred will be considered to be included in the BID.

.10 **Asphalt.** CONTRACTOR shall be responsible for repairing or replacing all pavement disturbed or removed during construction of the PROJECT. Contractor shall patch or replace asphalt pavement utilizing asphalt pavement and asphalt patching details and specifications per the details and specifications of the local jurisdiction in which the PROJECT resides.

.11 **Striping:** CONTRACTOR shall be responsible for repainting all pavement striping and marking disturbed or removed during construction of the PROJECT. CONTRACTOR shall replace marking paint and striping per the details and specifications of the local jurisdiction in which the PROJECT resides.

## **10 SAFETY OF PUBLIC AND WORKERS**

CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the WORK. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the SITE, and other property at the SITE or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction. CONTRACTOR shall erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection of persons and property. CONTRACTOR shall notify owners of adjacent utilities when prosecution of the WORK may affect them. CONTRACTOR shall remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except damage or loss to the extent attributable to the fault of the CONTRACT DOCUMENTS or to the extent attributable to acts or omissions of OWNER or ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR.

In emergencies affecting the safety of persons or the WORK or property at the SITE or adjacent thereto, CONTRACTOR without special instruction or authorization from ENGINEER or OWNER, shall and is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give ENGINEER or OWNER prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby. If OWNER or its representatives notify CONTRACTOR, in writing, of possible threatened damage, injury, or loss, CONTRACTOR shall take immediate measures to prevent a possible damage, injury, or loss, to OWNER's satisfaction. Any additional compensation claimed by CONTRACTOR on account of emergency WORK will be provided in DIVISION 01: GENERAL REQUIREMENTS, SECTION 01 26 00, Contract Modification Procedures.

## **11 SUBCONTRACTING**

CONTRACTOR may utilize the services of specialty SUBCONTRACTOR(s) on those portions of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTOR(s). Those SUBCONTRACTOR(s) must be identified on the BID and if not identified in the BID, approved in writing by OWNER prior to commencement of services by the SUBCONTRACTOR. CONTRACTOR shall not award WORK to SUBCONTRACTOR(s), in excess of fifty percent (50%) of the AGREEMENT PRICE, without prior written approval of OWNER.

CONTRACTOR shall be fully responsible to OWNER for the acts and omissions of SUBCONTRACTOR(s), and of persons either directly or indirectly employed by them, as CONTRACTOR is for the acts and omissions of the persons directly employed by CONTRACTOR.

CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTOR(s) to CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTOR(s) and to give CONTRACTOR the same power as regards terminating any subcontract that OWNER may exercise over CONTRACTOR under any provision of the CONTRACT DOCUMENTS.

Nothing contained in this CONTRACT will create any contractual relation between any SUBCONTRACTOR and OWNER.

## **12 PROGRESS PAYMENTS TO CONTRACTOR**

On the twenty fifth (25th) day of each month that the progress payment falls due (but not more often than once a month), CONTRACTOR shall submit to ENGINEER a partial payment estimate filled out and signed by CONTRACTOR covering the WORK performed during the period covered by the partial payment estimate and supported by such data as ENGINEER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at or near the SITE, the partial payment estimate will also be accompanied by such supporting data, satisfactory to OWNER, as will establish OWNER's title to the material and equipment and protect OWNER interest therein. ENGINEER shall either indicate in writing the approval of payment and present the partial payment estimate to OWNER or return the partial payment estimate to CONTRACTOR indicating in writing the reasons for refusing to approve payment. In the latter case, CONTRACTOR may make the necessary

corrections and resubmit the partial payment estimate. In any case, the partial payment will be submitted to OWNER by the first (1st) day of the following month. OWNER shall, within twenty five (25) days of submittal of an approved partial payment estimate, pay CONTRACTOR a progress payment on the basis of the approved partial payment estimate, if the CONTRACTOR is satisfactorily performing the WORK. OWNER shall retain monies from progress payments until final payment is due, under the following terms and conditions:

01. Retention of five percent (5%) of the calculated value of the satisfactorily WORK.
02. Beginning with the second partial payment estimate, each partial payment estimate thereafter shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the WORK have been applied on account to discharge CONTRACTOR's obligations associated with prior partial payment estimates. If requested, CONTRACTOR shall forward to OWNER statements from all SUPPLIER(s) and SUBCONTRACTOR(s) affirming that payments owed them by CONTRACTOR, as of the date of the statement, had been received.
03. CONTRACTOR may substitute acceptable securities, as defined below for the whole or any portion of the retainage. Acceptable securities are limited to Federal securities, Colorado state and political general obligations bonds, certificates of deposit insured by the FDIC or the FSLIC, or similar negotiable securities.

In addition to the foregoing procedures, for any construction contract exceeding one hundred fifty thousand dollars (\$150,000), OWNER shall make partial payments to CONTRACTOR on a monthly basis provided CONTRACTOR is satisfactorily performing the WORK. Said monthly payments will be based on information submitted by CONTRACTOR in monthly payment requests as described above. OWNER shall withhold no more than five percent (5%) of all monthly partial payments.

### **13 ADDITIONAL WITHHOLDING OF PROGRESS PAYMENTS**

OWNER may, at its sole discretion, withhold additional sums from progress payment monies due CONTRACTOR. Such additional withholding can be made for but is not limited to any of the following described reasons; and whenever the reasons for such withholding no longer exist, OWNER shall make payment of the sums withheld for these reasons.

01. **Failure to Repair Defective Work.** If the estimated cost of repairing or replacing defective WORK appears to exceed the sums of money normally withheld, OWNER may retain as many additional sums as it believes necessary to insure that the defective WORK is repaired or replaced.
02. **Claims Against CONTRACTOR.** If claims in connection with the WORK have been filed against CONTRACTOR and the CONTRACTOR has not resolved such claim, OWNER shall withhold sufficient sums in addition to applicable retainage to satisfy such claims in accordance with applicable law.
03. **Failure to Obtain PERMITS and Licenses.** Should CONTRACTOR fail to satisfy all requirements for licensing and/or fail to satisfy all requirements for PERMITS, OWNER may withhold sufficient funds to fully compensate OWNER for any damages, fines, penalties, or assessments that might be levied against OWNER or its PROJECT partners as a result of such CONTRACTOR failures.
04. **Failure to Comply with Applicable Laws.** If CONTRACTOR has failed to comply with all applicable laws, ordinances, rules, and regulations, OWNER may withhold sufficient funds to fully compensate OWNER for any damages, fines, penalties, or assessments that might be levied against OWNER or its PROJECT partners as a result of such CONTRACTOR failures.
05. **Failure to Satisfactorily Replace and/or Repair Property Destroyed or Damaged During the Progress of the WORK.**

06. **Retesting or Resurvey as Described Under DIVISION 01: GENERAL REQUIREMENTS, Section 01 45 23, Inspection and Materials Testing, and Section 01 71 23, Field Engineering and Surveying.**

07. **Liquidated Damages accruing under Article 21.**

#### **14 PARTIAL ACCEPTANCE OF WORK**

OWNER, at OWNER's sole discretion, may place into service segments or a part of the WORK before the entire WORK has been completed. Because of the difficulty of determining when CONTRACTOR's responsibility for the various parts of the WORK might cease when that WORK is partly used by OWNER, CONTRACTOR agrees that, except as qualified below, CONTRACTOR's responsibility for the entire WORK will not diminish until OWNER accepts the entire and completed WORK.

If such early use or occupancy by OWNER exposes defects, the components or elements of the WORK with the defects will be replaced or repaired by CONTRACTOR. Other damages or wear resulting from OWNER's use will be at OWNER's expense.

When OWNER partially occupies a facility, it shall share with CONTRACTOR the costs of energy to heat and light the facility and the costs of water and sanitary sewer service. OWNER's share of these costs will be determined by OWNER on an equitable basis, and CONTRACTOR shall be reimbursed by a AMENDMENT.

#### **15 INSURANCE**

.01 **General.** CONTRACTOR shall not commence or continue to perform any WORK unless CONTRACTOR, at CONTRACTOR's own expense, has in full force and effect all required insurance. CONTRACTOR shall not permit any SUBCONTRACTOR to perform WORK on this PROJECT unless such SUBCONTRACTOR has complied with the Workers' Compensation Insurance requirements.

The types of insurance CONTRACTOR shall obtain and maintain are Workers' Compensation Insurance, Employer's Liability Insurance and Liability Insurance. CONTRACTOR shall execute the LETTER OF DAMAGE GUARANTEE provided in Section 00 62 13 of the CONTRACT.

Workers' Compensation Insurance and Liability Insurance will be maintained in effect for the full guarantee period.

Insurers must be authorized to do business and have an agent for service of process in Colorado. Excepting only the State Compensation Insurance Fund in reference to Workers' Compensation Insurance, insurers must have an "A" policyholder's rating and a financial rating of at least Class XI in accordance with the most current Best's Rating.

As evidence of specified insurance coverage, CONTRACTOR shall provide INSURANCE CERTIFICATES and endorsements as a part of the CONTRACT DOCUMENTS.

.02 **Workers' Compensation Insurance and Employer's Liability Insurance.** Upon acceptance of the AGREEMENT, CONTRACTOR shall provide INSURANCE CERTIFICATES certifying that CONTRACTOR has obtained full Workers' Compensation Insurance, and Employer's Liability Insurance coverage for no less than the statutory limits for all persons whom CONTRACTOR employs or may employ in carrying out the WORK under the CONTRACT. At the same time, CONTRACTOR shall provide the insurance endorsements as part of the CONTRACT DOCUMENTS. This insurance will be in strict accordance with the requirements of the most current and applicable state Workers' Compensation Insurance laws.

.03 **Liability Insurance.** Upon execution of the AGREEMENT, CONTRACTOR shall provide INSURANCE CERTIFICATES showing that CONTRACTOR has Liability Insurance coverage in limits not less than the amounts set forth in Articles 15.06 through 15.08. At the same time, CONTRACTOR shall provide the insurance endorsement(s) as a part of the CONTRACT DOCUMENTS. These *Certificates of Insurance* shall delete the printed notice of cancellation provision and substitute the following: “The coverage afforded under the above described policies shall not be cancelled or allowed to expire until at least thirty (30) days prior WRITTEN NOTICE has been given to the Owner.”

Included in such insurance will be contractual coverage sufficiently broad to insure the matters set forth in Article 18 INDEMNIFICATION.

Included in such insurance will be a “Cross Liability” or “Severability of Interest” clause.

The Liability Insurance coverage will include each of the following types of insurance:

- A. General Liability
  - 1. Comprehensive Form
  - 2. Premises-Operations
  - 3. Explosion and Collapse Hazard
  - 4. Underground Hazard
  - 5. Products/Completed Operations Hazards
  - 6. Contractual Insurance
  - 7. Broad Form Property Damages, including Completed Operations
  - 8. Independent Contractors
  - 9. Personal Injury
  
- B. Automobile Liability
  - 1. Comprehensive Form, including Loading and Unloading
  - 2. Owned
  - 3. Hired
  - 4. Non-owned

The Liability Insurance will include as additional insured: OWNER, ENGINEER, OWNER’s Representative, and each of their directors, officers, agents, and employees. The insurance afforded to these additional insured will be primary insurance. If the additional insured have, other insurance that might be applicable to any loss, the amount of the insurance provided under this article or liability insurance will not be reduced or prorated by the existence of such other insurance.

.04 **Letter of Damage Guarantee.** Upon execution of the AGREEMENT, CONTRACTOR shall execute and provide the LETTER OF DAMAGE GUARANTEE provided in the CONTRACT (Section 00 62 13) indicating the CONTRACTOR will, at the CONTRACTOR’s expense, replace any WORK which is damaged in any way by any cause, including but not limited to damage due to floods. This includes the entire PROJECT that is the subject of the CONTRACT and includes completed WORK and WORK in progress.

.05 **CONTRACTOR’s Liability not Limited by Insurance.** Nothing contained in these insurance requirements is to be construed as limiting the liability of CONTRACTOR or CONTRACTOR’s sureties.

.06 **General Liability Insurance.** Bodily injury coverage will be for not less than \$1,000,000 for each occurrence \$1,000,000 aggregate.

Property damages coverage will be for not less than \$600,000 each occurrence and \$1,000,000 aggregate.

Personal injury coverage will be for not less than \$1,000,000 aggregate.

or

Bodily injury, personal injury, and property damage coverage will be in a combined single limit of not less than \$1,000,000 each occurrence and \$3,000,000 aggregate.

.07 **Automobile Liability.** Bodily injury coverage will be for not less than \$500,000 for each person and not less than \$1,000,000 for each accident, per each occurrence.

Property damage coverage will be for not less than \$600,000 for each occurrence.

or

Bodily injury and property damage coverage will be in a combined single limit of not less than \$1,000,000 for each occurrence and \$3,000,000 aggregate.

.08 **Employer's Liability Insurance.** Bodily injury coverage by accident will be for not less than statutory limits for each employee and statutory limits for each accident.

Bodily Injury coverage by disease will be for not less than statutory limits for each employee and statutory limits for each aggregate disease.

.09 **Loss of Insurance.** WRITTEN NOTICE by CONTRACTOR's insurance company(s) of failure to renew or cancellation of CONTRACTOR's insurance (Articles 15.02, 15.04, 15.06, 15.07 and 15.08) will be deemed as a notice and request by CONTRACTOR of suspension of all WORK in accordance with the SUPPLEMENTARY CONDITIONS, Article 20, Suspension of Work Delays: . All WORK relative to these documents will cease immediately until such time as adequate insurance is obtained. Loss of insurance will not otherwise relieve CONTRACTOR of CONTRACTOR's responsibilities under this AGREEMENT.

## **16 CONTRACT SECURITY (PAYMENT AND PERFORMANCE BONDS)**

CONTRACTOR shall within ten (10) days after the receipt of the NOTICE OF AWARD furnish DISTRICT with PAYMENT AND PERFORMANCE BOND(s) in penal sums equal to the amount of the AGREEMENT PRICE, conditioned upon the performance by CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Such BOND(s) will be executed by CONTRACTOR and a corporate bonding company licensed to transact such business in the State of Colorado in which the WORK is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasure Department Circular Number 570. Further, said bonding company will be subject to the approval of OWNER, which approval will not be unreasonably withheld. The expense of these BOND(s) will be borne by CONTRACTOR. If at any time a surety on any such BOND is declared bankrupt or loses its right to do business in the state in which the WORK is to be performed or is removed from the list of "Surety Companies Acceptable on Federal Bonds", CONTRACTOR shall within ten (10) days thereafter substitute an acceptable BOND(s) in such form and sum and signed by such other surety or sureties as may be satisfactory to OWNER. WRITTEN NOTICE by bonding company of failure to renew or cancellation of CONTRACTOR's BOND(s) will be deemed a notice and request by CONTRACTOR of suspension of all WORK in accordance with the SUPPLEMENTARY CONDITIONS, Article 20, Suspension of Work Delays. All WORK relative to the CONTRACT DOCUMENTS will cease until such time as adequate BOND(s) are obtained. The premiums on such BOND(s) shall be paid by CONTRACTOR. No further payments will be deemed due nor will be made until the new surety or sureties have furnished an acceptable BOND(s) to OWNER. Loss of bonding and cessation of WORK until adequate bonding is obtained will not otherwise relieve CONTRACTOR of CONTRACTOR's responsibilities under the AGREEMENT.

## **17 ASSIGNMENTS**

Neither CONTRACTOR nor OWNER shall sell, transfer, assign or otherwise dispose of the CONTRACT or any portion thereof, or of its right, title or interest therein, or its obligations thereunder, without written consent of the other party.

## **18 INDEMNIFICATION**

To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, OWNER's Representative, and each of their directors, officers, agents, and employees from and against all claims, damages, losses, expenses, and other costs, including costs of defense and attorneys' fees, arising out of or resulting from or in connection with the performance of the WORK, both on and off the JOB SITE, provided that any of the foregoing: (1) is attributable to personal injury, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the WORK itself), including the loss of use resulting therefrom, and (2) is caused in whole or in part by any act or omission of CONTRACTOR, any SUBCONTRACTOR, any SUPPLIER, anyone directly or indirectly employed by any of them or anyone for whose acts or omissions any of them may be liable, regardless of whether or not caused in part by any act or omission, (active, passive or comparative negligence included, excepting the negligence of OWNER), or a party indemnified hereunder.

In any and all claims against the indemnified parties by any employee of CONTRACTOR, any SUBCONTRACTOR, any SUPPLIER, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this section will not be limited in any way or any limitation on the amount or type of damages, compensation, or benefits payable, by or for CONTRACTOR; or any SUBCONTRACTOR, or any SUPPLIER, or other persons under workers' compensation acts, disability benefit acts, or other employee acts.

The obligations of CONTRACTOR under the first and fourth paragraphs in this section will not extend to the liability of ENGINEER, OWNER's Representative, and each of their directors, officers, employees, and agents, arising out of or resulting from or in connection with the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, designs or SPECIFICATIONS, providing that the foregoing was the sole and exclusive cause of the loss, damages, or injury.

CONTRACTOR shall also indemnify and hold harmless OWNER, ENGINEER, OWNER's Representative, and each of their directors, officers, employees, and agents from and against all losses, expenses, damages including damages in the WORK itself, attorneys' fees, and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of CONTRACTOR to faithfully perform the WORK and all of CONTRACTOR's obligation under the CONTRACT. Such costs, expenses, and damages will include all cost, including attorneys' fees, incurred by the indemnified parties in any lawsuit in which they are a party.

## **19 COMPLIANCE WITH ENVIRONMENTAL PROTECTION, ENERGY CONSERVATION, AND HEALTH/SAFETY RULES AND REGULATIONS**

CONTRACTOR shall at all times comply with all environmental protection, energy conservation, occupational health and safety and all other similar rules and regulations of any city, county, state or United States agency which may have jurisdiction. Failure to comply may be cause for suspension of WORK or termination of CONTRACT.

CONTRACTOR is responsible for meeting all Occupational Safety and Health Administration (OSHA) requirements including having competent personnel onsite responsible for determining and implementing appropriate safety measures for trenching and/or excavations.

CONTRACTOR shall provide fueling and equipment maintenance areas that are no less than one hundred (100) feet from the water's edge of any body of water. Further, CONTRACTOR shall keep on hand absorbent materials and barriers that can be dispatched rapidly during a fueling or leakage incident.

## **20 TAXES**

All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned and used by OWNER are exempt from State and RTD sales and use taxes. However, such materials will be subject to sales and use taxes imposed by other local taxing authorities.

Prior to issuance of "NOTICE TO PROCEED" and start of WORK, CONTRACTOR shall deliver to OWNER one (1) copy of the completed and executed "Application for Exemption Certificate" with the approval of the Department of Revenue, State of Colorado, affixed. This certificate will serve as an indication to OWNER that CONTRACTOR has acquired the necessary exemption. CONTRACTOR also agrees to make the same requirement, as contained above, of the SUBCONTRACTOR(s) on this PROJECT.

## **21 LIQUIDATED DAMAGES**

Time is of the essence in the CONTRACT. In the event CONTRACTOR fails in the performance of the WORK or any part thereof specified and required to be performed within the time limit or limits set forth in the CONTRACT, after due allowance for any extension, or extensions of time made in accordance with provisions herein set forth, CONTRACTOR shall be liable to OWNER for liquidated damages, and not as a penalty, in the amount stipulated therefore in the CONTRACT Form or in the other CONTRACT DOCUMENTS for each and every calendar day that CONTRACTOR shall be in default of completion as established by said time limit or limits. OWNER shall have the right to deduct said liquidated damages from any amount due, or that may become due CONTRACTOR, or to collect such liquidated damages from CONTRACTOR or CONTRACTOR's surety.

Liquidated damages in the amount stipulated do not include any sums of money to reimburse OWNER for extra costs, which it may become obligated to pay on other contracts, which were delayed or extended because of CONTRACTOR's failure to complete the WORK within the AGREEMENT TIME. Should OWNER incur additional costs because of delays or extensions to other contractors resulting from CONTRACTOR's failure of timely performance, OWNER shall assess these extra costs against CONTRACTOR and these assessments will be in addition to the stipulated liquidated damages.

## **22 TERMINATION OF CONTRACT BY OWNER**

OWNER may serve WRITTEN NOTICE upon CONTRACTOR and CONTRACTOR's surety of OWNER's intent to terminate the CONTRACT if:

- the WORK to be performed under the CONTRACT is assigned by CONTRACTOR without written permission of OWNER;
- CONTRACTOR shall be adjudged bankrupt;
- a general assignment of CONTRACTOR's assets are to be made for the benefit of CONTRACTOR's creditors;
- a receiver should be appointed for CONTRACTOR of any of CONTRACTOR's property;
- at any time ENGINEER certifies, in writing, to OWNER that the performance of the WORK under the CONTRACT is being unnecessarily delayed or that CONTRACTOR is willfully violating any of the conditions, provisions, or covenants of the CONTRACT DOCUMENTS, or that CONTRACTOR is executing the same in bad faith or otherwise not in accordance with terms of the CONTRACT;
- the WORK or any part thereof be not fully completed within the time or times named for its completion, or submitted under: SUPPLEMENTARY CONDITIONS, Article 19, Change of AGREEMENT TIME, or within the time to which such completion date or dates may be extended;
- CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- CONTRACTOR repeatedly fails to supply sufficient skilled workers or suitable materials or equipment;

- CONTRACTOR repeatedly fails to make prompt payments to SUBCONTRACTOR(s) or for labor, materials or equipment;
- CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
- CONTRACTOR disregards the authority of ENGINEER; or

other just causes exist;

This notice will give CONTRACTOR ten (10) days to remove the causes for termination, or commence to remove the causes if such cannot be fully accomplished within ten (10) days, and if CONTRACTOR does not, prior to the effective date of termination set forth in such notice, take or commence to take such measures as will, in the judgment of OWNER, ensure the satisfactory performance of the WORK, OWNER may declare the CONTRACT terminated on the effective date specified in the notice or on any other date thereafter. In the event of such termination, OWNER shall notify CONTRACTOR and CONTRACTOR's surety to discontinue all WORK under the CONTRACT and CONTRACTOR shall immediately respect such notice, stop WORK, and cease to have any right to the possession of the WORK SITE and shall forfeit the CONTRACT. Upon such termination, OWNER may take possession of all materials, equipment, tools, and plant as may be on the SITE of the WORK and required or necessary for completion of the WORK and take over the WORK and prosecute the same to completion by contract or otherwise for the account and at the expense of CONTRACTOR. CONTRACTOR and CONTRACTOR's surety shall be liable to OWNER for any and all costs and expenses in excess of the AGREEMENT PRICE or PRICES sustained by OWNER by reason of such prosecution and completion, which costs will include all administrative costs.

In the event that OWNER is prohibited from completing the PROJECT because of conditions or circumstance beyond the control of either OWNER or CONTRACTOR such as, but not limited to, an Executive Order of the President of the United States of America with respect to the prosecution of war or in the interest of national defense or an order of any state or federal court permanently prohibiting the construction of the PROJECT, OWNER may terminate the CONTRACT or portion thereof by giving at least ten (10) day's WRITTEN NOTICE to CONTRACTOR. When the CONTRACT is terminated before completion of all items of WORK in the CONTRACT, payment will be made for the actual number of units or items of WORK satisfactorily completed at the AGREEMENT PRICE.

On items or units that are only partially completed, payment will be made in proportion to which the satisfactorily completed WORK bears to the total BID price. Acceptable materials, obtained or ordered by CONTRACTOR for the PROJECT but not yet incorporated in the WORK at the time of such termination, will, at the option of OWNER be purchased from CONTRACTOR at actual cost as shown by receipts and actual cost records at the point of delivery. The intent of this provision is to provide a method of equitable settlement with CONTRACTOR in the event of termination of the CONTRACT because of conditions or circumstances beyond the control of either party. Payment by OWNER for loss of anticipated profits will not be the final settlement. It is also intended that a settlement for the WORK performed will not relieve CONTRACTOR or CONTRACTOR's surety from responsibility for defective WORK and/or materials on the completed portion of the WORK nor for labor and materials as guaranteed by the surety BOND(s).

OWNER or OWNER's authorized representative shall be given full access to all books, correspondence, and papers of CONTRACTOR relating to this CONTRACT in order to determine the amounts to be paid on account of the termination of the CONTRACT.

## **23 NO WAIVER OF RIGHTS**

No assent by OWNER, expressed or implied to any breach of any one (1) or more of the covenants, provisions, and agreements of the CONTRACT DOCUMENTS will be deemed or taken to be a waiver of any succeeding breach.

## **24 NO DISCRIMINATION IN EMPLOYMENT**

CONTRACTOR agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified on the basis of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability and further agrees to insert the foregoing provision in all subcontracts hereunder.

## **25 DISADVANTAGED BUSINESS ENTERPRISES**

CONTRACTOR shall submit a list of all SUPPLIER(s) and SUBCONTRACTOR(s) used for the performance of each PROJECT to OWNER. The basis for determining or defining a SUPPLIER or a SUBCONTRACTOR as a DBE shall be inclusion of their company name on a list of qualified DBE's such as the current CDOT DBE list or the current City and County of Denver DBE list. CONTRACTOR must submit this list of SUPPLIER(s) and SUBCONTRACTOR(s) to OWNER prior to final payment being made to CONTRACTOR.

## **26 ALIEN EMPLOYMENT**

CONTRACTOR shall not knowingly employ any alien to work on a DISTRICT project who is not a citizen of the United States or has not been lawfully admitted to the United States for permanent residence or whose employment would be a violation of any law, convention or treaty of the United States unless the employment of the alien is authorized by the United States Immigration and Naturalization Service (INS).

CONTRACTOR shall complete an INS Form I-9 for each such alien and retain such completed form as well as a record of the documentation accepted by CONTRACTOR in support of such INS Form I-9. CONTRACTOR shall make available for inspection by the DISTRICT, upon request, such records in regard to each employee working on a DISTRICT project.

CONTRACTOR shall verify or attempt to verify through participation in the Basic Pilot Program (created in Public Law 208, 104th Congress, As Amended, and expanded in Public Law 156, 108th Congress, As Amended, that is administered by the United States Department of Homeland Security) that CONTRACTOR does not employ any illegal aliens and, if CONTRACTOR is not accepted into the Basic Pilot Program prior to entering into this CONTRACT, CONTRACTOR shall apply to participate in the Basic Pilot Program every three months until CONTRACTOR is accepted or this CONTRACT has been completed, whichever is earlier.

In addition to the above requirements, CONTRACTOR shall comply with and certify to DISTRICT that it has fully complied with 8-2-122 C.R.S. and that it has retained in its records copies of one of the following for each one of its employees performing WORK under this CONTRACT:

- United States passport;
- Resident alien card;
- Alien registration card;
- Social Security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States) and Driver's License or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual; or
- Other documents acceptable under 8 U.S.C. § 1324a.

CONTRACTOR shall require SUBCONTRACTOR(S) performing WORK under CONTRACT to maintain the same records as required of CONTRACTOR in this Paragraph.

During the performance of WORK under this CONTRACT, DISTRICT, upon two (2) business days notice to CONTRACTOR, shall be entitled to inspect the records required to be maintained pursuant to this Paragraph of CONTRACTOR and all SUBCONTRACTOR(s) performing WORK under this CONTRACT.

Failure to timely produce these records for DISTRICT's inspection or failure to produce copies of documentation required under this Paragraph for each employee of CONTRACTOR and each SUBCONTRACTOR(s) performing WORK under this CONTRACT shall be considered a default in this CONTRACT and grounds for immediate termination of this CONTRACT as specified below.

CONTRACTOR shall not use the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while WORK under this CONTRACT is being performed.

CONTRACTOR, if it obtains actual knowledge that a SUBCONTRACTOR performing WORK under this CONTRACT knowingly employs or contracts with an illegal alien, shall be required to notify SUBCONTRACTOR and DISTRICT within three (3) days that CONTRACTOR has actual knowledge that the SUBCONTRACTOR is employing or contracting with an illegal alien and shall terminate the SUBCONTRACTOR if within three (3) days of receiving notice the SUBCONTRACTOR does not stop employing or contracting with the illegal alien. CONTRACTOR shall not terminate the SUBCONTRACTOR, if during such three (3) days, the SUBCONTRACTOR provides information to establish that the SUBCONTRACTOR has not knowingly employed or contracted with an illegal alien.

CONTRACTOR shall comply with any reasonable request by the Department of Labor and Employment (Department) made in the course of an investigation that the Department is undertaking pursuant to 8-17.5-102 (5) C.R.S.

DISTRICT may terminate this CONTRACT for a breach of contract if CONTRACTOR does not fully and completely comply with the SUPPLEMENTARY CONDITIONS. If this CONTRACT is so terminated, CONTRACTOR shall be liable for actual and consequential damages to DISTRICT.

Prior to the execution of this CONTRACT, Project Form in Section 00 60 11, Employment of Illegal Aliens, shall be executed by CONTRACTOR and delivered to DISTRICT.

## **27 HAZARDOUS ENVIRONMENTAL CONDITION ON SITE**

CONTRACTOR will not be responsible for any Hazardous Environmental Condition encountered at the Site that was not identified in the Contract Documents to be within the scope of the Work. CONTRACTOR shall be responsible for materials creating a Hazardous Environmental Condition created by any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers or anyone else for whom CONTRACTOR is responsible.

If CONTRACTOR encounters a Hazardous Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Construction in connection with such condition and in any area affected thereby except in an emergency; and (iii) notify Owner (and thereafter confirm such notice in writing). Owner shall promptly determine the necessity of retaining a qualified expert to evaluate such condition or take corrective action, if any.

CONTRACTOR shall not be required to resume Construction in connection with such Hazardous Environmental Condition or in any such affected area until after Owner has obtained any required permits related thereto and delivered to CONTRACTOR WRITTEN NOTICE (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Construction, or (ii) specifying any special conditions under which such Construction may be resumed safely. If Owner and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in AGREEMENT Price or AGREEMENT TIMES as a result of such Construction stoppage or such special conditions under which Construction is agreed to be resumed by CONTRACTOR, either party may make a Claim.

If after receipt of such special WRITTEN NOTICE CONTRACTOR does not agree to resume Construction based on a reasonable belief it is unsafe, or does not agree to resume such Construction under such special conditions, then Owner may order such portion of the Work that is related to such Hazardous Environmental Condition to be deleted from the Work. If Owner and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in AGREEMENT Price or AGREEMENT TIMES as a result of

deleting such portion of the Work, then either party may make a Claim. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 22.

To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless CONTRACTOR, Subcontractors, Suppliers and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from such Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Contract Documents to be included in the scope of the Work, and (iii) was not created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

To the fullest extent permitted by Laws or Regulations, CONTRACTOR shall indemnify and hold harmless Owner, Owner's Consultant and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from such Hazardous Environmental Condition created by CONTRACTOR or anyone for whom CONTRACTOR is responsible. Nothing in this Paragraph shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entities own negligence.

## **28 DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS**

Notice: If CONTRACTOR believes that any subsurface or physical condition that is uncovered or revealed either:

- is of such a nature as to require a change in the CONTRACT; or
- differs materially from that shown or indicated in the CONTRACT; or
- is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any WORK in connection therewith except in an emergency, notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any WORK in connection therewith (except as previously mentioned) until receipt of written order to do so.

ENGINEER's Review: After receipt of WRITTEN NOTICE, ENGINEER will promptly review the pertinent condition, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto, and advise OWNER in writing of ENGINEER's findings and conclusions.

Possible Price and Times Adjustments:

The AGREEMENT Price or the AGREEMENT TIMES, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the WORK; subject, however, to such condition meeting any one or more of the categories described above

CONTRACTOR shall not be entitled to any adjustment in the AGREEMENT Price or AGREEMENT TIMES if:

- CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR submitted CONTRACTOR's BID; or

- the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the SITE and contiguous areas required by the Bidding Requirements or CONTRACT DOCUMENTS to be conducted by or for CONTRACTOR prior to CONTRACTOR's BID;

If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the AGREEMENT Price or CONTRACT Times, or both, a CLAIM may be made therefor. However, neither OWNER or ENGINEER, or any of their officers, directors, members, partners, employees, agents, consultants, or SUBCONTRACTORS shall be liable to CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CONTRACTOR on or in connection with the PROJECT.

## **29 UNDERGROUND FACILITIES**

Shown or Indicated: The information and data shown or indicated in the CONTRACT DOCUMENTS with respect to existing underground facilities at or contiguous to the SITE is based on information and data furnished to OWNER or ENGINEER by the owners of such underground facilities, including OWNER, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data provided by others; and the cost of all of the following will be included in the AGREEMENT price, and CONTRACTOR shall have full responsibility for:

- Reviewing and checking all such information and data;
- Locating all underground facilities shown or indicated in the CONTRACT DOCUMENTS;
- Coordination of the WORK with the owners of such underground facilities, including OWNER, during construction; and
- The safety and protection of all such underground facilities and repairing any damage thereto resulting from the Work.

Not Shown or Indicated:

If an underground facility is uncovered or revealed at or contiguous to the SITE which was not shown or indicated, or not shown or indicated with reasonable accuracy in the CONTRACT DOCUMENTS, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any WORK in connection therewith except in an emergency, identify the owner of such underground facility and give WRITTEN NOTICE to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the underground facility and determine the extent, if any, to which a change is required in the CONTRACT DOCUMENTS to reflect and document the consequences of the existence or location of the underground facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such underground facility.

If ENGINEER concludes that a change in the CONTRACT DOCUMENTS is required, a FIELD ORDER or AMENDMENT will be issued to reflect and document such consequences. An equitable adjustment shall be made in the AGREEMENT Price or AGREEMENT TIMES, or both, to the extent that they are attributable to the existence or location of any underground facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the CONTRACT DOCUMENTS and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in AGREEMENT Price or AGREEMENT TIMES, OWNER or CONTRACTOR may make a CLAIM.

**30      APPLICABLE LAWS**

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Jurisdiction for any and all legal actions regarding this Agreement shall be in the State of Colorado and venue for the same shall lie in the County where the Project is located.

END OF SECTION

