

GENERAL CONDITIONS

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1. DEFINITIONS

- 1.1 Wherever used in the contract documents, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:
- 1.2 ADDENDA – Written or graphic instruments issued prior to the execution of the agreement, which modify or interpret the contract documents, drawings and specifications, by additions, deletions, clarifications or corrections.
- 1.3 BID – The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the work to be performed.
- 1.4 BIDDER – Any person, firm or corporation submitting a bid for the work.
- 1.5 BONDS - Bid, performance and payment bonds and other instruments of security, furnished by the contractor and his surety in accordance with the contract documents.
- 1.6 CHANGE ORDER – A written order to the contractor authorizing an addition, deletion or revision in the work within the general scope of the contract documents, or authorizing an adjustment in the contract price or contract time.
- 1.7 CONTRACT DOCUMENTS – The contract, including advertisement for bid, information for bidders, bid, bid bond, agreement, payment bond, performance bond, notice of award, notice to proceed, change order, drawings, specifications and addenda.
- 1.8 CONTRACT PRICE – The total monies payable to the contractor under the terms and conditions of the contract documents.
- 1.9 CONTRACT TIME – The number of calendar days stated in the contract documents for the completion of the work.
- 1.10 DRAWINGS – The part of the contract documents which show the characteristics and scope of the work to be performed and which have been prepared or approved by the Owner's Representative.
- 1.11 OWNER'S REPRESENTATIVE – Facilities Manager for the City of Steamboat Springs
- 1.12 FIELD ORDER – A written order effecting a change in the work not involving an adjustment in the contract price or an extension of the contract time, issued by the Owner's Representative to the contractor during construction.
- 1.13 NOTICE OF AWARD – The written notice of the acceptance of the bid from the owner to the successful bidder.
- 1.14 NOTICE TO PROCEED – Written communication issued by the owner to the contractor authorizing him to proceed with the work and establishing the date of commencement of the work.
- 1.15 OWNER – A public or quasi-public body, or authority, corporation, association, partnership or individual for whom the work is to be performed.
- 1.16 PROJECT – The undertaking to be performed as provided in the contract documents.
- 1.17 RESIDENT PROJECT REPRESENTATIVE – The authorized representative of the owner who is assigned to the project site or any part thereof.

- 1.18 SHOP DRAWINGS – All drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by the contractor or subcontractor, manufacturer, supplier or distributor, which illustrate how specific portions of the work shall be fabricated or installed.
- 1.19 SPECIFICATIONS – A part of the contract documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.
- 1.20 SUBCONTRACTOR – An individual, firm or corporation having a direct contract with the contractor or with any other subcontractor for the performance of a part of the work at the site.
- 1.21 SUBSTANTIAL COMPLETION – That date as certified by the Owner's Representative when the construction of the project or specified part thereof is sufficiently completed, in accordance with the contract documents, so that the project or specified part can be utilized for the purposes for which it is intended.
- 1.22 SUPPLEMENTAL GENERAL CONDITIONS – Modifications to General Conditions required by a Federal agency for participation in the project and approved by the agency in writing prior to inclusion in the contract documents, or such requirements that may be imposed by applicable state laws.
- 1.23 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.
- 1.24 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.
- 1.25 WRITTEN NOTICE – Any notice to any part of the agreement relative to any part of the agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative on the work.
- 1.26 ADDITIONAL SUPPLEMENTAL GENERAL CONDITION – A part of the contract documents which amends or supplements the General Conditions. A SUPPLEMENTAL GENERAL CONDITION required by other than a Federal agency.

2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

- 2.1 The contractor may be furnished additional instructions and detail drawings, by the Owner's Representative, as necessary to carry out the work required by the contract documents.
- 2.2 The additional drawings and instruction this supplied will become part of the contract documents. The contractor shall carry out the work in accordance with the additional detail drawings and instructions.

3. SCHEDULES, REPORTS AND RECORDS

- 3.1 The contractor shall submit to the owner such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the contract documents for the work to be performed.
- 3.2 At the pre-construction meeting, or, if none is held, within five days after the receipt of the Notice to Proceed and before actually commencing work, the contractor shall submit construction progress schedules showing the order in which he proposes to carry on the work, including dates at which he will start the various parts of the work, estimated date of completion of each part and, as applicable:
 - 3.2.1. The dates at which special detail drawings will be required; and
 - 3.2.2. Respective dates for submission of shop drawings, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.

- 3.3 The contractor shall also submit a schedule of values and schedule of payments that he anticipates he will earn during the course of the work.
- 3.4 Unless waived by the Owner's Representative, prior to the Contractor commencing work at the project site, a pre-construction meeting shall be held for the purpose of review and acceptance of project schedules and to review and establish procedures for handling shop drawings and other submittals, for processing applications for payment, for review of administrative requirements established by funding agencies, to review survey and staking requirements and procedures, and to establish a working understanding among the parties as to the work. The Contractor and Owner's Representative shall establish a mutually agreeable time and date for the pre-construction meeting.

4. DRAWINGS AND SPECIFICATIONS

- 4.1 The intent of the drawings and specifications is that the contractor shall furnish all labor, materials, tools, equipment and transportation necessary for the proper execution of the work in accordance with the contract documents and all incidental work necessary to complete the project in an acceptable manner, ready for use, occupancy or operation by the owner.

It is the intent of the specifications and drawings to describe a complete project (or part thereof) to be constructed in accordance with the Contract documents. Any work that may reasonable be inferred from the specifications or drawings as being required to produce the intended results shall be supplied whether or not it is specifically called for.

- 4.2 In case if of conflict between the drawings and specifications, the specifications shall govern. Figure dimensions on drawings shall govern over scale dimensions, and detailed drawings shall govern over general drawings.
- 4.3 Any discrepancies found between the drawings and specifications and site conditions or any inconsistencies or ambiguities in the drawings or specifications shall be immediately reported to the Owner's Representative, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. Work done by the contractor after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the contractor's risk.

5. SHOP DRAWINGS

- 5.1 The Contractor shall provide shop drawings and samples as may be necessary for the prosecution of the work as required by the contract documents. Where a shop drawing or sample is required by the specifications, no related work shall be commenced until the Owner's Representative has reviewed the submittal. The Owner's Representative shall promptly review all shop drawing and samples
- 5.2 When submitted for the Owner's Representative's review, shop drawings and samples shall bear the Contractor's certification that he has reviewed, checked and approved the shop drawings and samples and that they are in conformance with the requirements of the contract documents. Contractor's stamp of approval on any shop drawings or sample shall constitute a representation to the Owner and Owner's Representative that Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data and assumes full responsibility for doing so, and the Contractor has reviewed or coordinated each shop drawing or sample with the requirements of the work and the contract documents shall be called out to the Owner's Representative's attention in writing by the Contractor at the time of submittal.
- 5.3 The data shown on the shop drawings will be complete with respect to dimensions, design criteria, materials of construction and like information.

- 5.4 The Owner's Representative's review shall be only for general conformance with the design concept of the project and for compliance with the information given in the contract documents and shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate review of the assembly in which the item functions. Contractor shall make any corrections required by Owner's Representative and shall return the required number of corrected copies of shop drawings and resubmit new samples for review. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Owner's Representative on previous submittals.
- 5.5 Owner's Representative's review of shop drawings or samples shall not relieve Contractor from responsibility for any deviations from the contract documents unless Contractor has in writing called the Owner's Representative's attention to such deviation at the time of submission and Owner's Representative has given written concurrence or in the case of substantial deviations, processed a change order authorizing the specific deviation. The Owner's Representative's review shall not relieve the Contractor from responsibility for errors or omissions in the shop drawings or samples.
- 5.6 A copy of each reviewed shop drawing and sample shall be kept in good order by the Contractor at the site and shall be available to the Owner's Representative.

6. MATERIAL, SERVICES AND FACILITIES

- 6.1 It is understood that, except as otherwise specifically stated in the contract documents, the contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete and deliver the work within the specified time.
- 6.2 Materials and equipment shall be stored as to insure the preservation of their quality and fitness for the work. Stored materials and equipment to be incorporated in the work shall be located so as to facilitate prompt inspection.
- 6.3 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
- 6.4 Materials, supplies or equipment to be incorporated into the work shall not be purchased by the contractor or the subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

7. INSPECTION AND TESTING

- 7.1 All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the contract documents.
- 7.2 The owner shall provide all inspection and testing services not required by the contract documents.
- 7.3 The contractor shall provide at his expense the testing and inspection services required by the contract documents.
- 7.4 If the contract documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any work to specifically be inspected, tested or approved by someone other than the contractor, the contractor will give the Owner's Representative timely notice of readiness. The contractor will then furnish the Owner's Representative the required certifications of inspection, testing or approval.
- 7.5 Inspections, tests or approvals by the Owner's Representative or other shall not relieve the contractor from his obligations to perform the work in accordance with the requirements of the contract documents.

- 7.6 The Owner's Representative and his representatives will at all times have access to the work. In addition, authorized representatives and agents of any participating Federal or state agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records. The contractor will provide proper facilities for such access and observation of the work and also for any inspection or testing thereof.
- 7.7 If any work is covered contrary to the written instructions of the Owner's Representative it must, if requested by the Owner's Representative, be uncovered for his observation and replaced at the contractor's expense.
- 7.8 If the Owner's Representative considers it necessary or advisable that covered work be inspected or tested by others, the contractor, at the Owner's Representative's request, will uncover, expose or otherwise make available for observation, inspection or testing as the Owner's Representative may require, that portion of the work in question, furnishing all necessary labor, materials, tools and equipment. If it is found that such work is defective, the contractor will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such work is not found to be defective, the contractor will be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate change order shall be issued.

8. SUBSTITUTIONS

- 8.1 Whenever a material, article or piece of equipment is identified on the drawings or specifications by reference to brand name or catalogue number, it shall be understood that this be referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The contractor may recommend the substitution of a material, article or piece of equipment of equal substance and function for those referred to in the contract documents by reference to brand name or catalogue number, and if, in the opinion of the Owner's Representative, such material, article or piece of equipment is of equal substance and function to that specified, the Owner's Representative may approve its substitution and use by the contractor. A cost differential shall be deductible from the contract price and the contract documents shall be appropriately modified by change order. The contractor warrants that if substitutes are approved, no major changes in the function or general design of the project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the contractor without a change in the contract price or contract time.
- 8.2 Substitutions may be accepted by the Owner's Representative if sufficient information is submitted by the Contractor to allow the Owner's Representative to determine that the material or equipment proposed is equivalent to that named in the specifications. The procedure for review by the Owner's Representative will be as set forth in paragraphs 8.2.1. and 8.2.2 below:
- 8.21 Requests for review of substitute items of material and equipment will not be accepted by Owner's Representative from anyone other than Contractor. If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make written application to Owner's Representative for acceptance thereof, certifying that the proposed substitute will perform adequately the functions called for by the general design be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. The application will state whether of not acceptance of the substitute for use in the work
- 8.22 Owner's Representative will record time required by Owner's Representative and Owner's Representative's consultants in evaluating substitutions proposed by contractor and in making changes in the drawings or specifications occasioned thereby. Whether or not

Owner's Representative accepts a proposed substitute, Contractor shall reimburse Owner for the charges of Owner's Representative and Owner's Representative's consultants for evaluating any proposed substitute.

9. PATENTS

- 9.1 The contractor shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and save the owner harmless from loss on account thereof, except that the owner shall be responsible for any such loss when a particular process, design or product of a particular manufacturer or manufacturers is specified, however, if the contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Owner's Representative.

10. SURVEYS, PERMITS AND REGULATIONS

- 10.1 Refer to Section 1031, **Staking, Quantities & Drawings of Record**
- 10.2 Permits and licenses of a temporary nature necessary for the prosecution of the work shall be secured and paid for by the contractor unless otherwise stated in the supplemental general conditions. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the owner, unless otherwise specified. The contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as specified. If the contractor observes that the contract documents are at variance therewith, he shall promptly notify the Owner's Representative in writing, and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.

11. PROTECTION OF WORK, PROPERTY AND PERSONS

- 11.1 The contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. He will take all necessary precautions for the safety of, and will 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.
- 11.2 The contractor will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. He will erect and maintain, as required by the conditions and progress of the work, all necessary safeguards for safety and protection. He will notify owners of adjacent utilities when prosecution of the work may affect them. The contractor will remedy all damage, injury or loss to any property caused, directly or indirectly, whole or in part, by the 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 attributable to the fault of the contract documents or to the acts or omissions of the owner or the Owner's Representative of anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable directly to indirectly in whole or in part, to the fault or negligence of the contractor.
- 11.3 In emergencies affecting the safety of persons of the work or property at the site or adjacent thereto, the contractor, without special instruction or authorization from the Owner's Representative or owner, shall act to prevent threatened damage, injury or loss. He will give the Owner's Representative prompt written notice of any significant changes in the work or deviations from the contract documents caused thereby, and a change order shall thereupon be issued covering the changes and deviations involved.
- 11.4 The utilities shown on the drawings are a representation of the existing utility location to the best knowledge of the Owner's Representative. Field locations shown are approximate only. The utility information provided is solely for the purpose of aiding the Contractor in the bidding process and in no

way relieves the Contractor from obtaining timely field locations of utilities or in confirming the existence of utilities which may or may not be shown on the Drawings.

The Contractor shall be responsible for the notification of and coordination with all utility companies for accurate field locations of utilities, which may be damaged by the Contractor during the performance of work. If blasting is required in the vicinity of natural gas pipelines, the Contractor shall request a leak survey as required by Federal law.

The immediate repair of damaged utilities or special precautions required to protect existing utilities from damage shall be the Contractor's responsibility.

- 11.5 Where existing fences and improvements are present, the Contractor shall be responsible for removing and replacing such items as part of the work. Items are to be restored to at least an equal quality to that which existed prior to disturbance. The cost for such work is to be incorporated into other Bid items, unless a separate Bid items is provided for the work.

12. SUPERVISION BY CONTRACTOR

- 12.1 The contractor will supervise and direct the work. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The contractor will employ and maintain on the work a qualified supervisor or superintendent who shall have been designated in writing by the contractor as the contractor's representative at the site. The supervisor shall have full authority to act on behalf of the contractor and all communications given to the supervisor shall be as binding as if given to the contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

13. CHANGES IN WORK

- 13.1 The owner may at any time, as the need arises, order changes within the scope of the work without invalidating the agreement. If such changes increase or decrease this amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment shall be authorized by change order.
- 13.2 The Owner's Representative may also at any time issue a field order for the purpose of clarification, information, warnings or changes in the details of the work. The Contractor shall proceed with the requirements of the order as indicated. If the Contractor believes that such field order entitles him to a change in the contract price or time, or both, he shall notify the Owner's Representative in writing within seven days and return a copy of the field order to the Owner's Representative, with the amount of change in contract time and price noted, within 30 days. Determination of changes in contract price will be made in accordance with General Condition Number 14. Field order and associated costs will be authorized by change order. If so directed, the Contractor may commence directed work prior to initiation of a change order.

The Contractor may at any time submit a clarification request to the Owner's Representative for the purpose of clarification, information or proposed changes in the details of work. The clarification request shall be subject to the Owner's Representative's review and the Contractor may proceed with clarification request requirements, if applicable, as approved by the Owner's Representative. Adjustments to the Contractor price or time should be included with the clarification request. Clarification requests shall be authorized by change order as described above.

The Owner's Representative shall supply the Contractor with the above forms and additional information following project initialization.

14. CHANGES IN THE CONTRACT PRICE

- 14.1 The contract price may be changed only by a change order. The value of work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by one or more of the following methods in the order of precedence listed below:
- A. Unit prices previously approved.
 - B. An agreed lump sum.
 - C. The value of the increase or decrease shall be determined by the Owner's Representative on the basis of costs and a percentage for overhead and profit. Costs shall only include labor (payroll, payroll taxes, fringe benefits, worker's compensation, etc.), materials, equipment and other incidentals directly related to the work involved. The maximum percentage which shall be allowed for Contractor's combined overhead and profit, shall be as follows:
 - a. For all such work done by his own organization, the Contractor may add up to 10percent of his actual net increase in costs.
 - b. For all such work done by subcontractors, each subcontractor may add up to 10 percent of his actual net increase in costs for combined overhead and profit. The Contractor may also add up to 5 percent of the subcontractor's total for his combined overhead and profit; provided that no overhead or profit shall be allowed on costs incurred in connection with premiums for public liability insurance or other special insurance directly related to such work.

In such case the Contractor will submit in form prescribed by the Owner's Representative an itemized cost breakdown together with supporting data.

The amount of credit to be allowed by the Contractor to the Owner for any change which results in a net decrease in cost, will be the amount of the cost net decrease as determined by the Owner's Representative, as described above, plus a percentage for combined overhead and profit as outlined above, when both additions and credits are involved with any one change, the combined overhead and profit shall be figured on the basis of the net increase or decrease. The Contractor will not be required to credit actual incurred overhead expenses to the Owner on change orders involving net decreases to the contract price.

15. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- 15.1 The date of beginning and the time for completion of the work are essential conditions of the contract documents and the work embraced shall be commenced on a date specified in the notice to proceed.
- 15.2 The contractor will proceed with the work at such rate of progress to insure full completion within the contract time. It is expressly understood and agreed, by and between the contractor and the owner, that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.
- 15.3 If the contractor shall fail to complete the work within the contract time, or extension of time granted by the owner, then the contractor will pay to the owner the amount for liquidated damages as specified in the bid for each calendar day that the contractor shall be in default after the time stipulated in the contract documents.
- 15.4 The contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to the following, and the contractor has promptly given written notice of such delay to the owner or Owner's Representative.
- 15.4.1 To any preference, priority or allocation order duly issued by the owner.

15.4.2 To unforeseeable causes beyond the control and without the fault or negligence of the contractor, including but not restricted to, acts of God, or of the public enemy, acts of the owner, acts of another contractor in the performance of a contract with the owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; and

15.4.3 To any delays of subcontractors occasioned by any of the causes specified in paragraphs 15.4.1 and 15.4.2 of this article.

15.5 When any period of time is referred to in the Contract documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation. A calendar day of 24 hours measured from midnight to the next midnight shall constitute a day.

16. CORRECTION OF WORK

16.1 The contractor shall promptly remove from the premises all work rejected by the Owner's Representative for failure to comply with the contract documents, whether incorporated in the construction or not, and the contractor shall promptly replace and re-execute the work in accordance with the contract documents and without expense to the owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

16.2 All removal and replacement work shall be done at the contractor's expense. If the contractor does not take action to remove such rejected work within ten (10) days after receipt of written notice, the owner may remove such work and store the materials at the expense of the contractor.

17. SUBSURFACE CONDITIONS

17.1 The contractor shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the owner by written notice of:

17.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the contract documents; or

17.1.2 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 documents.

17.2 The contractor shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the work, and, equitable adjustment shall be made and the contract documents shall be modified by a change order. Any claim of the contractor for adjustment hereunder shall not be allowed unless he has given the required written notice; provided that the owner may, if he determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

17.3 In the event the Contractor and the Owner's Representative are unable to reach an agreement concerning the alleged changed conditions, the Contractor shall keep an accurate and detailed cost record which will indicate not only the cost of any remaining unaffected quantity of any Bid item which has had some changed conditions. Failure to keep such a record shall be a bar to any recovery of costs by reason of such alleged changed conditions. Such cost account records will be kept with the same particularity as force account records, and the Owner's Representative shall be given the same opportunity to supervise and check the keeping of such records as is done in force account work.

Records are to include, but not be limited to: date; weather conditions; equipment type; hours used, work performed and location; personnel; work performed, hours worked and location; subcontractors on project; nature of unusual or differing site condition; delays, disruptions and out of sequence work; and daily production, anticipated versus actual.

18. SUSPENSION OF WORK, TERMINATION AND DELAY

- 18.1 The owner may suspend the work or any portion thereof for a period of not more than ninety (90) days or such further time as agreed upon by the contractor, by written notice to the contractor and the Owner's Representative which notice shall fix the date on which work shall be resumed. The contractor will resume that work on the date so fixed. The contractor will be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to any suspension.
- 18.2 If the contractor is adjudged a bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the contractor or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to subcontractors or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the work or if he disregards the authority of the Owner's Representative, or if he otherwise violates any provision of the contract documents, then the owner may, without prejudice to any other right or remedy and after giving the contractor and his surety a minimum of ten (10) days from delivery of a written notice, terminate the services of the contractor and take possession of the project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the contractor, and finish the work by whatever method he may deem expedient. In such case the contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid to the contractor. If such costs exceed such unpaid balance, the contractor will pay the difference to the owner. Such costs incurred by the owner will be determined by the Owner's Representative and incorporated in a change order.
- 18.3 Where the contractor's services have been so terminated by the owner, said termination shall not affect any right of the owner against the contractor then existing or which may thereafter accrue. Any retention or payment of monies by the owner due the contractor will not release the contractor from compliance with the contract documents.
- 18.4 After ten (10) days from delivery of a written notice to the contractor and the Owner's Representative, the owner may, without cause and without prejudice to any other right or remedy, elect to abandon the project and terminate the contract. In such case, the contractor shall be paid for all work executed and any expense sustained plus reasonable profit.
- 18.5 If, through no act or fault of the contractor, the work is suspended for a period of more than ninety (90) days by the owner or under an order of court of other public authority, or the Owner's Representative fails to act on any request for payment within thirty (30) days after it is submitted, or the owner fails to pay the contractor substantially the sum approved by the Owner's Representative or awarded by arbitrators within (30) days of its approval and presentation, then the contractor may after ten (10) days from delivery of a written notice to the owner and the Owner's Representative, terminate the contract and recover from the owner payment for all work executed and all expenses sustained. In addition and in lieu of terminating the contract, if the Owner's Representative has failed to act on a request for payment or if the owner had failed to make any payment as foresaid, the contractor may upon ten (10) days written notice to the owner and the Owner's Representative stop the work until he has been paid all amounts then due, in change orders shall be issued for adjusting the contract price or extending the contract time or both to compensate for the costs and delays attributable to the stoppage of work.

18.6 If the performance of all or any portion of the work is suspended, delayed or interrupted as a result of a failure of the owner or Owner's Representative to act within the time specified in the contract documents, or if no time is specified, within a reasonable time, or both, shall be made by change order to compensate the contractor for the costs and delays necessarily caused by the failure of the owner or Owner's Representative.

19. PAYMENTS TO CONTRACTOR

19.1 At least ten (10) days before each progress payment falls due (but not more often than once a month), the contractor will submit to the Owner's Representative a partial payment estimate filled out and signed by the contractor covering the work performed during the period covered by the partial payment estimate and supported by such data as the Owner's Representative 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 shall also be accompanied by such supporting data, satisfactory to the owner, as will establish the owner's title to the material and equipment and protect his interest therein, including applicable insurance. The Owner's Representative will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to the owner, or return the partial payment estimate to the contractor indicating in writing his reasons for refusing to approve payment. In the latter case, the contractor may make the necessary corrections and resubmit the partial payment estimate. The owner will, within ten (10) days of presentation to him of an approved partial payment estimate, pay the contractor a progress payment on the basis of the approved partial payment estimate. The owner shall retain ten (10) percent of the amount of each payment until final completion and acceptance of all work covered by the contract documents. The owner at any time, however, after fifty (50) percent of the work has been completed, if he finds that satisfactory progress is being made, shall reduce retainage to five (5) percent on the current and remaining estimates. When the work is substantially complete (occupational or beneficial occupancy), the retained amount may be further reduced below five (5) percent to only that amount necessary to assure completion. On completion and acceptance of a part of the work on which the price is stated separately in the contract documents, payment may be made in full, including retained percentages, less authorized deductions.

If the Owner is a public entity at least 90 percent of the calculated value of any work completed shall be paid until 50 percent of the work required by the contract has been performed. Thereafter, the public entity shall pay any of the remaining installments without retaining additional funds if, in the opinion of the public entity, satisfactory progress is being made in the work. The withheld percentage of the contract price of any such work, improvement or construction shall be retained until the contract is completed satisfactorily and finally accepted by the public entity.

19.1.1 On a daily basis the Contractor shall measure all unit price work, which cannot be readily measured in the field after the work had been completed. No less than weekly the Contractor shall submit an itemized list of all such work with backup data to the Owner's Representative for review. No payment shall be made for any such work unless the procedure in this paragraph has been followed.

19.2 The request for payment may also include an allowance for the cost of such major materials and equipment, which are suitably stored either at or near the site.

19.3 Prior to the substantial completion, the owner, with the approval of the Owner's Representative and with the concurrence of the contractor may use any completed or substantially completed portions of the work. Such use shall not constitute an acceptance of such portions of the work.

19.4 The owner shall have the right to enter the premises for the purpose of doing work not covered by the contract documents. This provision shall not be construed as relieving the contractor of the sole

responsibility for the care and protection of the work, or the restoration of any damaged work except such as may be caused by agents or employees of the owner.

- 19.5 Upon completion and acceptance of the work, the Owner's Representative shall issue a certificate attached to the final payment request that the work has been accepted by him under the conditions of the contract documents. The entire balance found to be due the contractor, including the retained percentages, but except such sums as may be lawfully retained by the owner, shall be paid to the contractor within thirty (30) days of completions and acceptance of the work.
- 19.6 The contractor will indemnify and save the owner or the owner's agents harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material men, and furnishers of machinery and parts thereof, equipment tools and all supplies, incurred in the furtherance of the performance of the work. The contractor shall at the owner's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged or waived. If the contractor fails to do so the owner may, after having notified the contractor, either pay unpaid bills or withhold from the contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the contractor shall be resumed, in accordance with the terms of the contract documents, but in no event shall the provisions of this sentence be construed to impose any obligations upon the owner to either the contractor, his surety, or any third party. In paying any unpaid bills of the contractors, any payment so made by the owner shall be considered as a payment made under the contract documents by the owner to the contractor and the owner shall not be liable to the contractor for any such payments made in good faith.
- 19.7 If the owner fails to make payment thirty (30) days after approval by the Owner's Representative, in addition to other remedies available to the contractor, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the contractor.
- 19.8 The Owner's Representative's recommendation of any payment requested in an application for payment will constitute a representation by Owner's Representative to Owner based on Owner's Representative's review of the application for payment and the accompanying data and schedules that the work as progressed to the point indicated; that, to the best of Owner's Representative's knowledge, information and belief, the quality of the work is in accordance with the contract documents (subject to an evaluation of the work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the contract documents and any qualifications stated in the recommendation) and the Contractor is entitled to payment of the amount recommended, However, by recommending any such payment Owner's Representative will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the work, or that the means, methods, techniques, sequences and procedures of construction have been reviewed or that any examination had been made to ascertain how or for what purpose Contractor has used the moneys paid of to be paid to Contractor on account of the contract prices, or that title to any work, materials or equipment has passed to owner free and clear of any liens.
- 19.9 The Owner's Representative may refuse to recommend the whole or any part of any payment if, in his opinion, it would be incorrect to make such representations to Owner. He may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or test, nullify any such payment previously recommended to such extent as may be necessary in Owner's Representative's opinion to protect Owner from loss because:
- 19.9.1 The work is defective, or completed work has been damaged requiring correction or replacement;

- 19.9.2 Written claims have been made against Owner or liens have been filed in connection with the work;
- 19.9.3 The contract price has been reduced because of modifications;
- 19.9.4 Owner has been required to correct defective work or complete the work;
- 19.9.5 Of Contractor's unsatisfactory prosecution of the work in accordance with the contract documents, or;
- 19.9.6 Contractor's failure to make payment to subcontractors or for labor, materials or equipment.
- 19.10 When the Contractor considers the entire work ready for its intended use Contractor shall, in writing to Owner and Owner's Representative, certify that the entire work is substantially complete and request that Owner's Representative issue a certificate of substantial completion. Within a reasonable time thereafter, Owner, Contractor and Owner's Representative shall make an inspection of the work to determine the status of completion. If the inspection reveals deficiencies on the project, the Contractor shall immediately remedy all deficiencies as listed on a punch list provided by the Owner and Owner's Representative. Upon completion of the punch list items the Contractor shall repeat the procedure in the above paragraph. The process shall be repeated until the Owner issues a letter of preliminary acceptance for the project.
- If the inspection reveals deficiencies on the project, the Contractor shall immediately remedy all deficiencies as listed on a punch list provided by the Owner and Owner's Representative. Upon completion of the punch list items the Contractor shall repeat the procedure in the above paragraph. The process shall be repeated until the Owner issues a letter of preliminary acceptance for the project.
- Upon receiving the letter of preliminary acceptance the Owner's Representative will issue a certificate of substantial completion and recommend final project payment. Conditions may be attached to the certificate to include withholding enough money to cover the cost of any deficiencies. The date of the letter of preliminary acceptance begins the one-year warranty. It is important to receive the letter of preliminary acceptance in the same construction season as the work was performed. Inspection and acceptance by the Owner after November 1 may be made only by special request and only if weather allows.
- Final payment to the Contractor will not be made, the one-year warranty will not begin, and the Contractor shall remain liable for maintenance of the project until the letter of preliminary acceptance is issued.
- One month prior to the expiration of the one-year warranty period the Contractor shall request in writing a final inspection and final acceptance. The Owner will conduct the final inspection. If this inspection reveals deficiencies in the materials or workmanship, the Contractor shall make any repairs necessary under the one-year warranty. If any deficiencies are due to normal wear and tear, the Owner may request that repairs be done on a time and materials basis as negotiated with the Contractor.
- The Owner will issue a letter of final project acceptance if the final inspection reveals no deficiencies and all warranty work has been satisfactorily completed. Effective on the date of the letter of final project acceptance, Contractor shall be relieved of all warranty except for a one-year warranty on items repaired under the one-year warranty.
- 19.11 Neither recommendation of a progress or final payment by Owner's Representative, nor the issuance of a certificate of substantial completion, nor any payment by Owner to Contractor under the contract documents, nor any use or occupancy of the work or any part thereof by Owner, nor any act of acceptance of a notice of acceptability by Owner's Representative, nor any correction of defective

work by Owner shall constitute an acceptance of work not in accordance with the contract documents or a release of Contractor's obligation to perform the work in accordance with the contract documents.

20. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

20.1 The acceptance by the contractor of final payment shall be and shall operate as a release to the owner of all claims and all liability to the contractor other than claims in stated amounts as may be specifically excepted by the contractor for all things done or finished in connection with this work and for every act and neglect of the owner and other relating to or arising out of this work. Any payment, however, final or otherwise, shall not release the contractor or his sureties from any obligations under the contract documents or the performance bond and payment bonds.

21.1 INSURANCE

21.1 The contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the contractor's execution of the work, whether such execution be by himself or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

21.1.1 Claims under workmen's compensation, disability benefit and other similar employee benefit acts;

21.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

21.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

21.1.4 Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the contractor, or (2) by any other person; and

21.1.5 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

21.1.6 Payment for the costs of insurance and contract security shall be made per the "insurance and contract security" lump sum bid item. If no separate item is provided in the bid, the costs shall be uniformly distributed to other Bid items.

21.2 Certificates of Insurance acceptable to the owner shall be filed with the owner prior to commencement of the work. These certificates shall contain a provision that coverage afforded under the policies will not be canceled unless at least fifteen (15) days prior written notice has been given to the owner.

21.3 The contractor shall procure and maintain, at his own expense, during the contract time, liability insurance as hereinafter specified:

21.3.1 Contractor's General Public Liability and Property Damage Insurance including vehicle coverage issued to the contractor and protecting him from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the contract documents, whether such operations be by himself or by any subcontractor under him, or anyone directly or indirectly employed by the contractor or subcontractor under him. Insurance shall be written with a limit of liability of not less than \$1,000,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of such damages sustained by two or more persons in any one accident. Insurance shall be written

with a limit of liability of not less than \$500,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than \$500,000 aggregate for any such damage sustained by two or more persons in any one accident.

- 21.3.2 The contractor shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the project to the full insurable value thereof for the benefit of the owner, the contractor, and subcontractors as their interest may appear. This provision shall in no way release the contractor or contractor's surety from obligations under the contract documents to fully complete the project.
- 21.4 The contractor shall procure and maintain, at his own expense, during the contract time, in accordance with the provisions of the laws of the state in which the work is performed, Workmen's Compensation Insurance, including occupational disease provisions, for all of his employees at the site of the project and in case any work is sublet, the contractor shall require such subcontractor similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under Workmen's Compensation statute, the contractor shall provide and shall cause each subcontractor to provide, adequate and suitable insurance for the protection of his employees not otherwise protected.
- 21.5 The contractor shall secure, if applicable, "All Risk" type Builder's Risk Insurance for work to be performed. Unless specifically authorized by the owner, the amount of such insurance shall not be less than the contract price totaled in the bid. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft and smoke during the contract time, and until the work is accepted by the owner. The policy shall name as the insured the contractor, the Owner's Representative and the owner
- 21.6 The Owner, its employees and/or agents shall be names as an additional insured on all insurance policies required in this contract to be furnished by the Contractor or any subcontractor.
- 21.7 **THE CONTRACTOR IS AN INDEPENDENT CONTRACTOR AND IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS AND IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED PURSUANT TO THE CONTRACT RELATIONSHIP.**

22. CONTRACT SECURITY

- 22.1 The contractor shall within ten (10) days after the receipt of the notice of award furnish the owner with a performance bond and a payment bond in penal sums equal to the amount of the contract price, conditioned upon the performance by the contractor of all undertakings, covenants, terms, conditions and agreements of the contract documents, and upon the prompt payment by the contractor to all persons supplying labor and materials in the prosecution of the work provided by the contract documents. Such bonds shall be executed by the contractor and a corporate bonding company licensed to transact such business in the state 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 Treasury Department Circular Number 570. The expense of these bonds shall be borne by the contractor. If at any time a surety on any such bond is declared in which the work is to be performed or is removed from the list of Surety Companies accepted on Federal bonds, contractor shall within ten (10) days after notice from the owner to do so, substitute an acceptable bond (or bonds) in such form and sums and signed by such other surety or sureties as may be satisfactory to the owner. The premiums on such bond shall be paid by the contractor. No further payments shall be paid by the contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond to the owner.

22.2 Payment for the costs of insurance and contract security shall be made per the "insurance and contract security" lump sum bid item. If no separate item is provided in the bid, the costs shall be uniformly distributed to other Bid items.

23. ASSIGNMENTS

23.1 Neither the contractor nor the owner shall sell, transfer, assign, or otherwise dispose of the contract or any portion thereof, or of his right, title or interest therein, or his obligations thereunder, without written consent of the other party.

24. INDEMNIFICATION

24.1 The contractor will indemnify and hold harmless the owner and the Owner's Representative and their agents and employees from and against all claims, damages, losses and expenses, including attorney's fees arising out of or resulting from the performance of the work, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the contractor, and subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

24.2 In any and all claims against the owner or the Owner's Representative, or any of their agents or employees, by any employee of the contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the contractor or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefits acts.

24.3 The obligation of the contractor under this paragraph shall not extend to the liability of the Owner's Representative, his agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications.

25. SEPARATE CONTRACTS

25.1 The owner reserves the right to let other contracts in connection with this project. The contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs. If the proper execution or results of any part of the contractor's work depends upon the work of any other contractor, the contractor shall inspect and promptly report to the Owner's Representative any defects in such work that render it unsuitable for such proper execution and results.

25.2 The owner may perform additional work related to the project by himself, or he may let other contracts containing provisions similar to these. The contractor will afford the other contractors who are parties to such contracts (or the owner, if he is performing the additional work himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate his work with theirs.

25.3 If the performance of additional work by other contractors or the owner is not noted in the contract documents prior to the execution of the contract, written notice thereof shall be given to the contractor prior to starting any such additional work. If the contractor believes that the performance of such additional work by the owner or others involves him in additional expense or entitles him to an extension of the contract time, he may make a claim therefore as provided in Sections 14 and 15.

26. SUBCONTRACTING

- 26.1 The contractor may utilize the services of specialty subcontractors on those parts of the work that, under normal contracting practices, are performed by specialty subcontractors.
- 26.2 The contractor shall not award work to subcontractor(s) in excess of fifty (50) percent of the contract price, without prior written approval of the owner.
- 26.3 The contractor shall be fully responsible to the owner for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.
- 26.4 The contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the contractor by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the contractor the same power as regards terminating any subcontract that the owner may exercise over the contractor under any provision of the contract documents.
- 26.5 Nothing contained in this contract shall create any contractual relation between any subcontractor and the owner.
- 26.6 The contractor shall not employ any subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Owner and Owner's Representative may have reasonable objection. A subcontractor or other person or organization identified in writing to Owner and Owner's Representative by Contractor prior to the notice of award and not objected to in writing by Owner or Owner's Representative prior to notice of award will be deemed acceptable to Owner and Owner's Representative. Acceptance of any subcontractor, other person or organization by Owner or Owner's Representative shall not constitute a waiver of any right of Owner or Owner's Representative to reject defective work. If Owner or Owner's Representative, after due investigation, has reasonable objection to any subcontractor, other person or organization proposed by the Contractor after notice of Award, Contractor shall submit an acceptable substitute. Contractor shall not be required to employ any subcontractor, other person or organization against whom Contractor has reasonable objection.

27. OWNER'S REPRESENTATIVE'S AUTHORITY

- 27.1 The Facilities Manager shall act as the owner's representative during the construction period. He shall decide questions that may arise as to quality and acceptability of materials furnished and work performed. He shall interpret the intent of the contract documents in a fair and unbiased manner. The Owner's Representative will make visits to the site and determine if the work is proceeding in accordance with the contract documents.
- 27.2 The contractor will be held strictly to the intent of the contract documents in regard to the quality of materials, workmanship and execution of the work. Inspections may be made at the factory or fabrication plant of the source of material supply.
- 27.3 The Owner's Representative will not be responsible for the construction means, controls, techniques, sequences, procedures or construction safety.
- 27.4 The Owner's Representative shall promptly make decisions relative to interpretation of the contract documents.
- 27.5 Whenever in the contract documents the terms "as ordered," "as directed," "as allowed," "so," "like," "effect" or "import" or the adjectives "reasonable", "suitable," "acceptable," "proper" or "satisfactory" are used to describe requirement, direction, review or judgment of Owner's Representative as to the work,

it is intended that such requirement, direction, review, or judgment will be solely to evaluate the work for compliance with the contract documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates the Owner's Representative shall have authority to undertake responsibility contrary to the provisions of paragraphs 27.1 and 27.3.

- 27.6 Neither Owner's Representative's authority to act under this article 27 or elsewhere in the contract documents nor any decision made by Owner's Representative in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of Owner's Representative to Contractor, and subcontractor, any supplier, or any other person or organization performing any of the work, or to any surety for any of them.

28. LAND AND RIGHTS OF WAY

- 28.1 Prior to issuance of notice to proceed, the 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 mutually agreed.
- 28.2 The owner shall provide to the contractor information which delineates and describes the lands owned and rights of way acquired.
- 28.3 The contractor shall provide at his own expense and without liability to the owner any additional land and access thereto that the contractor may desire for temporary construction facilities, or for storage of materials.

29. GUARANTY

- 29.1 The contractor shall guarantee all material and equipment furnished and work performed for a period of one (1) year from the date of substantial completion. The contractor warrants and guarantees for a period of one (1) year from the date of substantial completions of the system that the completed system is free from all defects due to faulty materials or workmanship and the contractor shall promptly make such corrections as may be necessary by reason of such defects including repairs of any damage to other parts of the system resulting from such defects. The owner will give notice of observed defects with reasonable promptness. In the event that the contractor should fail to make such repairs, adjustments or other work that may be made necessary by such defects, the owner may do so and charge the contractor the cost thereby incurred. The performance bond shall remain in full force and effect through the guarantee period.

30. ARBITRATION

- 30.1 Owner's Representative will be the initial interpreter of the requirements of contract documents and judge of the acceptability of the work thereunder. Claims, disputes and other matters relating to the acceptability of the work or the interpretation of the requirements of the contract documents pertaining to the performance and furnishing of the work and claims under articles 14 and 15 in respect of changes in the contract price and contract time will be referred initially to Owner's Representative in writing with a request for a formal decision in accordance with this paragraph, which Owner's Representative will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to Owner's Representative and other party to the agreement promptly (but in no event later than seven days) after the occurrence or the event giving rise thereto, and written supporting data will be submitted to Owner's Representative and the other party within 14 days after such occurrence unless Owner's Representative allows an additional period of time to ascertain more accurate data in support of the claim.
- 30.2 When functioning as interpreter and judge under paragraph 27.1 and 30.1, Owner's Representative will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision by Owner's Representative pursuant to paragraphs 27.1 and 30.1 with

respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in article 20) will be a condition precedent to any exercise by Owner or Contractor of such rights or remedies as either may otherwise have under the contract documents or by law or regulations in respect of any such claim, dispute or other matter.

- 30.3 All claims, disputes and other matters in question between Owner and Contractor arising out of, or relating to the contract documents or the breach thereof (except for claims which have been waived by the making or acceptance of final payment as provided by article 20) will be decided by Colorado law; or if specifically agreed to in writing by the Owner and Contractor, by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining subject to the limitations of this article 30. Any agreement so to arbitrate and any other agreement or consent to arbitrate entered and any other agreement or consent to arbitrate entered into accordance herewith as provided in the article 30 will be specifically enforceable under the prevailing law of any court having jurisdiction.

31. TAXES

- 31.1 On all work where the Owner is a municipality or other public entity, the Contractor and all subcontractors shall obtain a sales tax exemption number and therefore will not pay sales tax on materials purchased for this project as allowed by Colorado law. The sales tax exemption application for DR172 is enclosed.

The Contractor will not be reimbursed by the Owner for sales tax paid on materials installed as part of the project work.

32. USE OF EXPLOSIVES

- 32.1 When the use of explosives is necessary for the prosecution of the work, the Contractor shall exercise the utmost care so as to not endanger life or property, including new work. The Contractor shall be responsible for all damage resulting from the use of explosives. The Contractor shall comply with all local, state and Federal laws, ordinances, safety codes and OSHA regulations relative to the handling, storage and use of explosives. All blasting operations shall be under the direct supervision of a duly licensed person. The Contractor shall be responsible for notifying all parties affected by blasting operations.