

TOWN OF JOHNSTOWN
CONSTRUCTION CONTRACT GENERAL CONDITIONS

ARTICLE 1 - ARTICLE 1 - DEFINITIONS

- 1.1** Definitions: Whenever used in the Bidding Documents and Contract Documents, the following terms shall have the following meanings, applicable to both the singular and plural:
- 1.1.1 Addenda:** Written changes to the Bidding Documents issued at least two days before the opening of Bids which modify or interpret the Contract or changes the date set for the opening of Bids.
 - 1.1.2 Advertisement to Bid:** The written advertisement inviting Bidders to submit Bids for construction of the Project.
 - 1.1.3 Agreement for Construction Contract or Agreement:** The written agreement between the Town and Contractor covering the Work to be performed, incorporating the Contract Documents as a part thereof.
 - 1.1.4 Alternate Bid:** An Alternate Bid is an amount stated in the Bid added to or deducted from the base amount of the Bid when the Town accepts a corresponding change in project scope, materials or method of construction described in the Contract.
 - 1.1.5 Bid or Bid Proposal:** The proposal the Bidder submits on the prescribed Bid Forms stating the prices for the Work to be performed.
 - 1.1.6 Bid Forms:** The Bid Proposal, Bid Bond, Bid Schedule, Bidder's qualifications and data, non-collusion affidavit, Subcontractor information and related data.
 - 1.1.7 Bidder:** Any qualified individual, firm, partnership, corporation or combination thereof submitting a Bid Proposal for the performance of the Work covered by the Contract.
 - 1.1.8 Bidding Documents:** The Advertisement to Bid, Bid Forms, Information and Instructions to Bidders, Specifications, Drawings, sample forms, Special Conditions, General Conditions and Addenda (if any).
 - 1.1.9 Bid Schedule:** The itemized list of bid items and proposed Contract Price for the Work specified in the Contract Documents.
 - 1.1.10 Bonds:** Bid Bond, Performance Bond and Payment Bonds and/or other instruments of security acceptable to the Town, furnished by the Contractor and its Surety according to the Contract.
 - 1.1.11 Calendar Days:** Includes all days in a month including weekends and holidays.
 - 1.1.12 Change Order:** A written modification of the Contract, issued after award to the Contractor, authorizing an addition, deletion or revision in the Work within the general scope of the Contract or authorizing an adjustment in the Contract Price or Contract Time, mutually agreed upon between the Town and the Contractor.
 - 1.1.13 Contract:** The construction contract consisting of the Agreement for Construction Contract and the incorporated Contract Documents.
 - 1.1.14 Contract Documents:** All the documents expressly incorporated into the Contract by the Agreement for Construction Contract, including but not limited to Addenda, Change Orders, Drawings, General Conditions, Information and Instruction to Bidders, Advertisement to Bid, Insurance Certificates, Invitation to Bid, Notice of Award, Notice to Proceed, Bid Bond, Performance and Payment Bonds, Special Conditions and Technical Specifications.
 - 1.1.15 Contract Price:** The total monies payable to the Contractor under the terms and conditions of the Contract for completion of the Project.
 - 1.1.16 Contract Time:** The number of days stated in the Contract for the completion of the Project.

- 1.1.17 **Contractor:** The person, company, firm or corporation contracting with the Town to construct, erect, alter, install or repair the Project
- 1.1.18 **Contractor's Representative:** The authorized representative of the Contractor assigned to the Project.
- 1.1.19 **Drawings:** The part of the Contract prepared or approved by the Project Manager showing the characteristics and scope of the Work to be performed.
- 1.1.20 **Date of Contract:** The execution date in the Agreement for the Contract.
- 1.1.21 **Day:** A calendar day of twenty-four hours each.
- 1.1.22 **Field Order:** A written order directing a change in the Project issued by the Project Manager to the Contractor during construction.
- 1.1.23 **Final Payment:** Subsequent to issuance of the Notice of Construction Acceptance and Notice of Final Settlement, the final payment, including retainage, paid by the Town to the Contractor.
- 1.1.24 **Information and Instruction to Bidders:** Documentation provided to Bidders with information needed and procedures to be followed in the course of completing the construction of the Project.
- 1.1.25 **Inspector:** The representative authorized to inspect the Work performed by the Contractor.
- 1.1.26 **Notice of Award:** The written notice of acceptance of the Bid from the Town to the successful Bidder.
- 1.1.27 **Notice of Construction Acceptance:** The written acknowledgment that construction is complete which starts the warranty period.
- 1.1.28 **Notice of Final Acceptance:** The written acceptance of Work performed under the Contract following satisfactory conclusion of the warranty period.
- 1.1.29 **Notice of Final Settlement:** The notice published at least twice, not less than ten days before the date of Final Payment, or as otherwise required by law, in a newspaper of general circulation in the county where the Work was done.
- 1.1.30 **Notice to Proceed:** The written notice by the Town to the Contractor authorizing the Contractor to proceed with the Work which establishes the Contract commencement and, absent extensions of time in accordance with these General Conditions, the Substantial Completion Date..
- 1.1.31 **Notice of Substantial Completion:** The written notice of the date, as certified by the Project Manager, when the Project or a specified part is sufficiently completed, according to the Contract, so the Project or specified part can be used for the intended purposes.
- 1.1.32 **Owner:** The Town of Johnstown.
- 1.1.33 **Project:** The undertaking to be performed as provided in the Contract.
- 1.1.34 **Project Manager:** The authorized representative of the Town assigned to the Project.
- 1.1.35 **Shop Drawings:** All Drawings, diagrams, illustrations, brochures, schedules, and other data prepared by the Contractor, a Subcontractor, manufacturer, Supplier or distributor illustrating how specific portions of the Work will be fabricated or installed.
- 1.1.36 **Site:** The location(s) where the Project is constructed and the Work is undertaken.
- 1.1.37 **Special Conditions:** Supplement to the General Conditions containing instructions and conditions specific to the Project.
- 1.1.38 **Specifications:** A part of the Contract Documents consisting of written technical description of materials, equipment, construction systems, standards, and workmanship.
- 1.1.39 **Subcontractor:** Any person, company, firm or corporation having a subcontract with the

Contractor to furnish and perform on-site labor, with or without furnishing materials for the Project.

- 1.1.40 **Substantial Completion Date:** The date, as certified by the Project Manager, when the Project or a specified part is sufficiently completed, according to the Contract, so the Project or specified part can be used for the intended purposes. The Substantial Completion Date shall be set forth in the Agreement and may be extended by a Change Order.
- 1.1.41 **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.
- 1.1.42 **Surety:** The entity which is bound with and for the Contractor for the Performance Bond and Payment Bond.
- 1.1.43 **Town:** The Town of Johnstown, a home-rule municipal corporation of the State of Colorado, acting by and through its Mayor, Town Council, Town Manager or other authorized representative.
- 1.1.44 **Unit Price:** An amount stated in the Bid as a price per unit of measurement for materials or services as described in the Contract.
- 1.1.45 **Work:** The construction and services required by the Contract, whether completed or partially completed, including all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may be the whole or a part of the Project.
- 1.1.46 **Work Days:** Includes all days in the month the Contractor is permitted to work; excludes weekends and holidays.

ARTICLE 2 - PRELIMINARY MATTERS

2.1 Notice to Proceed

- 2.1.1 Following the execution of the Contract by the Parties, the Project Manager shall give the Contractor written Notice to Proceed with the Work. The Contractor shall begin and continue the Work regularly and without interruption (unless otherwise directed in writing by the Project Manager) with the force necessary to complete the Work within the Contract Time.

2.2 Contractor's Understanding

- 2.2.1 The Contractor agrees that, by careful examination, the Contractor is satisfied as to the nature and location of the Work, the conformation of the ground, the character, quality, and quantity of the materials to be encountered, the character of equipment and facilities needed before commencing and for completion of the Project, the general and local conditions and all other matters that can in any way affect the Work under the Contract. The Contractor further agrees that no oral agreement with any officer, agent or employee of the Town, either before or after the execution of the Contract, shall affect or change any of the terms or obligations contained in the Contract.

2.3 Contractor's Warranty

- 2.3.1 The Contractor warrants that the Contractor has the knowledge, ability, experience, and expertise to perform the Work competently. The Contractor warrants the capacity of the Contractor's construction personnel and its ability to complete the Project within the Contract Time.

2.4 Contractor's License and Permits

- 2.4.1 The Contractor agrees to obtain all licenses and permits required to do the Work. Whenever necessary, the Contractor shall have a Contractor's License issued by the Town by the time of the Notice of Award. The Contractor shall have all permits required by the Town, as well as

those required by county, state and federal agencies. The Town will not charge for Town permits, although a charge may apply for the Contractor's License. Subcontractors shall also have a Contractor's License issued by the Town and the proper permits. The Town shall not charge for the Subcontractor's permits.

2.5 Schedules, Reports, Labor and Material

- 2.5.1 Before commencing construction, the Contractor shall submit to the Project Manager a construction progress schedule, on a form approved by the Project Manager, showing all Work the Contractor and all Subcontractors will perform. The Project Manager may require the Contractor to substitute a critical path method schedule or bar graph type schedule.
- 2.5.2 The construction progress schedule shall be in enough detail for the Project Manager to readily determine the Work to be performed each day. When requested by the Project Manager, the Contractor shall update the schedule.
- 2.5.3 Before commencing construction, the Contractor shall give the Project Manager the dates it expects to submit Shop Drawings, manufacturers' details, catalog cuts or other required special detail drawings and also the dates of beginning manufacture, testing, delivery and installation of special equipment and materials.
- 2.5.4 If requested by the Town, the Contractor shall furnish the Project Manager proof of labor compensation rates being paid or already paid.
- 2.5.5 The Town reserves the right to furnish materials for the Work and the Contractor may not claim costs and profit on materials furnished by the Town. The Town reserves the right to purchase from the Contractor any materials previously purchased for a project and not used. Payment for the materials will be based on the actual material cost as shown on the Supplier's invoice, any transportation charges incurred, plus a fifteen percent handling fee.

2.6 Contractor's Address

- 2.6.1 The address in the Agreement shall be designated as the place to which all communications to the Town or the Contractor be hand delivered, sent by electronic mail or mailed. The delivery at the listed address, in person, by electronic mail (on the condition of receipt thereof by the intended recipient) or by certified mail, of any notice, letter or other communication to the Contractor shall be adequate service upon the Contractor, and the date of the service is the date of delivery.

2.7 Notification to Utility and Property Owners

- 2.7.1 The Contractor shall cooperate with utility owners to mitigate damage whenever the Contractor's work affects their utilities.
- 2.7.2 The Contractor shall not excavate without first notifying the owners, operators or association of owners and operators having underground facilities in the area of such excavation. Notice may be given in person, by telephone or in writing. Notice to an association is notice to each member of the association.
- 2.7.3 Contractor shall give notice of the commencement, extent and duration of excavation work at least two business days before commencing such work.
- 2.7.4 If the Project affects fences, landscaping, mailboxes, driveways or other such improvements, the Contractor shall notify the affected property owner(s) or occupant(s) in writing at least two business days before commencement of such work. The Contractor shall cooperate with the owners or occupants to reduce inconvenience where reasonably possible.

2.8 Tax Exempt; Department of Revenue Forms

- 2.8.1 All sales to the Town in its governmental capacity are exempt from sales and use tax.
- 2.8.2 It is the responsibility of the Contractor to apply for a tax exemption certificate from the Colorado Department of Revenue and to use such certificate when purchasing materials or supplies in connection with the Project.
- 2.8.3 The Town's tax exemption numbers are to be used only when obtaining the Contractor's own tax exemption certificate for each specific Town project.

ARTICLE 3 - DRAWINGS AND SPECIFICATIONS

3.1 Intent of Drawings and Specifications

- 3.1.1 In the Drawings and Specifications, the Town intends that the Contractor furnish all superintendence, labor, materials, tools, equipment, supplies, machinery and transportation necessary for the proper execution of the Work unless specifically noted otherwise. The Contractor shall do all the Work shown on the Drawings and described in the Specifications and all incidental Work reasonably necessary to complete the Project in an acceptable manner that is ready for use by the Town.
- 3.1.2 The Contractor shall complete all Work according to the Drawings and Specifications and all other Contract Documents, and in compliance with applicable laws.
- 3.1.3 In interpreting the Contract, words describing materials or work having a well-known technical or trade meaning, unless otherwise specifically defined, shall be construed according to well-known meanings as recognized by engineers, architects and the trades.
- 3.1.4 When the Contract refers to a provision of the General Conditions or another Contract Document, the Contract means the provision as amended or supplemented by other provisions of the Contract.
- 3.1.5 When the Specifications state the words "as directed," or "as required," or "as permitted," or words of like meaning, it is understood that the direction, requirement or permission of the Project Manager is intended. Similarly, the words approved, acceptable or satisfactory shall refer to approval by the Project Manager.
- 3.1.6 The Contract Documents are intended to be complementary, and Work called for on any Drawing and not mentioned in the Specifications, or Work described in the Specifications and not shown on any Drawing, is included under the Contract as if set forth in both the Specifications and Drawings.
- 3.1.7 The Project Manager shall decide the intent of the Drawings and Specifications. The decision shall be final.

3.2 Copies of Drawings and Specifications Furnished

- 3.2.1 The Project Manager shall furnish to the Contractor copies of Drawings and Specifications of the Work.

3.3 Discrepancies in Drawings or Specifications

- 3.3.1 Contractor shall immediately report in writing any discrepancies found between the Drawings or Specifications and Site conditions or any errors or omissions in the Drawings or Specifications to the Project Manager, who shall promptly correct such discrepancy, error or omission. Any Work done by the Contractor after discovery of such discrepancies, errors or omissions is done at the Contractor's risk.

3.4 Dimensions

- 3.4.1 Calculated dimensions shall govern over scaled dimensions.

3.5 Drawings and Specifications at Job Site

- 3.5.1 The Contractor shall keep one complete set of all Drawings and Specifications at the Site, available to the Project Manager at all times.

3.6 Shop Drawings

- 3.6.1 The Contractor shall provide Shop Drawings, settings, schedules, and such other drawings as may be necessary for the prosecution of the Work in the shop and in the field as required by the Drawings, Specifications or Project Manager's instructions.
- 3.6.2 The Contractor shall submit for approval reproducible copies of all Shop Drawings and descriptive data as applicable showing all features not fully detailed in the Contract Documents but essential for a completely coordinated installation.
- 3.6.3 The Town's approval of Shop Drawings indicates only that the type and kind of equipment, general method of construction or detailing are satisfactory. The Contractor shall not construe the approval as a complete check. The Contractor has the responsibility for incorporating into the Work satisfactory materials and equipment meeting the requirements of the Drawings and Specifications, the proper dimensions and the detailing of connections.
- 3.6.4 The Town's review of Shop Drawings is only to check for compliance with the design concept of the Project and general compliance with the Contract Documents. Approval does not indicate the waiver of any Contract requirement. Changes in the Work are authorized only by separate written Change Order.

3.7 Record Documents

- 3.7.1 The Contractor shall keep one record copy of all Addenda, Change Orders, Drawings, Field Orders and Shop Drawings and Specifications in good order. The Contractor shall record any changes made during construction on the record copies. The Contractor shall make a set of "Record Drawings" by marking this set of prints with all changes from the original Drawings as bid, which shall include changes resulting from executed Change Orders, alignment changes, depth changes of underground pipes and utilities, and all other items that are not the same as originally drawn. The Contractor shall keep the Record Drawings up to date as the Project progresses. The Project Manager may require, as a condition of the approval of the monthly progress payment, periodic inspection of the Record Drawings. The Contractor shall deliver the Record Drawings to the Project Manager upon completion of the Project before Final Payment.

3.8 Differing Site Conditions

- 3.8.1 The Contractor shall promptly, before such conditions are further disturbed, notify the Project Manager in writing of:
 - 3.8.1.A Subsurface or latent physical conditions at the Site differing materially from those indicated in the Contract; or
 - 3.8.1.B Unknown physical conditions at the Site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.
- 3.8.2 Upon receipt of written notification from the Contractor of alleged differing site conditions, the Project Manager shall promptly investigate the conditions and, if the Project Manager finds the conditions materially differ and so cause an increase or decrease in the Contractor's cost of or the time required for performance of any part of the Work under the Contract, an equitable adjustment shall be made and the Contract modified in writing as provided for in Article 10 of these General Conditions. No claim shall be allowed under this Article unless the Contractor has given the written notice required in Article 3.8.1.
- 3.8.3 No claim shall be allowed under this Article if Final Payment has been made.

3.9 Surveys

- 3.9.1 The Project Manager has the option to develop and arrange for detail surveys through a separate contract if deems desirable or necessary and if specifically noted in the Special Conditions, otherwise the Contractor shall provide all surveys required to construct the Project according to the Contract Documents. The Contractor assumes full responsibility for construction according to the proposed lines and grades.
- 3.9.2 The Contractor shall carefully protect all monuments and property markers from disturbance or damage.

ARTICLE 4 - AVAILABILITY OF RIGHT-OF-WAY

4.1 Acquisition of Right-of-Way

- 4.1.1 Before issuance of the Notice to Proceed, the Town shall obtain all land and right-of-way necessary for carrying out and completion of the Work to be performed pursuant to the Contract, unless otherwise mutually agreed.
- 4.1.2 When necessary, the Town shall provide to the Contractor information which delineates and describes the lands owned and rights-of-way acquired. The Contractor shall confine its operations within the areas designated by the Project Manager.

4.2 Access to Right-of-Way

- 4.2.1 The Town shall provide right of access to all locations necessary for the performance of the Work. Nothing contained in the Contract shall give the Contractor exclusive occupancy of such areas. The Town, other contractors of the Town and utility companies, may enter upon or occupy portions of the land furnished by the Town for any purpose, but without unreasonably interfering with the completion of the Project. Joint occupancy of such lands shall not be the basis of any claim for delay or damages.

4.3 State Highway Right-of-Way

- 4.3.1 If any part of the Project is within the right-of-way of a roadway under the jurisdiction of the Colorado Department of Transportation ("CDOT"), the Contractor shall obtain the necessary permits from CDOT and conform to all the requirements and restrictions indicated on the permit.

4.4 Temporary Storage Facilities

- 4.4.1 The Contractor may secure at its own expense, and without liability to the Town, use of any additional property that the Contractor may desire for temporary construction activities or for storage of materials.

ARTICLE 5 - BONDS AND INSURANCE

5.1 Performance Bond and Payment Bond

- 5.1.1 The Contractor shall, within ten (10) days after receipt of the Notice of Award and, in any event, before the commencement of any operations under the Contract, execute the Agreement and furnish the Town with separate Performance and Payment Bonds, each in a penal sum equal to the amount of the Contract Price, conditioned upon the Contractor's performance of all undertakings, covenants, terms, conditions, and agreements of the Contract and upon the Contractor's prompt payment to all persons supplying labor and materials in the prosecution of the Work provided by the Contract. The Contractor and a Surety, licensed to transact such business in the State of Colorado and acceptable to the Town, shall execute the Performance and Payment Bonds. The Performance and Payment Bonds shall cover the entire Contract Price, regardless of changes thereto after execution of the Agreement, and shall remain in full

effect for a period of two years from the date of issuance of the Notice of Construction Acceptance or until Notice of Final Acceptance, whichever is later. The Contractor shall bear the expense of the Performance and Payment Bonds. If at any time the Surety on such Bonds becomes irresponsible or loses its right to do business in the State of Colorado, the Town may require another Surety, which the Contractor shall furnish within ten (10) days after receipt of written notice to do so. Evidence of authority of an attorney-in-fact acting for the corporate Surety shall be provided in the form of a certificate as to its power of attorney and to the effect that it is not terminated and remains in full force and effect on the date of the Performance and Payment Bonds. The form of the Performance and Payment Bonds shall be subject to the Town's approval.

5.2 Insurance

- 5.2.1 The insurance requirements contained in the Contract shall not limit or redefine the obligations of the Contractor as provided elsewhere in the Contract.
- 5.2.2 Only insurance companies in good standing with authority to issue policies in the State of Colorado may provide insurance coverage under the Contract.

5.3 Insurance Requirements

- 5.3.1 The Contractor shall purchase and maintain, for the full period of the Contract, including the warranty period, at the Contractor's sole expense, insurance policies providing coverage as follows:
 - 5.3.1.A General liability. The Contractor shall maintain general liability insurance of at least \$1,000,000 per each occurrence and \$2,000,000 aggregate plus an additional amount adequate to pay related attorney's fees and defense cost. Coverage shall include bodily injury including accidental death, property damage, personal injury and contractual liability.
 - 5.3.1.B Comprehensive Automobile Liability. The Contractor shall maintain comprehensive automobile liability insurance with minimum limits for bodily injury and property damage coverage of at least \$1,000,000 per each occurrence plus an additional amount adequate to pay related attorneys' fees and defense costs, for each of Contractors owned, hired or non-owned vehicles assigned to or used in performance of the Agreement.
 - 5.3.1.C Professional Liability/Errors and Omissions. The Contractor shall maintain errors and omissions insurance in the amount of \$1,000,000.
 - 5.3.1.D Workers' Compensation & Employer's Liability. The Contractor shall maintain the following during the life of the Agreement for all employees engages in services performed under the Agreement:
 - Workers' Compensation insurance with statutory limits as required by the Workers' Compensation Act of the State of Colorado.
 - Employer's Liability insurance with limits of \$100,000 per accident, \$500,000 disease aggregate, and \$100,000 disease each employee.
 - 5.3.1.E Builders Risk/Installation Floater. The Contractor shall maintain builder's risk/installation floater insurance for the full replacement cost. Such insurance shall be written on a builder's risk "All-Risk" or on a peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, false work, and work in transit and shall insure against at least the following perils: fire, lightning, extended coverage, theft, vandalism and malicious mischief, collapse, debris removal, demolition occasioned by enforcement of laws and regulations and water damage.
- 5.3.2 In the event any of the Work is performed by a Subcontractor, the Contractor shall be

responsible for any liability directly or indirectly arising out of the services performed under an Agreement with the Subcontractor, which liability is not covered by the Subcontractor's insurance.

- 5.3.3 The insurance coverage required for the performance of the Contract shall be endorsed to name the Town, its elected and appointed officials, officers, agents, employees, as additional insureds under the Contract.
- 5.3.4 The Contractor shall furnish certificates of insurance to the Town prior to the commencement of the Work under the Contract. The certificates of insurance shall specify the parties who are additional insureds. The certificates of insurance shall show the type, amount, class of operations covered, effective dates and date of expiration of policies, and contain substantially the following statement: "The insurance evidenced by this Certificate shall not reduce coverage or limits and shall not be cancelled, except after thirty (30) days written notice has been provided to the Town of Johnstown."
- 5.3.5 All insurance and bonding companies providing coverage or surety under the Contract shall have a Best Insurance Rating of "A" or better. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by the Contractor. The additional insured endorsement 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 deductible losses under each of the policies required above. If the Contractor is self-insured under the laws of the State of Colorado, the Contractor shall provide appropriate declarations and evidence of coverage, subject to review and approval by the Town.
- 5.3.6 For the term of the Contract, including the two-year warranty period, the Contractor shall not cancel, materially change or fail to renew the insurance coverage, and agrees to notify the Project Manager of any material reduction or exhaustion of aggregate policy limits. If the Contractor fails to purchase or maintain the required insurance coverage, the Town shall have the right, but not the obligation, to procure such insurance coverage at the Contractor's expense or, at its discretion, to terminate the Contract.

ARTICLE 6 - INDEMNIFICATION

6.1 Responsibility for Damage Claims

- 6.1.1 The Contractor shall indemnify, save harmless and defend the Town, its officers, employees and agents, from and in all suits, actions or claims of any character brought because of: any injuries or damage received or sustained by any person, persons or property because of operations for the Town under the Contract; the Contractor's failure to comply with the provisions of the Contract; the Contractor's neglect of materials while constructing the Work; any act or omission, neglect or misconduct of the Contractor; any claims or amounts recovered from any infringements of patent, trademark, or copyright, unless the design, device, materials or process involved are specifically required by Contract; any claims or amount arising or recovered under the "Workers' Compensation Act" by reason of the Contractor's failure to comply with the Act; pollution or environmental liability; and/or any failure of the Contractor to comply with any other law, ordinance, order or decree. The Town may retain so much of the money due the Contractor under the Contract as the Town considers necessary for such purpose. If no money is due, the Contractor's surety may be held until such suits, actions, claims for injuries or damages have been settled.
- 6.1.2 The Contractor agrees to pay the Town all expenses incurred to enforce this "Responsibility for Damage Claim" provision, including but not limited to attorney's fees. The Contractor further agrees to pay for the Town's cost of defense if the insurer of the Contractor fails to provide or pay for the defense of the Town, its officers employees and agents, as additional insureds.

- 6.1.3 Nothing in the **INSURANCE PROVISIONS** shall limit the Contractor's responsibility for payment of claims, liabilities, damages, fines, penalties, and costs, including but not limited to attorney's fees, resulting from its performance or nonperformance under the Contract.

ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES

7.1 Control of the Work

- 7.1.1 The Contractor shall have a Contractor's Representative acceptable to the Town present at the Site during performance of the Work who shall be the Contractor's representative and have charge of the Project. The Contractor's Representative shall have the authority to act on the Contractor's behalf.

7.2 General Use of Subcontractors

- 7.2.1 The Contractor may utilize the services of Subcontractors on those parts of the Work which, under normal contracting practices, are performed by subcontractors.
- 7.2.2 The Contractor shall not subcontract any portion of the Work to be done under the Contract until approval of such action has been obtained from the Town.
- 7.2.3 The Contractor shall be fully responsible to the Town for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by the Subcontractors.
- 7.2.4 Nothing contained in the Contract creates any contractual relationship between any Subcontractor and the Town.
- 7.2.5 The Contractor shall put appropriate provisions in all subcontract agreements relative to the Work to bind Subcontractors to the terms of the Contract insofar as applicable to the Work of Subcontractors, and to give the Contractor the power to terminate any Subcontractor.
- 7.2.6 The Contractor shall make available to each Subcontractor, before the execution of subcontract agreements, copies of the Contract Documents to which the Subcontractor shall be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.

7.3 Materials and Equipment Furnished by the Contractor

- 7.3.1 The Contractor shall furnish and pay the cost of all materials not furnished by the Town, the superintendence, labor, tools, equipment, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery and transportation required for the Project. The Contractor shall perform the work required for the construction of all structures listed and itemized under the Bid Schedule of the Bid in strict accordance with the Drawings, Specifications and any amendments thereto.
- 7.3.2 Unless otherwise provided for in the Specifications, all workmanship, equipment, materials, and articles incorporated in the Project are to be the best of their respective kinds, new and undamaged.
- 7.3.3 Materials, supplies or equipment to be incorporated into the Project shall not be purchased by the Contractor or any Subcontractor subject to chattel mortgage or under a conditional sales contract or other agreement under which an interest is retained by the seller.
- 7.3.4 The Contractor shall furnish the Project Manager, for approval, the name of the manufacturer of machinery, equipment and materials the Contractor contemplates incorporating in the Project. The Contractor shall also furnish to the Project Manager information regarding capacities, efficiencies, sizes and the like of the machinery, equipment or materials and any other information as may be required by the Project Manager. The Contractor shall submit samples for approval when requested. Machinery, equipment, materials and articles installed

or used without the Project Manager's approval are at the risk of subsequent rejection.

- 7.3.5 The Contractor shall provide the Project Manager copies of all shop manuals, operating manuals, parts lists, classifications, catalog cuts, specifications, warranties and guarantees for all equipment and machinery installed.
- 7.3.6 Consideration of a product as an "equal" by the Project Manager may require that the manufacturer of such product furnish guarantees that extend beyond the usual product warranty time. The refusal of a manufacturer to provide such guarantees is sufficient reason for rejecting the product.

7.4 Existing Utilities

- 7.4.1 The Town shall provide available information on the Drawings showing the location of existing underground, surface and overhead structures and utilities. However, the Town does not guarantee that such information is accurate or complete. The Contractor shall verify all locations of existing underground, surface and overhead structures and utilities shown on the Drawings or otherwise existing.
- 7.4.2 The Contractor shall support, and protect from injury, existing power lines, telephone lines, water mains, gas mains, sewers, cables, conduits, ditches, curbs, walks, pavements, driveways and other structures at, near or in the vicinity of the Project.

7.5 Coordination with Town

- 7.5.1 The Contractor shall coordinate its Work with the Town. If it becomes necessary to close portions of any water or sewer system due to construction operations, a minimum of two (2) calendar days written notification shall be given to the Town and, whenever possible, seven (7) days written notice should be provided. The Contractor shall be responsible for ensuring continuity of the utilities.

7.6 Laws and Ordinances

- 7.6.1 The Contractor shall perform all obligations under the Contract in strict compliance with all federal, state and local laws, rules and regulations applicable to the performance of the Contractor under the Contract.
- 7.6.2 The Contractor shall obtain all permits and licenses required in the prosecution of the Work.
- 7.6.3 The Contractor shall not offer, give or agree to give any Town employee, Town official or former Town employee a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation under the Contract.

7.7 Protection of Persons

- 7.7.1 It shall be a condition of the Contract, and the Contractor shall make a condition of each subcontract agreement entered into pursuant to the Contract, that the Contractor and any Subcontractor shall not require any laborer, mechanic or other person employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to health or safety. The Contractor shall comply with all applicable safety rules and regulations adopted by the United States Department of Labor Occupational Safety and Health Administration ("OSHA"), the Industrial Commission of the State of Colorado and the Town. The Town assumes no duty to ensure that the Contractor follows the appropriate safety regulations.
- 7.7.2 For operations involving trenching, excavation or any other underground construction, the Contractor's attention is specially directed to, and its work shall conform with, the Construction Safety and Health Regulations, Part P Subparagraph 1926.650-653 by OSHA, latest revision.
- 7.7.3 The Contractor shall take all necessary precautions to ensure the protection of the public health, safety and welfare. The Contractor shall furnish, erect, and maintain at its own expense

all necessary precautions for the protection of the Work and safety of the public through and around its construction operations.

7.8 Protection of Property

- 7.8.1 The Contractor shall continuously and adequately protect the Work from damage, injury or loss arising in connection with the Contract. The Contractor shall repair or replace, at its expense, any such damage, injury or loss, except as such may be caused by the negligent acts of the Town. The Contractor shall provide and maintain, at its expense, all passageways, barricades, guard fences, lights and other protection facilities required by a public authority or by local conditions.
- 7.8.2 The Contractor shall be responsible for protection of all public and private property on and adjacent to the Site. The Contractor shall use every precaution necessary to prevent damage to curbs, sidewalks, driveways, trees, shrubs, sod, mailboxes, fences and other private and public improvements. The Contractor shall protect carefully from disturbance or damage all land monuments and property markers and shall not remove them unless authorized to do so.

7.9 Responsibility to Repair or Replace

- 7.9.1 Should any property be damaged during the performance of the Work, the Contractor shall immediately notify the property owner. Unless authorized in writing by the property owner or directed by the Project Manager, the Contractor shall not attempt to make repairs. Written authorization from the property owner allowing the Contractor to make repairs shall include a provision holding the Town harmless from any responsibility whatsoever relative to the sufficiency of the repairs. Prior to commencement of the repairs, the Contractor shall give the Project Manager a copy of the written authorization to make such repairs.
- 7.9.2 When any direct or indirect damage or injury is done to any public or private property or utility by or on account of any act, omission, neglect or misconduct in the execution of the Work by the Contractor, the Contractor shall restore the damaged property at its own expense to a condition equal to or better than that existing before such damage or injury.
- 7.9.3 The Contractor shall replace materials and equipment lost, stolen, damaged or otherwise rendered useless during the performance of Work on the Project.

7.10 Traffic Control

- 7.10.1 The Contractor shall arrange the Work in a manner that minimizes disruption to traffic. All traffic control devices used shall conform to the latest edition of the Manual of Uniform Traffic Control Devices ("MUTCD"). Except as otherwise permitted, two-way traffic shall be maintained at all times on public roadways. At least three (3) calendar days prior to commencing work in Town rights-of-way, the Contractor shall submit a detailed traffic control plan to the Town and an application for a right-of-way permit to the Town. The traffic control plan ("TC Plan") shall include the name of the contractor, the name and phone number of the person responsible for the traffic control, the date for beginning and ending construction activity and hours of operation expected. The TC Plan should show the widths of streets involved, traffic lanes, the size and location of the work area with distances from the curb, distance to the nearest intersection and the type and location of traffic control devices. The Town's approval of the TC Plan shall establish the requirements for closures related to the number of lanes and time of day lanes or streets may be closed. No changes to the TC Plan shall be permitted without prior written approval by the Town.
- 7.10.2 The Contractor shall furnish and maintain all necessary signs, barricades, lights, and flaggers necessary to control traffic and provide for safety of the public, in compliance with the MUTCD and to the satisfaction of the Town.

7.11 Sanitary Regulations

- 7.11.1 The Contractor shall be responsible for providing proper health and sanitation facilities for its employees in compliance with rules and regulations of the Colorado Department of Public Health and Environment (“CDPHE”) and any other bodies having jurisdiction.
- 7.11.2 The Contractor shall always provide an abundant supply of safe drinking water for the Contractor’s employees.
- 7.11.3 At convenient places, the Contractor shall provide outside toilets which are to be maintained in a sanitary condition. Toilets shall not be permitted where they may pollute a water supply.

7.12 Pollution Control

- 7.12.1 The Contractor shall comply with all applicable state and federal laws, orders, rules and regulations concerning the control, prevention and abatement of water pollution and air pollution in all operations pertaining to the Contract.
- 7.12.2 The Contractor shall use construction methods that prevent release, entrance or accidental spillage of solid matter, contaminants, debris or other objectionable pollutants and wastes including, but not limited to, refuse, garbage, cement, concrete, sewage effluent, industrial waste, radioactive substances, oil and other petroleum products, aggregate processing tailings, mineral salts and thermal pollution.
- 7.12.3 The Contractor shall not emit dust into the atmosphere during any operations, including but not limited to dust resulting from: grading, excavating, manufacturing, handling or storing of aggregates, trenching or cement or pozzolans. The Contractor shall use the necessary methods and equipment to collect, deposit, and prevent dust from its operations from damaging crops, orchards, fields or dwellings or from causing a nuisance to persons. The Contractor shall be liable for any damage resulting from dust.
- 7.12.4 The Contractor shall obtain permits for de-watering for structure foundations or earthwork operations adjacent to or encroaching on lakes, streams or water courses and shall complete such work in a manner that prevents muddy water and eroded materials from entering the lakes, streams or water courses, by construction of intercepting ditches, bypass channels, barriers, settling ponds or by other approved means.

7.13 Stormwater Quality

- 7.13.1 The Contractor shall be responsible for the preservation and protection of storm water collection systems and other natural and developed drainage ways that may be affected by the Work. The Contractor shall obtain a Stormwater Discharge Permit Associated with Construction Activity from CDPHE for any construction activity that disturbs one or more acres of land. The Contractor shall be responsible for complying with the requirements of the Stormwater Discharges Permit Associated with Construction Activity Permit until the permit has been formally inactivated.
- 7.13.2 The Contractor may be subject to fines and civil penalties for construction sites that discharge un-permitted stormwater in violation of the Clean Water Act and local regulations.
- 7.13.3 The Contractor shall comply with all permit requirements throughout the warranty period and until final stabilization is reached.
- 7.13.4 The Contractor shall satisfy all environmental quality standards imposed by law and take reasonable steps to minimize the environmental impact of the Work.
- 7.13.5 The Contractor shall ensure that all erosion control be performed in accordance with Sections 208 of the Colorado Department of Transportation’s Standard Specifications or Construction Best Management Practices of UDFCD Volume 3 Urban Storm Drainage Criteria Manual.
- 7.13.6 The Contractor shall coordinate the construction of temporary erosion control measures with the construction of permanent erosion control measures to assure economical, effective and continuous erosion control throughout the construction and warranty period.

- 7.13.7 Unless listed in the Bid Proposal, all erosion control features, including the erosion control supervisor, if available, will not be measured, but will be paid for on a lump sum basis. The lump sum price bid will be full compensation for all work required to complete such item.

7.14 Cleaning Up and Restoration

- 7.14.1 The Contractor shall clean up all refuse and scrap materials so the Site presents a neat, orderly, and workmanlike appearance at all times.
- 7.14.2 Upon completion of the Project, and before final inspection, the Contractor shall remove from the Site and from any occupied adjoining property all buildings, refuse, unused materials, forming lumber, sanitary facilities, and any other materials and equipment that belong to the Contractor or its Subcontractors. The Contractor shall restore the Site to its original condition, including reseeding if necessary, at the completion of the Project.
- 7.14.3 The Town may clean up and restore the construction Site to a satisfactory condition if the Contractor fails to do so. Any costs the Town incurs shall be deducted from the final payment due the Contractor.

ARTICLE 8 - TOWN'S RESPONSIBILITIES

- 8.1 The Town shall furnish the data required by the Contract and make payments to the Contractor as provided by the Contract Documents.

ARTICLE 9 - PROJECT MANAGER'S RESPONSIBILITIES

9.1 Field Direction

- 9.1.1 The Project Manager shall maintain Owner's authority over the Contractor relating to field direction and project administration but shall not assume liability for the Contractor's work or be deemed to control the Contractor's scheduling.

9.2 Inspection

- 9.2.1 The Project Manager shall appoint inspectors to inspect the Project. Inspections may extend to all or any part of the Project. The inspectors are not authorized to alter the provisions of the Drawings or Specifications or to delay the fulfillment of the Contract by failure to inspect materials and Work with reasonable promptness.
- 9.2.2 An inspector has authority to recommend to the Project Manager that the Project Manager reject defective materials or suspend any portion of the Work that is being done improperly.
- 9.2.3 The Contractor shall give the Project Manager due and timely notice of readiness when the Work, or any part thereof, is to be inspected, tested or approved by an inspector. The Contractor shall provide the Project Manager with required certificates of inspection, testing or approval. Inspection, tests or approvals by the Project Manager or others shall not relieve the Contractor from its obligations to perform the Work according to the requirements of the Contract.
- 9.2.4 If the Project Manager considers it necessary or advisable that previously completed or covered Work be inspected or tested, the Contractor shall uncover, expose or otherwise make such portion of the Work available to the Project Manager for inspection and testing. The Contractor shall furnish all tools, labor, material and equipment necessary to make the Work available. If the Project Manager finds the Work defective, the Contractor shall pay for the cost of satisfactory reconstruction and making the Work available. However, if the Work is not found defective, the Contractor shall be allowed an increase in the Contract Price and/or, as appropriate, an extension of the Contract Time for costs and time directly attributable to making the Work available and for reconstruction.
- 9.2.5 If the Contractor's operations require inspecting, testing or surveying to be done outside normal

working hours or on Town holidays, such shall be at the Contractor's expense.

9.3 Stop Work Order

- 9.3.1 The Project Manager has the authority to suspend Work on the Project, either in whole or in part, for as long as the Project Manager deems necessary due to:
- Unsuitable weather;
 - Faulty workmanship;
 - Improper superintendence;
 - Contractor's failure to carry out orders or to perform any provision of the Contract;
 - Conditions which may be considered unfavorable for the prosecution of Work;
 - Work being carried on in an unsafe manner; or
 - Any other reasonable grounds.
- 9.3.2 The Project Manager shall issue the stop work order in writing and the Contractor may not proceed with Work on the suspended portion of the Project until notified in writing by the Project Manager.
- 9.3.3 If it is necessary to stop work for an indefinite period, the Contractor shall, if directed by the Project Manager, store all materials in such a manner that they will not become an obstruction or become damaged in any way. The Contractor shall take every precaution to prevent damage to or deterioration of the Work, providing suitable drainage and erecting temporary structures where necessary.

9.4 Disputes

- 9.4.1 If the Contractor considers any Work directed by the Town to be outside the Contract requirements, or if it considers any directive of the Project Manager to be improper, the Contractor shall promptly ask for a written instruction or decision and shall perform the Work in conformance with the Project Manager's direction. If the Contractor considers such instructions unsatisfactory, the Contractor shall file a written protest with the Project Manager within ten (10) days after receipt thereof.
- 9.4.2 All claims, disputes and other matters in question arising out of or relating to the Contract shall be submitted to the Project Manager before the Contractor may commence litigation.

ARTICLE 10 - CHANGES

10.1 General

- 10.1.1 The Town may make alterations to the Project within the general scope of the Contract without the consent of the Contractor or Surety at any time during the Work. The Contractor shall perform the Work as changed, as if originally specified. The alterations shall not invalidate the Contract in any way.
- 10.1.2 The Project Manager may, at any time, without notice to the Surety, by written notice to the Contractor, make any change in the Work to be performed within the general scope of the Contract, including but not limited to changes:
- In the Specifications, Drawings and designs;
 - In the method or manner of the performance of the Work;
 - In facilities, equipment, materials, services or site furnished by the Town; or
 - Directing acceleration in the performance of the Work.
- 10.1.3 Any written order from the Project Manager that, in the Contractor's opinion, warrants an extension of time or increased or decreased costs, shall be treated as a Change Order provided that, unless otherwise initiated by the Project Manager, the Contractor gives the Project Manager written notice within two (2) business days of the basis for the Contractor's position that a Change Order should be executed. If the Town and the Contractor do not agree to the

terms of a Change Order, the Project Manager may, at its discretion, authorize the Contractor to proceed with the Work with a reservation of the Contractor's rights. In such case, the Contractor shall maintain accurate records to substantiate its position.

10.1.4 The Contractor may not treat any order, statement or conduct of the Project Manager as a change under this Article nor become entitled to an equitable adjustment in the Contract Price or Contract Time, except as provided in this Article.

10.1.5 Claims for changes in the Contract Price or Contract Time shall not be considered after the Final Payment has been made.

10.2 Appropriation

10.2.1 Notwithstanding any other provision of the Contract, the issuance of any Change Order or other form of order or directive by the Town requiring additional compensable work to be performed which will cause the Contract Price to exceed the amount appropriated for the Work is prohibited unless the Contractor is given written assurance by the Town that lawful appropriations to cover the costs of the additional work have been made or unless the unless such work is covered under the remedy-granting provisions of the Contract.

10.3 Field Orders

10.3.1 The Project Manager may make changes in the details of the Project at any time by issuing a Field Order. The Contractor shall proceed with the performance of any changes in the Project ordered by the Project Manager. If the Contractor believes that such Field Order entitles it to a change in the Contract Price or the Contract Time, or both, it shall give the Project Manager written notice within two (2) business days after the receipt of the Field Order.

10.4 Change Orders

10.4.1 Changes in the Contract Price and Contract Time are authorized only by Change Orders. Any requests for extension of time due to conditions outside of the Contractor's control shall be made in writing to the Town within seven (7) calendar days of such condition.

10.4.2 Any difference in cost from Change Orders shall be added to or deducted from the amount of the Contract, as the case may be. Adjustments in the amounts to be paid to the Contractor on account of changed Work shall be determined by one of the following methods in the order listed:

- Unit prices submitted in the Bid Schedule;
- Negotiated unit prices; or
- Negotiated lump sum.

10.5 Extras and Force Account Work

10.5.1 The Contractor shall perform any extra work and furnish materials and equipment necessary or desirable for proper completion of the Contract if the Project Manager believes it necessary to order such additional work or materials or equipment. The Project Manager shall order such labor, material and equipment in writing before the extra work is started. The labor, material and equipment will be classed as "Extra Work." The Town will not pay for Extra Work unless the Town requires the Extra Work in writing. All claims for Extra Work shall be submitted to the Project Manager, supplemented by any data the Project Manager requires.

10.5.2 Extra Work shall ordinarily be paid for at a lump sum or unit price agreed upon in writing by the Project Manager and Contractor before the Extra Work is ordered. In the negotiation of lump sum or unit prices, the agreed estimated cost of the Extra Work plus an allowance for overhead and profit, not to exceed the allowances stated in Section 10.5.3, shall be used.

10.5.3 The allowance for overhead and profit shall include full compensation for superintendence, bonds and insurance premiums, office expense, and all other items of expense or cost not

included in the cost of labor, materials, or equipment provided under Sections 10.5.4, 10.5.5 and 10.5.6. The allowance for overhead and profit shall be fifteen percent (15%). The actual necessary cost for labor, materials, or equipment shall be computed according to Sections 10.5.4, 10.5.5 and 10.5.6.

Superintendence, bond and insurance premiums and other general expense shall not be included in the computation of actual necessary cost. When all or any part of the Extra Work is performed by a Subcontractor or specialty firm, the Contractor may add five percent (5%) of the Subcontractor's total cost for the Extra Work. The Contractor shall give the Project Manager daily report sheets covering the direct cost of labor and materials and charges for equipment. The daily report sheets shall provide names or identifications and classifications of workers and hours worked, as well as size, type and identification number of equipment and hours operated. Material charges shall be substantiated by valid copies of vendors' invoices. The Project Manager shall make any necessary adjustments and compile the costs of cost-plus Work. When these reports are agreed upon and signed by both parties, they become the basis of payment for the Extra Work performed.

10.5.4 **Labor:** The cost of labor used in performing the Extra Work by the Contractor, a Subcontractor, or other forces shall be the sum of the actual wages paid plus any employer payments to, or on behalf of, workers for fringe benefits including health and welfare, pension, vacation, and similar purposes; all payments imposed by state and federal laws including, but not limited to, workers' compensation insurance, and social security payments; and the amount paid for subsistence and travel required in accordance with the regular practice of the employer.

10.5.5 **Materials:** The cost of materials used in performing the extra Work, including transportation charges for delivery (exclusive of machinery rentals), shall be the cost to the purchaser, whether Contractor, Subcontractor or other forces, from the Supplier thereof, inclusive of sales or use taxes, if any, except if, in the opinion of the Project Manager, the cost of materials is excessive or the Contractor does not furnish satisfactory evidence of the cost of such material. If the Project Manager finds the cost excessive or the Contractor has not furnished evidence of the cost, then the cost shall be deemed to be the lowest current wholesale price for the quantity concerned delivered to the Site less cash or trade discounts.

10.5.6 **Equipment:** The Contractor shall be paid according to the rental rates agreed upon in writing before commencement of the Extra Work for any machinery or special equipment (other than small tools) authorized by the Project Manager. The Contractor may furnish cost data to assist the Project Manager in the establishment of the rental rate. The rental rates paid shall include the cost of fuel, oil, lubrication supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance and all incidentals. Individual pieces of equipment or tools having a replacement value of \$100.00 or less, whether or not consumed by use, are considered small tools and no payment shall be made for such items. Operator wages shall be paid separately, as provided in Section 10.5.4.

The rental time to be paid for equipment on the Work is the time the equipment is in productive operation on the extra Work being performed. Rental time shall not be allowed while equipment is inoperative due to breakdowns or storage on-site.

10.5.7 **Eliminating Items:** The Project Manager shall notify the Contractor in writing to eliminate any items contained in the proposal unnecessary for the proper completion of the Extra Work. The Contractor, by Change Order, shall be reimbursed for Extra Work completed and all costs incurred, including mobilization of materials and equipment, before the elimination of such items.

ARTICLE 11 - CONTRACT TIME

11.1 General

11.1.1 Time is of the essence in the performance of all Work contemplated in the Contract. Therefore,

the Work shall be commenced no later than ten (10) days from and including the date of Notice to Proceed and shall be fully completed in a satisfactory and acceptable manner within the time stated in the Agreement.

- 11.1.2 The capacity of the Contractor's construction force shall be sufficient to assure completion of the Project within the Contract Time. The Contractor shall use multiple crews if necessary to complete the Project within the Contract Time.

11.2 Delays

- 11.2.1 Delay claims fall into three categories: non-excusable, excusable or compensable. Any payment for delays or the granting of time extensions require an executed Change Order.

11.2.1.A **Non-excusable delay** is one caused by factors within the Contractor's reasonable control. The delay is the Contractor's fault and no additional time or additional compensation shall be allowed. A non-exclusive list of non-excusable delays are:

- Late submittal of Shop Drawings;
- Late procurement of materials or equipment;
- Insufficient personnel;
- Unqualified personnel;
- Inadequate coordination of Subcontractors or other contractors;
- Subcontractor delays;
- Late response to Town or Project Manager inquiries; or
- Construction not conforming to Contract requirements.

11.2.1.B **Excusable delay** is caused by factors beyond the Contractor's reasonable control, but is not the result of the Town's actions or failures to act. An excusable delay entitles the Contractor to an extension of time but no additional compensation for the cost of the delay.

11.2.1.C **Compensable delay** is one where the Town has failed to meet a Contract obligation. If the Project Manager considers a delay as compensable, the Town shall grant a time extension and pay the Contractor for the increased cost caused by the delay.

11.3 Failure to Complete Work on Time - Liquidated Damages

- 11.3.1 The Town may permit the Contractor to proceed if the Contractor fails to substantially complete the Work on or before the Substantial Completion Date. In such case, the Town shall deduct the sum specified in the Contract for liquidated damages for each day that the Work remains uncompleted. This sum shall not be a penalty.

- 11.3.2 Liquidated damages shall be in the following amount:

Contract Price	Liquidated Damages per Calendar Day
\$0 - \$499,999	\$800
\$500,000 - \$9,999,999	\$1,600
\$1,000,000 - \$1,999,999	\$2,200
\$2,000,000 - \$4,999,999	\$3,200
\$5,000,000 - \$14,999,999	\$5,400
\$15,000,000 and up	\$9,800

- 11.3.3 The parties agree that, under all of the circumstances, the daily basis and the amount set forth as liquidated damages is reasonable and equitable. The Town expends additional personnel effort in administering the Contract, or portions thereof, that are not completed on time, and

such efforts and the costs thereof are impossible to accurately compute. In addition, citizens of the Town may incur personal inconvenience and lose confidence in their government as a result of public projects, or parts thereof, not being timely completed. The impact and damages resulting from delays, serious in monetary as well as other terms, are impossible to measure.

- 11.3.4 It the Town permits the Contractor to continue and finish the Work, or any part thereof, after the time fixed for completion of the Work, such action shall not operate as a waiver on the part of the Town of liquidated damages or any of its rights under the Contract.

ARTICLE 12 - WARRANTY AND GUARANTEES

12.1 Warranty and Guarantees

- 12.1.1 The Contractor and its Surety are jointly and severally responsible for the condition of all completed Work and for maintenance and satisfactory operation of the Work for a period of two years following the Notice of Construction Acceptance or for two years after warranty work is fully satisfied, whichever is later. The Town shall submit a notice of warranty work that requires repair or replacement under the warranty to the Contractor in writing. The Contractor and Surety are jointly and severally responsible for the satisfactory repair or replacement of any Work, materials or equipment which are found defective during the warranty period, provided that the defect results directly or indirectly from faulty workmanship or negligence by the Contractor, from faulty manufacturing or from faulty erection or improper handling of materials or equipment furnished or installed by the Contractor. Neither the Contractor nor its Surety shall be liable for any defect resulting from the Town's negligence.

ARTICLE 13 - SAMPLES AND TESTING

13.1 Samples and Testing

- 13.1.1 All materials and equipment used in the Project shall be subject to sampling and testing according to generally accepted standards and as required in the Contract Documents. In the absence of direct references or Town requirements, the sampling and testing of materials shall be done according to the current specifications of the American Society for Testing and Materials or the American Water Works Association, as appropriate. The Contractor shall cooperate with the Project Manager in collecting and forwarding required samples.
- 13.1.2 The Contractor shall not incorporate any materials into the Project or cover any part of the Work until it has been inspected and approved according to the Contract Documents.
- 13.1.3 The Contractor shall furnish all samples without charge. The Contractor shall cooperate with the Project Manager in collecting, handling, storing and forwarding required samples, which shall include the furnishing of labor and equipment when necessary.

ARTICLE 14 - Access to Work

14.1 Access to Work

- 14.1.1 The Project Manager and authorized Town representatives shall have access to the Project and the Site at any time for purposes of inspection, sampling and testing. Access shall extend to authorized representatives of participating federal or state agencies and to other public authorities having jurisdiction established by law. The Contractor shall provide proper facilities for access to the Project.
- 14.1.2 Access to the Project shall include access wherever and whenever the Project is in manufacture, preparation or progress. It shall include access to payrolls, records of personnel, invoices of materials, terms and conditions of sale of materials and equipment to be incorporated in the Project, files, records, books, correspondence, instructions, Drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and any other relevant data and records relating to the Contract.

- 14.1.3 The Town may, at reasonable times, inspect the place of business or worksite of the Contractor or Subcontractor at any tier which is pertinent to the performance of the Contract.

ARTICLE 15 - DEFECTIVE WORK AND MATERIALS

15.1 Defective Work and Materials

- 15.1.1 Material and workmanship not conforming to the requirements of the Contract are deemed defective. Defective Work or material shall be removed immediately from the Site and replaced with acceptable Work and material at the Contractor's expense.
- 15.1.2 If the Contractor fails to replace rejected materials or Work within ten (10) days after receipt of written notice, the Town may replace or correct them and charge the cost to the Contractor and may, in addition thereto, at its discretion, terminate the Contract. The Town's failure to detect previously installed defective materials or Work shall not impair the Town's right to receive the completed Project free of defects and in a manner that meets all of the requirements of the Contract Documents.

ARTICLE 16 - PAYMENTS TO CONTRACTOR AND COMPLETION

16.1 General

- 16.1.1 Unless expressly provided otherwise in the Contract, the prices shown in the Bid Schedule include the cost of all labor, materials, equipment, tools, forms, services, utilities, royalties, fees, and any other thing or expense necessary to complete the Project. Items not shown on the Bid Schedule or the Drawings, but necessary to construct the Project, will be considered a part of the Project whether specified or not and no separate payment shall be made for those items.
- 16.1.2 Unless expressly provided otherwise in the Contract, the Contract Price includes all labor, materials, equipment, tools, forms, services, utilities, royalties, fees, and any other thing or expense necessary to complete the Project.

16.2 Determination of Amounts and Quantities

- 16.2.1 The Project Manager shall verify determinations of amounts and quantities of Work performed. The Project Manager shall have access to the records related to the Contract as set forth in Article 14.

16.3 Variations in Estimated Quantities

- 16.3.1 Where the quantity of a pay item in the Contract is an estimated quantity and where the actual quantity of such pay item varies more than twenty-five percent (25%) below the estimated quantity stated in the Contract, the Contractor shall, upon demand of the Town, make an equitable adjustment in the Contract Price. The Contract Price adjustment shall be based upon any decrease in costs due solely to the variation below seventy-five percent (75%) of the estimated quantity.

Where the quantity of a pay item in the Contract is an estimated quantity and the actual quantity of such pay item is more than twenty-five percent (25%) above the estimated quantity in the Contract, the Town may elect to terminate the Contract or issue a Change Order to adjust the Contract Price.

In no case will the price adjustment change the original Contract Price to an amount not appropriated and approved by Town Council.

16.4 Monthly Pay Request

- 16.4.1 The Contractor shall prepare monthly pay requests for all Work completed up to that time. The Project Manager shall approve the monthly pay requests before progress payments are made.

- 16.4.2 In making progress payments, the Town shall retain five percent (5%) of the calculated value of completed Work. The withheld percentage of the Contract Price of the Work shall be retained until the Contract is completed satisfactorily and finally accepted by the Town.
- 16.4.3 Monthly pay requests may include the value of acceptable materials required in the construction which have been delivered on the Site or to adjacent property for which acceptable provisions have been made for preservation and storage of the material, providing the Contractor submits with its monthly pay requests paid invoices for the material for which payment is being requested. Material paid for by the Town becomes the property of the Town and, in the event of the default on the part of the Contractor, the Town may use or cause to be used such materials in construction of the Work.
- 16.4.4 The Town may withhold, in addition to retained percentages from Contractor payments, such an amount or amounts as may be necessary to cover:
- 16.4.4.A Claims for labor or materials furnished the Contractor or Subcontractor(s) or reasonable evidence indicating probable filing of such claims;
- 16.4.4.B Failure of the Contractor to make proper payment to Subcontractors or for material or labor furnished by others;
- 16.4.4.C Costs arising from a reasonable doubt that the Contract can be completed for the balance of the Contract Price then unpaid, including, but not limited to, those arising from;
- Evidence of damage to another contractor or private property;
 - Uncorrected defective Work or guarantees that have not been met;
 - Failure of the Contractor to submit cost breakdowns, schedules, reports and other information required under the Contract;
 - Persistent failure to carry out the Work according to the Contract; or
 - Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.
- 16.4.5 The Town, at its discretion, may disburse and has the right to act as agent for the Contractor in disbursing funds withheld pursuant to this Section to the party or parties who are entitled to payment therefrom, but the Town assumes no obligation to make such disbursement. The Town shall render to the Contractor a proper accounting of all funds disbursed.

16.5 Town's Right to Accept Portion of the Project

- 16.5.1 The Town reserves the right to accept and make use of any completed portion of the Project without invalidating the Contract or obligating the Town to accept the remainder of the Project.

16.6 Substantial Completion

- 16.6.1 When the Contractor considers the Work ready for its intended use, the Contractor shall notify the Project Manager in writing that the Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that the Project Manager issue a Notice of Substantial Completion. Within a reasonable time, the Contractor, Project Manager and any other appropriate Town representatives shall make an inspection of the Work to determine the status of completion. If the Project Manager does not consider the Work substantially complete, the Project Manager shall notify the Contractor in writing giving the reasons for denial of the Notice of Substantial Completion. If the Project Manager considers the Work substantially complete, the Project Manager shall prepare and deliver to the Contractor a Notice of Substantial Completion which shall fix the date of final completion and construction acceptance. The Project Manager shall attach to the Notice of Substantial Completion a "punch list" of items to be completed or corrected before Final Payment.

16.7 Construction Acceptance

- 16.7.1 When the Work specified in the Contract is completed and the final cleanup has been performed, the Contractor shall notify the Project Manager that all Work under the Contract has been completed. Within a reasonable time, the Contractor, Project Manager and any other appropriate Town representatives shall make a final inspection of the Work. If the Project Manager finds that the Project has been completed according to the requirements set forth in the Contract, the Town, upon the recommendation of the Project Manager, shall issue a Notice of Construction Acceptance. Notices of Construction Acceptance issued orally or without proper Town authorization are void. The Town shall not make the Final Payment under the Contract before it issues the Notice of Construction Acceptance.
- 16.7.2 The two-year warranty required by the Contract shall commence on the date set in the Notice of Construction Acceptance for the Project or the date set in the Notice of Construction Acceptance for a designated portion of the Project, which warranty may be extended, if at all, as set forth in these General Conditions.

16.8 Claims Against the Contractor

- 16.8.1 As provided by law, persons, including Subcontractors, who have not been paid by the Contractor and who have provided materials, services and labor of any kind, or labor and material incidental to the completion of the Project, may file claims and the Town may withhold from the Contractor an amount sufficient to cover such claims.

16.9 Final Payment

- 16.9.1 The Town shall make Final Payment within sixty (60) days after issuance of the Notice of Construction Acceptance or at such later time as required by law.
- 16.9.2 After the Notice of Construction Acceptance is issued by the Town, the Town shall publish the Notice of Final Settlement at least twice, not less than ten (10) days before the date of Final Payment, or as otherwise required by law, in a newspaper of general circulation in the county where the Work was done. If no claims are filed before the expiration of ten (10) days from the date of the last publication of the Notice of Final Settlement, the Final Payment, including retainages, may be made.
- 16.9.3 If any Subcontractor or Supplier files a claim before the expiration of ten (10) days from the date of the last publication of the Notice of Final Settlement for work done or material furnished that has not been paid for by the Contractor, the Town shall withhold from Final Payment to the Contractor sufficient funds for payment of the claims. The funds shall not be withheld longer than ninety (90) days from the date of Final Payment unless a legal action is commenced within that time to enforce payment of the claims.
- 16.9.4 At the end of ninety (90) days, or any time before, if the person filing the claim acknowledges receipt of payment for the claim, or otherwise releases the claim in writing, the Town shall pay the Contractor the monies not subject to suit or *lis pendens* notices.
- 16.9.5 Monies that are the subject of a suit will be withheld until a judgment is rendered in the suit or, if permitted by law, deposited into the registry of the court.
- 16.9.6 Notwithstanding any other provision of the Contract, the Town may withhold funds if required to do so pursuant to the Colorado Public Works Act, Section 38-26-101, *et seq.*, C.R.S.

ARTICLE 17 - CONTRACT TERMINATION

17.1 Town's Right to Terminate Contract for Convenience

- 17.1.1 The Town shall, at any time, have the right to terminate the Contract for convenience upon written notice to the Contractor. The Contractor shall be entitled to the full amount of the approved estimate for the Work satisfactorily completed under the Contract up to the time of such termination, including the retained percentage. The Town shall reimburse the Contractor

for such expenditures as, in the judgment of the Project Manager, have not otherwise been paid together with the cost of moving to and from the Project.

17.2 Town's Right to Terminate Contract for Default

- 17.2.1 The Town shall have the right to terminate the Contract if the performance of the Work is unnecessarily or unreasonably delayed by the Contractor or if any of the provisions of the Contract are being violated by the Contractor or its Subcontractors. Upon receipt of written notice, the Contract shall terminate unless, in the opinion of the Project Manager, the Contractor corrects the violation within five (5) days after the notice is served or, if the violations are not able to be fully corrected within five (5) days, commences in due diligence to correct the violations and completes the corrections in a reasonable time. In the event of such termination, the Town shall immediately serve notice of the termination upon the Surety and provide the Surety with the right to take over and perform the Work called for in the Contract. If the Surety undertakes the Work, the Surety shall then be bound by all the provisions of the Contract. If the Surety does not commence performance of the Work within ten (10) days from the date of the written notice, the Town may take over the Project and, without prejudice to any other remedies, complete the Project. The Contractor and the Surety shall be liable to the Town for any and all excess costs incurred by the Town in completing the Work.

17.3 Contractor's Right to Terminate Contract

- 17.3.1 The Contractor may terminate the Contract if the Work is stopped for a period of three (3) months under order of any court or other public authority through no act or fault of the Contractor or of anyone employed by it.
- 17.3.2 The Contractor may suspend Work if the Town fails to make payments at the times provided in the Contract and the Contractor has provided the Town with written notice seven (7) days before suspension of the Work. The Contractor may terminate the Contract, at its option, if the Town continues to be in default thirty (30) days after the date of such written notice. Failure by the Town to make payments at the times provided is a bar to any claim by the Town against the Contractor for delay in completion of the Project if the Contractor suspended Work for that reason. Notwithstanding the foregoing, the Town shall have and retain the right to withhold funds for reasons set forth in the Contract and any such retention shall not be the basis of the Contractor's right to terminate the Contract.
- 17.3.3 If the Contractor terminates the Contract, the Contractor may recover the price of all Work done and materials provided up to the date of such termination.

ARTICLE 18 - Article 16--EQUAL OPPORTUNITY

18.1 During the performance of the Contract, the Contractor agrees as follows:

- 18.1.1 The Contractor shall not discriminate against any employee or applicant for employment because of race, color, age, disability, religion, sex, national origin, or as otherwise prohibited by law.
- 18.1.2 The Contractor shall endeavor to ensure that Subcontractors do not discriminate against any employee or applicant for employment because of race, color, age, disability, religion, sex, national origin, or as otherwise prohibited by law.

ARTICLE 19 - MISCELLANEOUS

- 19.1 **Reservation of Right to Bar Persons from the Work and Site:** The Town reserves the right to bar any person, including employees of the Contractor and Subcontractors, from the Site. This shall not be treated as a request for the employee's termination but a request that the employee not be assigned to work on the Site. No increase in Contract Time or Contract Price shall be authorized by such action.

19.2 Illegal Aliens: Pursuant to Section 8-17.5-101, et. seq., C.R.S., the Town may not enter into or renew a public contract for services with a contractor who knowingly employs or contracts with an illegal alien to perform work under the contract or who knowingly contracts with a subcontractor who knowingly employs or contracts with an illegal alien to perform work under the contract. In accordance with the mandatory provisions of Section 8-17.5-101, et. seq., C.R.S., the Contractor shall not knowingly employ or contract with an illegal alien to perform work under the Contract nor shall the Contractor enter into a contract with a subcontractor who fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

The Contractor shall verify or attempt to verify the employment eligibility of all employees who are newly hired to perform work under the Contract through participation in the E-Verify of the Department Program [as defined in Section 8-17.5-101(3.3), C.R.S.]. The Contractor shall not use the E-Verify Program or the Department Program to undertake pre-employment screening of job applicants while the Contract is being performed.

If Contractor obtains actual knowledge that a subcontractor performing work under the Contractor knowingly employs or contracts with an illegal alien, the Contractor shall:

- a. Notify the subcontractor and the Town within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- b. Terminate the subcontract if within three (3) days of receiving actual notice the subcontractor does not stop employing or contracting with the illegal alien, except the 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.

The 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 Section 8-17.5-102(5), C.R.S.

If the Contractor violates the provisions of this paragraph, the Town may terminate the Contract for breach and the Contractor shall be liable for actual and consequential damages.

19.3 Financial Obligations of Town: All financial obligations of the Town under the Contract are contingent upon appropriation, budgeting and availability of specific funds to discharge such obligations. The Contract shall be terminated effective January 1 of the first fiscal year for which funds are not appropriated. Nothing in the Contract shall be deemed a pledge of the Town's credit, or a payment guarantee by the Town to the Contractor.

19.4 Assignment: The Contractor shall not assign the Contract, or any part thereof, without the written consent of the Town and the Surety, nor shall the Contractor assign any moneys due or to become due to the Contractor unless the Town approves such assignment in writing.

19.5 Amendments: The parties shall only amend the Contract in writing with the proper official signatures and, if required elsewhere in this Contract, on the proper forms.

19.6 Waiver: The Contractor understands and agrees that any waiver granted by the Town of any term or provision of the Contract shall not constitute a precedent. Neither the acceptance of the Work by the Town nor the payment of all or part of the Contract Price due the Contractor shall constitute a waiver by the Town of any claim the Town may have against the Contractor.

19.7 Mediation: Any controversy or claim arising out of or relating to this Contract, or the breach thereof, which cannot be resolved by mutual agreement, shall be subject to mediation prior to the

commencement of a legal action.

- 19.8 Governing Law:** The Contract is governed and to be construed according to the laws of the State of Colorado. Venue and jurisdiction for any court action filed regarding the Contract shall be in the County of Weld, State of Colorado.
- 19.9 Binding Contract:** The Contract is binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.
- 19.10 Colorado Governmental Immunity Act:** The parties understand and agree that the Town 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.*, C.R.S., as amended, or otherwise available to the Town, its officers, or its employees.
- 19.11 Colorado Labor:** Pursuant to Title 8, Article 17, C.R.S., the Contractor agrees, except as otherwise waived by the Town, to employ Colorado labor to perform the Work to the extent of not less than eighty percent of each type or class of labor in the several classifications of skilled and common labor employed under the Contract. "Colorado labor" means any person who is a resident of the state of Colorado, at the time of employment, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification.
- 19.12 No Personal Liability:** In carrying out any of the provisions of the Contract or in exercising any power or authority thereby, there shall be no personal liability of the Town, its governing body, staff, consultants, officials, attorneys, representatives, agents, or employees.
- 19.13 Third Party Beneficiary:** None of the terms or conditions in the Contract shall give or allow any claim, benefit or right of action by any third person not a party to the Contract. Any person except the Town or the Contractor receiving services or benefits under the Contract shall be only an incidental beneficiary.
- 19.14 Costs and Attorney Fees:** If any judicial proceedings are brought against Contractor to enforce any of the provisions of the Contract, the Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.
- 19.15 No Presumption:** Each party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The parties agree that this Agreement reflects the joint drafting efforts of all parties and in the event of any dispute, disagreement or controversy arising from this agreement, the parties shall be considered joint authors and no provision shall be interpreted against any party because of authorship.
- 19.16 Headings:** The headings in these General Conditions are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of the Contract or any part thereof.