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# ARTICLE I. CONSTRUCTION SITE REQUIREMENTS

1. PROJECT MANAGER

Contractor and the City shall each designate a “Project Manager” to be responsible for supervising the implementation of this Contract and to represent that party in all matters and questions arising under this Contract. The City’s Project Manager shall be the judge of the performance of this Contract as it relates to compliance with drawings and specifications and other contract documents, quality of workmanship and materials and implementation of this Contract according to its letter and intent and shall have full access to the work at all times. The Project Managers alone shall have the authority to issue change orders. All correspondence to the City or to Contractor relating to this Contract shall be directed to the Project Manager. The Project Managers’ decisions on all matters of this Contract shall be final and conclusive, subject to the other party’s right to dispute such decision.

1. PROJECT INSPECTOR

The “Project Inspector” is an employee of the City or of the A/E (defined below). The City has delegated its authority to the Project Inspector to make initial decisions regarding technical questions that may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work under this Contract. The Project Inspector shall interpret the intent and meaning of this Contract, including drawings and specifications, and make initial decisions with respect to quality, workmanship and materials and Contractor’s fulfillment of this Contract and Contractor’s entitlement to compensation. Contractor shall consult with the Project Inspector in all matters relating to this Contract where any questions arise regarding technical aspects of this Contract. The Project Inspector’s decisions are subject to review by the Project Manager.

1. THE ARCHITECT/ENGINEER

The City may contract for the services of an architect or engineer, referred to as an “A/E,” to aid the Project Manager in administering this Contract. The A/E will consult with the Project Manager concerning the performance and acceptance of the work. The A/E will participate in the preparation and approval of progress and final payment estimates and participate in inspections while the work is in progress and prior to final acceptance by the City.

1. CONTRACTOR

Contractor shall supervise and direct the work, using Contractor’s best skill and attention. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the work under this Contract and shall perform all the work in a workmanlike manner. Contractor shall be responsible to the City for all acts and omissions of Contractor’s agents and employees, subcontractors and their agents and employees, and other persons performing any of the work under contract with Contractor or any of its agents, employees, or subcontractors. Contractor shall not be relieved from any obligations under the contract documents by inspections, tests, or approvals required or performed pursuant to this Contract by persons other than Contractor.

1. SUBCONTRACTORS

Contractor shall be permitted to subcontract the performance of certain work to a third-party subcontractor, provided that: (1) Contractor gives prior written notice to the City of the subcontractor and the detailed nature and scope of the work to be performed by the subcontractor; (2) the City consents to the subcontracting of such work to such subcontractor; and (3) Contractor complies with the terms and conditions set forth below. Contractor shall remain responsible to the City in accordance with this Contract for the work performed by any subcontractor and for all acts and omissions of its subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent as if the subcontracted work were performed by Contractor’s employees, and any terms and conditions applicable to subcontracted work shall continue to apply notwithstanding any such subcontracting. No agreement between Contractor or and a subcontractor or supplier shall in any way affect this Contract between the City and Contractor. Contractor shall review the qualifications of all subcontractors and their supervisors and assure that all subcontractors satisfy all applicable insurance requirements set forth in Article II, Bonding, Insurance, and Taxes herein. Contractor or shall require each subcontractor to sign an agreement in which the subcontractor agrees to be bound by all applicable terms and conditions of the contract documents for the benefit of the City. Nothing in the contract documents nor in the City’s acceptance of a subcontractor shall create any contractual relationship between the City and any subcontractor or other person or organization having a direct contract with Contractor. Contractor shall indemnify, defend, and hold harmless the City from and against any loss, expense, obligation, or liability incurred by the City arising out of claims made by any subcontractor related to its performance of the subcontracted work or any matters related thereto.

1. SUPERVISION AT THE JOB SITE

Contractor shall provide and maintain continually on the work site a Superintendent for all work being performed under this Contract. Contractor shall designate the Superintendent, who shall be authorized to act on behalf of Contractor in all matters related to this Contract. Within five (5) days after the execution of this Contract, Contractor shall inform the Project Manager in writing of the home and residence address and the telephone number of the person designated as the Superintendent. Contractor shall also provide a mobile phone to the Superintendent and inform the Project Manager in writing of the telephone number therefor. A call to any one of these numbers shall constitute emergency notice by the City. The Superintendent shall be on-call at all times to address emergencies.

In the event of an emergency, Contractor shall be responsible for remedying all aspects of the work creating the emergency or loss of utility service and respond within two (2) hours of being notified of the emergency. If Contractor does not respond within two (2) hours, Contractor shall be responsible for any and all costs incurred by the City including, but not limited to, deployment of public safety personnel, and any labor, equipment and materials required to remedy the emergency. Unless the Project Manager requests that a Superintendent be replaced or permits such replacement or the Superintendent ceases to be employed by Contractor or becomes sick or disabled, the same person shall continue in the capacity of Superintendent and be present continuously or immediately available at the work site until the work has been completed.

1. COMMUNICATIONS AT THE WORK SITE

The Superintendent shall be the normal recipient of work site communications from the Project Manager. Important communications from the Project Manager shall be in writing and shall be made by field order (see Section 403, Field Orders), or a reasonable facsimile thereof. Other important communications from Contractor to the City shall also be in writing. Further, the Superintendent shall designate agents at the site to receive such communications when the Superintendent is away from the site. When the Superintendent is absent, such persons shall be authorized to act immediately on emergency communications given by the Project Manager. If the Project Manager issues an emergency communication to Contractor, but there is no authorized representative of Contractor able to act on the emergency communication, the Project Manager may take whatever action is necessary to deal with the emergency, at Contractor’s cost. If the City finds it necessary to communicate at the work site with contractor personnel authorized to receive such communications and none are available to receive such communications, the City may suspend Contractor’s operations at the work site which are affected by the communications until such communications can be accomplished.

1. DRAWINGS AND SPECIFICATIONS

The “drawings and specifications” consist of all documents, excluding shop drawings, approved by the City for the purpose of describing the work to be performed under this Contract. The City shall retain ownership of all drawings and specifications prepared or used in connection with this Contract, whether prepared by or on behalf of Contractor or the City. Copies of the drawings and specifications may be obtained at the location specified in the advertisement for bids. The drawings show the character and the scope of the work to be performed. Figure dimensions shall in all cases be used in preference to scale dimensions. The specifications consist of written technical descriptions of materials, equipment, construction systems, processes, standards, and workmanship. If work is shown on drawings, but dimensions for such work are not indicated, then Contractor shall not execute such work unless Contractor is able to determine the unspecified dimensions from the dimensions which are specified. Whenever Contractor is unable to determine unspecified dimensions, Contractor shall proceed as provided in Section 108, Inconsistencies in Contract Documents.

1. OWNERSHIP OF UNIQUE DRAWINGS AND SPECIFICATIONS

The City may hire an artist, architect, or engineer to prepare drawings or specifications for a unique design, logo, or structure, as will be set forth in the Special Conditions. The City hereby reserves complete property rights to such drawings and specifications. This Section 109 is not intended to include common drawings or specifications or manufacturer’s specifications, which are commonly used in the construction industry, or those used by the artist, architect, or engineer who prepared such drawings or specifications. Contractor and all subcontractors are prohibited from using such drawings or specifications or selling or otherwise transferring such drawings or specifications to any other person or entity, except as required for the work, unless the Project Manager waives this condition in writing.

1. INCONSISTENCIES IN CONTRACT DOCUMENTS

The contract documents are complementary and what is called for by one document is binding as if called for by all contract documents. If Contractor notices a conflict, error or discrepancy in the contract documents, Contractor shall notify the Project Manager in writing immediately. Contractor shall not proceed with any part of the work affected by such conflict, error or discrepancy until the Project Manager has authorized Contractor to proceed in writing. The City shall decide which of the provisions in the contract documents shall be followed in the event of a conflict, error or discrepancy. If the City selects an interpretation that costs more or less than a version on which Contractor reasonably relied in preparing its bid, the contract price shall be increased or decreased by an appropriate change order. The adjustment in the contract price shall be calculated according to the provisions of Article IV, Change in Contract Terms, except that increases shall be granted only to the extent that the Project Manager finds that Contractor’s interpretation which formed the basis of its bid was reasonable. If Contractor disputes the contract price adjustment made by the Project Manager, Contractor may appeal pursuant to Section 409, Contract Grievance Procedure. Contractor shall report to the Project Manager all errors Contractor discovers in the contract documents.

Information and data reflected in the contract documents with respect to underground utilities at or contiguous to the site are based upon information and data furnished to the City by the owners of such underground utilities or others, and the City does not assume responsibility for the accuracy or completeness thereof, unless it is expressly provided otherwise in the contract documents.

1. STANDARDS

Reference to standard specifications of any technical society, organization, or association, or to codes of local or state authorities, shall mean the latest standard code, specification, or tentative specification adopted and published at the deadline for the submission of bids, unless specifically stated otherwise.

1. LICENSES AND PERMITS

Neither Contractor nor any subcontractor shall commence work under this contract in the City until obtaining all required City licenses and permits. The following is a list of licenses and permits which may be required. The regulations can be accessed via the City’s website at [www.bouldercolorado.gov](http://www.bouldercolorado.gov). These requirements are subject to change without notice. This list should not be deemed to be exhaustive. In addition, Contractor is responsible for obtaining all required federal, state, and county licenses and permits. The City will pay the development excise tax and any plant investment fees applicable to the project.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| License or Permit | B.R.C., 1981 | | Location | |
| General Contractor’s License | 4-4-3 | | Planning and Development Services  Phone:303-441-1880 | |
| Building Permit | 10-5-2 | | Same | |
| Solar Access Permit | 9-9-17(h) | | Same | |
| Plumbing Contractor’s License | 4-15-3 | | Same | |
| Plumbing Permit | 10-10-2 | | Same | |
| Electrical Contractor’s Registration | 4-8-2 | |  | |
| Electrical Permit | 10-6-2 | | Same | |
| Mechanical Contractor’s License | 4-13-3 | | Same | |
| Mechanical Permit | 10-9-2 | | Same | |
| Sound Level Variance | 5-9-3; 8-5-11 | | Same | |
| Sign Contractor’s License | 4-21-2 | | Same | |
| Sign Permit | 9-9-21 | | Same | |
| Moving or Wrecking Permit | | 10-5-2 | | Same | |
| Fire Protection System Permit | | 10-8-2 | | Same | |
| Fence Permit | | 9-9-15 | | Same | |
| Public Right-of- Way License | | 4-6-2 | | Same | |
| Water Main Connection Permit | | 11-1-14 | | Same | |
| Sewer Main Connection Permit | | 11-2-9 | | Same | |
| Industrial Discharge Permit | | 4-20-31, 11-3-13 | | Water Quality Phone: 303-441-3200 | |
| Sales and Use Tax License | | 3-17-3 | | Sales & Use Tax Division  Phone: 303-441-3050 | |

1. ROYALTIES AND PATENTS

Contractor shall pay all license fees and royalties. Contractor shall include and shall be considered to have included in the bid proposal a sum sufficient to cover all fees, royalties, licenses and claims for any patent rights, trade secrets, copyrights, trademarks or other intellectual property which may be connected with the work. If Contractor uses any such intellectual property in the work, Contractor shall enter into a written agreement with the owner of the intellectual property to provide that there will be no future payments owed by the City. Contractor shall defend, indemnify, and hold harmless the City, its officers, agents and employees from all fees, royalties, licenses and claims or suits therefore in connection with any infringement or alleged infringement of any intellectual property right.

1. COLORADO LABOR REQUIREMENTS

Except for federally funded contracts, Colorado labor shall be employed for at least eighty percent (80%) of each class of skilled and common labor employed for all City public works projects. “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, age, or religion except when sex or age is a bona fide occupational criterion, pursuant to Section 8-17-101, C.R.S., as amended.

1. PUBLIC RELATIONS

Contractor shall carry on the work in such a manner as to cause as little inconvenience as possible to the public, particularly to occupants of property near or contiguous to the project, as is consistent with good workmanship. Contractor shall notify such occupants at least forty- eight (48) hours in advance of proposed work that may block entrances or otherwise cause undue difficulty to the occupants of affected property and shall restore such entrances to usable condition as soon as possible. Contractor, subcontractors and employees shall at all times be courteous to the public, the Project Manager, and other City representative while engaged in work under this Contract. Any employees of Contractor, subcontractors or agents who fail to act in a courteous manner toward the public, the Project Manager, or other City representative shall be immediately and permanently removed from the construction site by Contractor upon the reasonable request of the Project Manager.

Contractor shall notify all business managers and residents affected by the interruption of utilities and other services caused by his operations. Such notice shall be given at least forty-eight (48) hours prior to the interruption of service. Notice shall be given for the interruption of domestic water, irrigation water, sewer, trash pickup, and changes in access to property. Prior to interruption of domestic water service, a second notice shall be given no less than one hour and no more than four hours prior to discontinuation of service. Notifications may be oral or in written form if the business manager or resident cannot be located. Water services shall not be discontinued for more than two (2) consecutive hours without special written permission from the Project Manager. If requested by a commercial business, potable water bottles and toilets for use by their employees shall be furnished and serviced by Contractor. These requirements are considered as incidental to the work and no additional payment will be made by the City.

1. PROTECTION OF PERSONS AND PROPERTY

Contractor shall be responsible for initiating maintaining and supervising all safety precautions and programs in connection with the work. Contractor shall designate a person at the work site who is responsible to oversee or take precautions to prevent accidents. Contractor shall take all reasonable safety precautions and provide all reasonable protection to prevent damage, injury, or loss to:

* 1. All employees at the work site and all other persons affected by the work;
  2. All materials and equipment in the care, custody, or control of Contractor or subcontractor, whether stored on or off the work site;
  3. All work done under this Contract;
  4. All property at the site including walks, pavements, roadways, structures and utilities, and all neighboring property which may be affected by the work; and
  5. All plant materials including without limitation grasses, trees, and shrubs except where specifically identified for removal.

Contractor shall repair or replace any damage, injury, or loss to all public or private property caused directly or indirectly, in whole or in part, by Contractor or any subcontractor or their employees or agents or anyone directly or indirectly employed by them or anyone for whose acts any one of them may be responsible. Contractor shall give all notices and comply with all applicable laws bearing on the safety of persons or property or their protection from damage, injury, or loss.

1. PROTECTION AND PREVENTION OF SITE ACCESS

Where the work is conducted in or adjacent to any street, alley, bike lane, path, sidewalk or public place, Contractor shall furnish and erect such barricades, fences, lights, and danger signals and shall furnish such personnel to warn the public and guard the site and shall take such other precautionary measures as are reasonably necessary to protect persons, property, and the work done under this Contract. Excavations in or adjacent to public streets, alleys, bike lanes, paths or sidewalks shall be securely barricaded so as to prevent access by small children or any other person or vehicle when work is not being carried on at the site of excavation. Such barricades shall be painted in a color that is visible at night. Contractor shall follow the guidelines set forth in the Manual of Uniform Traffic Control Devices (“MUTCD”). Any costs incurred to satisfy requirements of this Section 117 will be considered costs of the work.

1. TRAFFIC MAINTENANCE

It is a priority for the City to maintain access for all modes of travel, including vehicles, transit, pedestrian and bicyclists, at all times. Before proceeding with construction, Contractor shall obtain written approval from the City for the proposed method of handling traffic. The MUTCD shall be followed for traffic control. The procedures designated by this handbook may be modified by change order when necessary. Closing or otherwise severely obstructing streets, alleys, bike lanes, paths, sidewalks and road systems will be permitted only after the Project Manager has authorized Contractor in writing to do so. When a detour is necessary because a street, alley, bike lane, path, sidewalk or road system is blocked in whole or in part by the work, the City will designate its route and Contractor shall furnish, post, and maintain detour signs of the type and size required by the City at the places designated by the City prior to impairing public access or closing or otherwise obstructing a street, alley, bike lane, path, sidewalk or road system. The Superintendent designated pursuant to Section 106, Supervision at the Job Site, shall be responsible for traffic control. The Superintendent shall have the responsibility to sign documents on behalf of Contractor related to traffic control and to handle all other details covered by the contract documents that contribute to the comfort and safety of the traveling public.

1. PROJECT IDENTIFICATION

In addition to appropriate warning and traffic signs, Contractor must provide a sign at the job site that identifies Contractor and the City department in charge of construction and gives a telephone number for each. This sign shall identify an authorized representative of either or both the City and Contractor who is to be contacted whenever there is an emergency at the job site, including without limitation evenings, weekends, holidays, and all times when the job site is unattended. The sign shall be placed in a prominent location, properly supported in position, and maintained in good condition during the life of the project. Contractor must obtain a sign permit from the City before erecting the project identification sign. The sign shall be limited to free-standing, wall or window signs not exceeding thirty-two (32) square feet in total area and sixteen (16) square feet per face and may not exceed seven (7) feet in height with no riders or attachments in non-residential zones and twelve (12) square feet in total area and six (6) square feet per face and four (4) feet in height in residential zones. Section 9-9-21((d)(4)(A), B.R.C. 1981. No sign shall obstruct traffic or a motorist’s view of traffic signs, signals or other official notices. All signs shall be constructed and conform to the construction standards set forth in Section 9-9-21, B.R.C. 1981, and with the standards for temporary signs as set forth in Section 10-11-17, B.R.C. 1981. Under Section 4-21-2, B.R.C. 1981, only licensed sign contractors shall install signs for which a permit is required.

1. MAINTAINING TRAFFIC DURING SUSPENSION OF WORK

Upon any suspension of the work under this contract pursuant to Article VIII, Suspension and Termination, Contractor shall make passable and shall open to vehicles, bicyclists and pedestrians such portions of the work site as are reasonably directed by the Project Manager for the temporary accommodation of the public during the anticipated period of suspension. Thereafter, until the Project Manager orders that construction be resumed, the City shall maintain any temporary travel ways through the work site. Unless the City expressly and in writing assumes such responsibility, Contractor shall be responsible for protecting the work site itself during the period of suspension.

1. RESUMPTION OF WORK

When work is resumed after a suspension, Contractor shall replace or renew any work or materials damaged or lost as a result of temporary use of portions of the work site. Contractor shall also remove, as directed by the Project Manager, any work or materials used by the City in the maintenance of any temporary travel ways. Contractor shall complete the work in every respect as though its implementation had been continuous and without interruption. Except for suspensions of work pursuant to Section 1003, Suspension of the Work for the City’s Convenience, or Section 1008, Termination of This Contract for Convenience, Contractor shall bear the costs which result from the period of suspension and all startup costs associated with resuming the work as set forth in this Section 121.

1. DRAINAGE

Contractor shall provide at its own cost and expense all reasonable methods for adequately draining the work and shall assume full responsibility and liability for damage to any person or property resulting from inadequate or excessive drainage. Contractor shall be responsible for the preservation and protection of storm water collection systems and other natural and developed drainage ways which may be affected by work done under this Contract. This municipal service system is operated and regulated by the Utilities Division of the City of Boulder Department of Public Works. Contractor is required to notify the Director of Public Works for Utilities prior to initiation of the work when the work may diminish the system’s capabilities or may redirect water flow. This notification process does not, however, relieve Contractor of any responsibility for damage which may result from Contractor’s operations.

If the construction requires land disturbance of one acre in size or greater or less than one acre but is part of a common plan of development or sale, then Contractor shall conform to the requirements for a stormwater discharge permit associated with construction activity from the Colorado Department of Public Health and Environment (Colorado Department of Public Health and Environment, Water Quality Control Division, 303-692-3500 <http://www.cdphe.state.co.us/wq/PermitsUnit/wqcdpmt.html>). The general contractor is responsible for obtaining this permit from the Colorado Department of Public Health and the Environment and the City shall be a co-permittee pursuant to the permit requirements. Contractor shall comply with all terms and conditions of this permit and, such compliance being an obligation under this contract, shall indemnify the City for all costs, damages, or liabilities resulting from or related to non-compliance with this permit pursuant to Paragraph 208, above.

Contractor shall satisfy all environmental quality standards imposed by law and take reasonable steps to minimize the environmental impact of the work. These environmental quality standards include, without limitation, noise control, air pollution control, water pollution control, and dust control, which may be placed at risk by the activities of Contractor:

1. Contractor shall not pollute the water of any pond, lake, stream, ditch, or other watercourse, as prohibited pursuant to Title 11, Chapter 5 “Storm Water and Flood Management Utility,” B.R.C. 1981, which generally prohibits discharge of pollutants to water bodies.
2. Contractor will implement erosion control practices and stormwater best management practices in accordance with Title 11, Chapter 5 “Storm Water and Flood Management Utility,” B.R.C. 1981.
3. Contractor will comply with permits required to discharge groundwater to the storm drainage system in accordance with state law.
4. WASTEWATER

Except for sanitary sewage, which shall be discharged only into the City’s sanitary sewer system, Contractor shall not discharge any water or other liquids to the City’s sanitary sewer system. All bypassing or pumping of sanitary sewage required during construction shall be to other sanitary sewer facilities approved by the Project Manager by a field order. All existing sanitary sewer facilities shall remain in continuous and full operation during construction. All costs incurred for bypassing, removal, pumping, and disposal of wastewater and sanitary sewage during construction shall be borne by Contractor.

1. DITCH IMPACTS AND CROSSINGS

Contractor shall confirm, prior to the start of construction, which agreements the City has procured with any ditch company. If a ditch agreement has been negotiated between a ditch company and the City, Contractor is responsible for complying with the terms of that agreement.

Contractor is responsible for notifying a ditch company’s representative when the work will breach a ditch, tunnel under a ditch, is within 25 feet of a ditch, redirect the flow of a ditch, or in any way will impact or diminish the ditch system’s capability to carry water. Such notification shall occur as soon as the schedule for the work is established, but at a minimum of fourteen (14) days prior to initiating the work. This notification does not relieve Contractor of any responsibility for damage that may result from Contractor’s operations, nor does it relieve Contractor of any responsibility to obtain any necessary approvals from a ditch company. Should Contractor require additional approval from a ditch company, Contractor should note that such approvals generally take more than thirty (30) days to obtain.

1. PROTECTION OF MUNICIPAL SERVICE FACILITIES

Contractor shall provide and maintain free access to all municipal service systems including, without limitation, fire hydrants, water and gas valves, manholes, handholds, and traffic light and utility poles. All natural and developed drainage ways shall be kept open unless and until other provisions satisfactory to the Project Manager are made for the removal of storm water. If Contractor damages any municipal service systems, Contractor shall immediately repair or replace the damaged municipal service facilities at no cost to the City.

1. LIST OF MUNICIPAL SERVICE SYSTEMS

If Contractor’s work affects any municipal service system, Contractor shall notify the affected organization immediately. The term “municipal service system” or “facility” shall mean any equipment located in the public right-of-way or in a utility easement, whether or not platted or formally deeded to the City. The list below is not intended to be complete; rather, it identifies the systems which contractors encounter most frequently:

|  |  |  |
| --- | --- | --- |
| System | Agency to Contact | Telephone # |
| Telephone | CenturyLink | 1-800-954-1211 |
| Buried Utilities Location Service | Utility Notification Center of Colorado | 1-800-922-1987 |
| Streets, Roads, Alleys, Bike lanes, Paths or Sidewalks and Traffic Control Equipment | Department of Public Works/Transportation Division | 303-441-3200 |
| Sanitary Sewer Collection, Storm Water Collection and Drainage Ways; Water Distribution | Department of Public Works/Utilities Division | 303-441-3200 |
| Electrical Power Lines and Natural Gas Lines | Xcel Energy | Electric: 800-895-1999  Gas: 800-895-2999 |
| Tree Removal/Pruning in City-owned property and right-of-way | Parks and Recreation Department, Forestry Division | 303-441-4406 |
| Work within easements through public parkland | Parks and Recreation Department | 303-413-7200 |
| Open Space and Mountain Parks | Open Space Department | 303-441-3440 |
| Police and Alarms | Police Department | 303-441-3333 |
| Fire | Fire Department | 303-441-3350 |
| Cable Television | Comcast | 800-934-6489 |
| Broadband | Innovation & Technology | 303-441-3080 |

1. INTERRUPTIONS TO UTILITIES

If this Contract requires that any utility be interrupted or Contractor desires to interrupt a utility for its convenience, it shall promptly contact the affected utility and customers and obtain the necessary permissions. The interruption shall be confined to the least possible time period and cause the least possible inconvenience to service recipients. Contractor shall bear all costs related to a utility interruption. If such an interruption is required by this Contract, the City shall be liable only for those costs included in Contractor’s bid.

1. UTILITIES, STRUCTURES, AND CONDITIONS SHOWN IN CONTRACT DOCUMENTS
2. Except as set forth in paragraph B, below, existing underground, surface or overhead utilities, structures and conditions may be omitted in the drawings, specifications and other contract documents and those shown may not be accurately situated or drawn to scale. Contractor shall be responsible for protecting all such utilities as described below.
3. The approximate locations of underground facilities and the tie in points that are owned or operated by the City are shown on the plans and specifications. As part of the work contractor shall, on behalf of the City, locate and mark the precise location of such facilities as required by Section 9-1.5-101, *et seq*., C.R.S. In addition, the plans and specifications may indicate that the location of any underground facilities owned or operated by the City are “unknown,” “uncertain” or “within a range.” Contractor shall have full responsibility for determining the exact location of all the above-mentioned underground facilities by “potholing,” “handwork” or such other means as may be necessary to determine the precise location without damaging such underground facilities. This work is included in the contract price unless called out in the bid as a separate pay item. The precise location of all such underground facilities shall be incorporated into the record drawings by Contractor.
4. Contractor shall notify the “Utility Notification Center of Colorado” in a timely fashion, as required by Section 9-1.5-101, *et seq*., C.R.S. Contractor shall request written record of any information from all owners or operators of underground facilities (as defined in the above statute) regarding the location of the specific underground facilities. Contractor shall comply with all requirements of the above statute as it pertains to the “excavator.” The City shall not be responsible for the accuracy or completeness of any information provided by third-party owners or operators of underground facilities, including the marking thereof.
5. The cost of the following will be included in the contract price and contractor shall have full responsibility for:
   * 1. Reviewing and checking all information and data provided by all owners or operators of underground facilities;
     2. Locating all underground facilities shown or indicated in the contract documents;
     3. Coordination of the work with the owners and operators of all underground facilities during construction;
     4. The safety and protection of all utilities and the entire expense of repairing or replacing any utilities or structures disturbed or damaged during construction;
     5. All coordination and implementation associated with any necessary relocation or removal of utilities, including relocation and removal which must be performed by third parties.
     6. The location and protection of all individual service lines, notwithstanding any requirements to the contrary in Section 9-1.5-101 *et seq*., C.R.S.
     7. The repair of any damage to utilities that have been properly located by the designated utility locating service and for utilities for which Contractor has not obtained the proper field location marking.
6. If any underground facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the contract documents or by reason of information supplied pursuant to Section 9-1.5-101 *et seq*., C.R.S., Contractor shall promptly, after becoming aware thereof and before further disturbing conditions affected thereby or performing any work in conjunction therewith (except in emergency situations), identify the owner of such underground facility and give written notice to that owner, the “Utility Notification Center of Colorado”, and the City. The location of all such underground facilities shall be incorporated into the record drawings by Contractor. The City will promptly review the underground facility and determine the extent, if any, to which a change is required in the contract documents to reflect and document the consequences of the existence of the underground facility. During such time, Contractor shall be responsible for the safety and protection of such underground facility. Contractor shall be allowed an increase in contract price, or an extension of contract time, or both, in accordance with Article IV, Change in Contract Terms, to the extent that they are attributable to the existence of any underground facility that is not shown or indicated in the contract documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If the City and contractor are unable to agree on entitlement to or the amount or length of any such adjustments in the contract price or contract time, Contractor may make a claim therefore as provided in the contract documents.
7. In the event of a break in an existing water main, gas main, sewer or underground cable, Contractor shall immediately notify the responsible official of the organization operating the utility interrupted and the Project Manager and shall lend all possible assistance in restoring service.
8. ARCHAEOLOGICAL AND HISTORICAL DISCOVERIES

If any fossils or treasure or unusual or valuable geological formations are found during the work, such items shall be carefully preserved by Contractor, who shall notify the Project Manager and request instructions regarding the disposition of these items. These items are the property of the City. In addition, Contractor shall inform the Project Manager of any evidence that might suggest to a lay person that deposits of historical or archeological interest or treasure or unusual or valuable geological formations may be present on the work site. Upon making such a discovery, Contractor shall avoid disturbing that part of the work site. This could require that Contractor’s activities be redirected or stopped until the Project Manager determines how to proceed. No further disturbance of such discoveries shall be made until the Regional Office of the Environmental Protection Agency and the State Historical Preservation Officer have been notified and the Project Manager determines how the work should proceed. If the Project Manager finds that protecting such discoveries causes an increase or decrease in Contractor’s cost or time required to perform the work, an equitable adjustment will be made in the contract price and/or time of performance, in accordance with Article IV, Change in Contract Terms.

1. HAZARDOUS OR EXPLOSIVE MATERIALS

Before using or storing hazardous or explosive materials at the work site, Contractor shall inform the Project Manager and the City’s fire department of the proposed action in writing and shall receive the Project Manager’s written approval before proceeding. Explosives or hazardous materials shall be handled and used by experienced workers only. All firing shall be done by electricity. All storage places shall be marked clearly: “DANGEROUS –EXPLOSIVES” or “DANGEROUS - HAZARDOUS MATERIALS.” Caps or other exploders shall not be stored at the same place where dynamite or other explosives are stored. All explosives, firing devices, and other hazardous materials shall be kept in locked containers.

1. PROTECTION OF PRIVATE PROPERTY

Contractor shall not enter upon private property for any purpose without having previously obtained permission from the property owner. Contractor shall be responsible for the preservation of, and shall use every reasonable precaution to prevent damage to, all private property adjacent to the work site. Contractor shall repair or replace any damage, injury, or loss to such property caused directly or indirectly, in whole or in part, by Contractor or any subcontractor, their employees or agents, or anyone directly or indirectly employed by them or anyone for whose acts anyone of them may be responsible, to a condition substantially similar or equal to that existing before such damage was done by repairing, rebuilding, or otherwise restoring the property or paying the owner for such damage as may be directed by the Project Manager. If Contractor fails to restore such property or pay for such damage, the City may, upon forty-eight (48) hours’ written notice to Contractor under ordinary circumstances, and without notice when a nuisance or hazardous condition results, repair, rebuild, or otherwise restore such property or pay for such damage and the cost thereof shall be deducted from any payments due to Contractor under this Contract. If not so deducted, Contractor shall immediately reimburse the City for the cost thereof.

Contractor shall immediately notify the Project Manager of all proposed uses of private property related to the project. Contractor shall provide written verification that the use of the private property has been negotiated with and approved by the private property owner prior to the use of the property. Verification shall include Boulder County records related to property ownership and signed and notarized agreement(s) between the property owner and Contractor. Uses of private property that are considered directly related to the project include, but are not limited to, material storage, equipment or manpower access, material disposal, and material borrow. In case Contractor negotiates use of the private land(s) with property owners for its convenience, Contractor shall be fully responsible for all related negotiations and payments.

1. PROTECTION OF EXISTING PLANT MATERIALS

Contractor shall be responsible for taking all reasonable steps for protecting, transplanting, and replanting existing trees, shrubs, and other plant materials that may be affected by the work. Plants designated to remain shall be protected by construction fencing or barriers at all times during the entire contract period. No material shall be stockpiled, and no equipment shall be parked or repaired within twenty-five (25) feet of existing trees unless it is impossible to avoid doing so and permission is first obtained from the Project Manager. No oil, gasoline, concrete, or other materials shall be dumped or temporarily stockpiled anywhere on site unless permission is first obtained from the Project Manager. Contractor shall be responsible for the mitigation of any plants damaged or scarred during construction at Contractor’s expense pursuant toChapter 6-6, “Protection of Trees and Plants,” B.R.C. 1981. Where separations expose or damage the root systems of plants designated to remain, Contractor shall take remedial measures at the direction of the Project Manager within two (2) hours or as soon as reasonably possible to insure the health of the plant. Plants designated to remain, but which are, in the opinion of the Project Manager, damaged beyond repair, shall be replaced by Contractor at Contractor’s own expense with a similar size and species chosen by the Project Manager. Any existing sod damaged by the construction operations shall be replaced by Contractor at Contractor’s own expense. Contractor’s liability for damages due to injured plant materials shall not be limited to the replacement of such materials, but shall also include damages incidental to removing and replacing such materials. No plant materials shall be cut except with the written permission of the Project Manager. If Contractor must repair or replace damaged plant materials, Contractor shall guarantee such replacement materials for one full growing season following the planting thereof. As used herein, the growing season begins on April 1 and ends on August 31.

1. PLANTING, PROTECTION AND GUARANTEE OF PLANT MATERIALS

Contractor shall take special care when plant materials have been planted as part of the work. If such plant materials are damaged or die from natural causes or due to the negligence of Contractor within a period of one (1) full growing season from the date of planting, then Contractor shall replace such plant materials with plant materials of the same size and quality at no cost to the City. Damaged plant materials shall be replaced no later than the following growing season, and sooner if possible. As used herein, the growing season begins on April 1 and ends on August 31. The Project Manager shall approve all plant materials, including replacement materials, in writing before the planting thereof. If Contractor must replace any plant materials, Contractor shall guarantee such replacement items for a period of one full growing season following the planting thereof. If the plant materials so replaced are damaged or die from natural causes or due to the negligence of Contractor during the guarantee period, Contractor shall replace such damaged plant materials, and again guarantee them for an additional full growing season, and so on until the guarantee is fully met.

If the Project Manager directs, Contractor shall guarantee proper performance of landscaping materials for a period of two years from the date of final completion and secure this guarantee with a maintenance bond. This maintenance bond shall be based on the cost of landscaping as set forth in the bid schedule or schedule of values and shall only apply to landscaping maintenance purposes including, without limitation, replacement of trees, shrubs, reseeding, weed control, operation and repair of sprinkler system, and any other maintenance requirements.

134. WEED MANAGEMENT PROGRAM

All weed control practices shall be in accordance with the City’s [Integrated Pest Management Policy](https://bouldercolorado.gov/sites/default/files/2021-02/2019cityofboulderintegratedpestmanagementpolicy.pdf), available from the city of Boulder at <https://bouldercolorado.gov/services/integrated-pest-management-program> or by phone: 303-441-1901. Contractor shall prepare a weed management plan in accordance with this policy and submit it to the project manager and the City’s Integrated Pest Management Coordinator. Chemicals shall not be used for weed control unless allowed by the City’s Approved Pesticide List for the weed species and site type and/or location. All pesticide applications must comply with the appropriate pre- and post-notification requirements, according to the City of Boulder’s Pesticide Ordinance (Section 6-10-1 B.R.C. 1981). For all City pesticide applications, notification will be posted at the site at least 24 hours in advance, remain on-site for at least 24 hours, and must also posted to the City’s online pesticide dashboard. Information including chemical, target weed species, application method, site location and project manager contact information must be submitted to the City’s Integrated Pest Management Coordinator by Friday the week prior to the herbicide application date.

135. WORK IN EXISTING BUILDINGS

If the work involves an existing building, Contractor shall plan and execute the work to avoid unnecessary damage to walls, ceilings, ducts, pipes, wires, and any other building elements. Contractor shall organize and plan the work to reduce to a minimum the need for cutting or otherwise removing load bearing structural elements to accommodate the installation of piping, ductwork, or equipment. If two or more persons are doing work in the same place, Contractor shall be responsible for coordinating efforts. If cutting or removal of structural elements is necessary because the work could not be organized and planned to avoid such cutting or removal, Contractor shall so inform the Project Manager. Contractor shall not damage or endanger any portion of other work of the City or any separate contractor by cutting, patching, excavating, or otherwise altering any work, except with the written consent of the Project Manager and of such separate contractor. Such consent shall not be unreasonably withheld. Contractor shall be responsible for all repair, replacement and patching that becomes necessary. If the work involves an existing building, Contractor or shall erect and maintain during the progress of the work suitable dustproof partitions to protect the building and the occupants thereof. Contractor shall schedule the work of subcontractors and other persons in order that each may accomplish the work in an efficient and orderly fashion and in a manner that will permit maximum use of the building and minimize impairment of any existing facilities.

136. CONNECTIONS TO EXISTING FACILITIES

Unless otherwise specified or indicated, Contractor shall make all necessary connections to existing facilities, including, without limitation, structures, drain-lines, and utilities such as water, sewer, and electric. In each case, Contractor shall receive permission from the City or the owning utility prior to undertaking connections. Contractor shall protect facilities against deleterious substances and damage.

Connections to existing facilities that are in service shall be thoroughly planned in advance and all required equipment, materials, and labor shall be on hand at the time of undertaking the connections. Work shall proceed continuously, around the clock if necessary, to complete connections in the minimum time. Utilities interruptions shall be kept to a minimum and scheduled for the least inconvenient time for service recipients. Operation of valves or other appurtenances on existing utilities, when required, shall be by or under the direct supervision of the owning utility.

137. REMOVAL/REPLACEMENT OF EXISTING FACILITIES

Contractor shall perform all removal and replacement required for, and in connection with, the work, including but not limited to, the following:

1. Removal of improperly timed work;
2. Removal of samples of installed materials for testing;
3. Alteration of existing facilities;
4. Installation of new work in existing facilities.

Contractor shall provide all shoring, bracing, supports, and protective devices necessary to safeguard all work and existing facilities during cutting and patching operations. Contractor shall not undertake any cutting or demolition that may affect the structural stability of the work or existing facilities without the Project Manager’s concurrence.

Materials shall be cut and removed to the extent indicated on the drawings or as required to complete the work. Materials shall be removed in a careful manner, with no damage to adjacent facilities or materials. Materials which are not salvable shall be removed from the site by contractor.

All work and existing facilities affected by cutting operations shall be restored with new materials, or with salvaged materials acceptable to the Project Manager, to obtain a finished installation with the strength, appearance, and functional capacity required. If necessary, entire surfaces shall be replaced and refinished.

138. PROTECTION AGAINST WEATHER

All work and construction materials, unless otherwise protected, shall be protected in a manner to prevent damage to the construction materials. Sufficient covering shall be kept ready at the work site for this purpose. If the City chooses to protect any construction materials or work done under this Contract that Contractor has left unprotected, Contractor shall reimburse the City for the value of City labor and materials expended in protecting the work or construction materials.

139. TEMPORARY ENERGY, WATER, TELEPHONE AND OTHER SERVICES

Contractor shall pay for all temporary energy, water, telephone, and other services needed to do the work and provide and pay for all temporary facilities needed to deliver such services to the work. Temporary facilities shall be installed and maintained to protect the public and workers and shall conform to any applicable requirements for the delivery of the services. Upon completion of the work, Contractor shall remove all such temporary facilities. Contractor may use a structure’s permanent heating system to provide temporary heat if the Project Manager pre-approves this in writing. If temporary heating is required for the benefit of the City before the permanent heating system is available, Contractor shall provide safe heating apparatus acceptable to the Project Manager and shall provide all fuel that is required. All expenses resulting from temporary heating shall be paid for by Contractor and not reimbursed by the City. When the heating system in any new construction is ready for operation, Contractor may put it into operation and remove the temporary heating equipment. Operation of the heating system before the City issues a certificate of substantial completion is at Contractor’s risk and expense.

140. SANITARY FACILITIES

Contractor shall provide and maintain suitable, weather tight, plastic or painted sanitary toilet facilities for any and all workers engaged on the work for the entire construction period. Contractor shall keep the toilets clean. When the toilet facilities are no longer required, Contractor shall promptly remove them from the site and disinfect and treat the site area as required. Toilet facilities of any existing building at or near the site shall not be used by employees or agents of Contractor or subcontractors unless the Project Manager grants prior written approval.

141. MONUMENTS AND STAKES

Prior to starting work on site, Contractor shall hire a licensed surveyor to locate and stake, with a very visible temporary stake, all existing property corner markers and survey monuments within the planned disturbance area of the project or within the right-of-way access to the project. Contractor shall not disturb any monuments or stakes until so ordered by the Project Manager. In case any monument or stake is disturbed by Contractor without orders from the City, Contractor shall pay the cost of the survey and other work required to relocate the same. Any work done without being properly located and established by base lines, offset stakes, benchmarks, or other basic reference points located, established, or checked by the City may be ordered removed and replaced by a licensed surveyor at Contractor’s expense. In such case, Contractor shall bear any expense to the City caused by improper location of the work.

142. PROTECTION OF THE ENVIRONMENT

Contractor shall satisfy all environmental quality standards imposed by law and take reasonable steps to minimize the environmental impact of the work. These environmental quality standards include, without limitation, noise control, air pollution control, water pollution control, and dust control. In addition:

1. Contractor shall not burn any trash, rubbish, or other materials except in accordance with the provisions of Paragraph 10-8-2(b)(12), B.R.C. 1981.
2. Contractor shall not pollute the water of any pond, lake, stream, ditch, or other water course on City property, as prohibited pursuant to Section 5-4-11, B.R.C. 1981.
3. Contractor shall not deposit in any part of the water utility any substance or material that will injure or obstruct the utility or contaminate or pollute the water or obstruct the flow of water, as prohibited pursuant to Section 11-1-12, B.R.C. 1981.
4. Contractor shall comply with the provisions of Chapter 11-3, B.R.C. 1981, regarding industrial and prohibited wastewater discharges.
5. Contractor shall not discharge visible emissions from motor vehicles pursuant to Section 7-3-5, B.R.C. 1981.
6. Contractor shall implement erosion control practices and stormwater best managements practices in accordance with Section 11-5-6, B.R.C. 1981.
7. Contractor will comply with permits required to discharge groundwater to the storm drainage system in accordance with Section 11-5-8, B.R.C. 1981.

Should Contractor or its subcontractors fail to satisfy environmental quality standards, the City shall have the right to employ outside assistance, City employees, or a private contractor to provide control and clean up, as necessary. All such costs may be deducted from any payment due to Contractor or charged to Contractor directly.

143. NOISE CONTROL

Contractor shall comply with all provisions of Chapter 5-9, Noise, B.R.C. 1981. If Contractor believes that the work will violate these provisions, Contractor shall notify the Project Manager and shall also apply for a variance from the City’s Environmental and Zoning Enforcement Division before beginning the work. A variance may be granted if it is found that compliance with these standards twill cause an undue hardship and it is found that:

1. The activity, operation or sound source will be of temporary duration, and even with the application of the best available control technology cannot be done in a manner that would comply; and
2. No reasonable alternative is available to the applicant.

If a variance is granted, reasonable conditions or requirements may be prescribed to minimize adverse effects upon the community or the surrounding neighborhood.

144. STORAGE AND REMOVAL OF CONSTRUCTION MATERIALS

Contractor shall routinely keep the work site and the surrounding premises free of accumulated waste materials and rubbish. Contractor shall provide adequate trash receptacles about the site and shall promptly empty the containers when filled. Waste materials must be removed regularly to a suitable landfill or recycling facility. Volatile wastes shall be properly stored in covered metal containers and removed daily. Wastes shall not be buried or burned on the site or disposed of into storm drains, sanitary sewers, streams or waterways. If space is available, the Project Manager may designate a place on the site to collect debris, rejected materials and other waste materials. If such a place is designated, Contractor shall, at Contractor’s sole expense, install fencing and whatever else is necessary to keep loose materials confined so that they are not scattered by wind. Contractor shall be liable for any damage caused by construction materials which have been scattered by wind. Contractor and all subcontractors are hereby notified of the frequent wind hazards of Boulder and waive any defense that wind gusts of high velocity could not be anticipated. Reusable construction materials such as concrete forms and scaffolding shall be neatly stacked by contractor when not in use. Contractor shall promptly remove splattered concrete, asphalt, oil, paint, corrosive liquids, and cleaning solutions from surfaces to prevent marring or other damage. Progress payments may be withheld if Contractor fails to maintain the work site in a clean, orderly, and safe condition.

Contractor shall re-use and recycle, to the greatest extent possible, the waste produced as a result of the project. Unless otherwise indicated or specified, existing materials and equipment removed as a part of the work shall become contractor’s property. Contractor shall carefully remove, in a manner to prevent damage, all materials and equipment specified or indicated to be salvaged and reused or to remain the property of the City. Contractor shall store and protect salvaged items specified or indicated to be reused in the work. Salvaged items not to be reused in the work, but to remain the City’s property, shall be delivered by contractor in good condition to the City as directed by the Project Manager or at the City Yards. Any items to be reused or salvaged that are damaged in removal, storage, or handling through carelessness or improper procedures shall be replaced by contractor in kind or with new items. Contractor may, at its option, furnish and install new items in lieu of those specified or indicated to be salvaged and reused, in which case such removed items will become contractor’s property. Existing materials and equipment removed by contractor shall not be reused in the work except where so specified or indicated.

145. EXISTING TRAVEL WAYS CONDITIONS DURING CONSTRUCTION

When reasonable and appropriate, equipment, tools, and materials shall be kept out of traveled ways such as streets, alleys, sidewalks, paths and bike lanes. Equipment which may endanger vehicular traffic must be lighted and marked to warn motorists. No sand, gravel, rocks, mud, dirt, or other debris may be deposited upon any streets, alleys, sidewalks, paths and bike lanes in violation of Section 8-2-10, B.R.C. 1981. If Contractor does not comply with this provision after receiving written notification, the City may have the debris removed and the costs of removal may be deducted from any payment to Contractor or charged to Contractor directly.

146. POST-CONSTRUCTION CLEANUP AND REPAIRS

At the completion of the work, Contractor shall remove all spots from floors, walls, ceilings, windows and doors and, where necessary, refit windows, doors and cabinet work. Contractor shall also clean all window glass and all plumbing fixtures. Contractor shall make such minor repairs and alterations as may be necessary to make any building or structure ready for occupancy. Contractor shall replace all broken and scratched glass with material which complies with the contract documents. This Section 145 shall not apply after or to the extent that the City has taken possession of a building on which Contractor has performed work. On all street construction projects, Contractor shall conform the work to acceptable line and grade, as determined by the Project Manager. In addition, Contractor shall have the streets, alleys, sidewalks, paths and bike lanes affected by the work swept clean of sand, gravel, rocks, mud, dirt or other debris by a street, alley, sidewalk, path and bike lane cleaner when necessary, as determined by the Project Manager. The City will not authorize final payment until Contractor has removed all rubble and other debris from the street and adjoining work area.

147. CHANGES IN THE WORK MUST BE NOTED

Contractor shall maintain at Contractor’s field office one copy of all drawings and specifications in good condition and immediately note thereon all changes made during the construction process. Any deviation between the drawings and specifications and the work actually done must be noted on this set of drawings, which should be referred to as the “as built” set of drawings. If Contractor performs work that is at variance with the plans and specifications, Contractor has the burden to prove to the City that it has provided work equally suited for the purpose and of equal value. All underground utility structures encountered or constructed in the process of doing the work shall be correctly located on the drawings and provide to the City electronic mapping files in a format approved by the City. When the work is completed, Contractor shall deliver this “as built” set of drawings and specifications to the Project Manager as a condition precedent to final payment.

148. DISPUTES BETWEEN CONTRACTOR AND THE PROJECT MANAGER

Contractor shall follow all instructions issued by the Project Manager. If Contractor requests clarification or interpretation of any contract documents Contractor shall notify the Project Manager in writing. The Project Manager shall issue a written response to Contractor within ten (10) days following Contractor’s request. If the Project Manager fails to issue a written reply within ten (10) days after receipt of Contractor’s request for interpretation, Contractor may suspend the portion of the work that is the subject of the dispute. Contractor shall be granted a time extension of one (l) day for each day following the suspension for which the Project Manager fails to issue a written resolution of the dispute if the entire work is suspended. However, if the suspension applies to only a part of the work, a time extension will not be authorized until the partial suspension has run and its effect on the entire contract can be evaluated. Contractor shall not work on any part of the work which is the subject of a dispute between Contractor and the Project Manager until the Project Manager issues a written notice to continue. If Contractor proceeds with work which is the subject of a dispute between the Project Manager and Contractor, and Contractor later must replace this work because the Project Manager determines that the work was not performed in accordance with the contract documents, Contractor shall bear all costs of removal and replacement of the non-conforming work.

# ARTICLE II. BONDING, INSURANCE, AND TAXES,

1. BOND REQUIREMENTS

A performance bond and a labor and material bond is required for all contracts. The performance bond and the labor and materials bond, in the full amount of the contract price, are attached as Form 1 and Form 2, respectively, and incorporated herein by this reference... The bonds have been issued by a surety authorized by the State of Colorado to do business in Colorado and admitted in the State of Colorado with an A.M. best rating of A-VI or better and be named in the current list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in circular 570 (amended) by the Audit Staff, Bureau of Accounts, U.S. Treasury Department. If at any time a surety that has issued the performance bond or the labor and material bond becomes insolvent or the subject of bankruptcy proceedings or loses its right to do business in Colorado, another surety shall be required, which Contractor shall obtain within five (5) days after receipt of any form of notice of such event. In the event that there is a conflict between the City-approved bond form and any other contract entered into between Contractor and the surety on either the performance or the labor and material payment bond, the conditions stipulated in the City-approved bond form shall control. Contractor shall also notify the City immediately if the surety becomes insolvent or the subject of bankruptcy proceedings or loses its right to do business in Colorado pursuant to Section 805, Contractor Shall Notify the City of Certain Events. In the event that the contract price is increased due to a change order, the City reserves the right to require Contractor to procure additional performance and labor and material payment bonds to cover the increase in the contract price. The City shall reimburse Contractor for the increased cost of such additional bonds, which will be added to the contract price by an executed change order.

1. PERFORMANCE BOND

The performance bond is a guarantee for the faithful performance and completion of the work in strict accordance with the terms of this Contract. The performance bond is also a guarantee for the repair or replacement of all work found by the City to be defective or otherwise unacceptable during this Contract’s performance time and through the guarantee period. *See* Article VI, Contractor’s Warranty and Guarantee. With regard to design/build contracts, unless otherwise specified, the performance bond guarantees the faithful performance and completion of all design work, as well as construction. The performance bond shall stay in effect during the guarantee period set forth in Section 601, Contractor’s Warranty and Guarantee. The surety that executed the performance bond has waived any right to independent notice under this Contract if Contractor receives such notice and consents to any extension of time, modification, waiver, forbearance, or change which may be made in any of the terms and conditions of this Contract by the parties or by their successors or assigns. In the event that the guarantee period for this Contract is extended pursuant to Section 617, Extension of the Guarantee Period and Additional Bond Requirements, past the original guarantee period, Contractor’s performance bond shall cover automatically the extension of the guarantee period. If a product is used in the work and the product fails before the guarantee period (including extensions) has expired, Contractor must replace the defective product and guarantee the product during a new guarantee period for the same length of time as the original guarantee period, unless the defective product is the result of a design error caused by the City, or an architect, engineer, or Project Manager whom the City employed.

1. LABOR AND MATERIAL PAYMENT BOND

The labor and material payment bond guarantees that all those performing labor or furnishing materials, supplies, tools and equipment under this Contract shall be paid. The surety that executed the labor and material bond has waived any right to independent notice under this Contract if Contractor receives such notice, and consents to any extension of time, modification, waiver, forbearance, or change which may be made in any of the terms and conditions of this Contract or by the parties or by their successors or assigns.

1. INSURANCE POLICIES

Contractor shall procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Section 204. Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Section 204 by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

Contractor shall procure and maintain and, if applicable, shall cause any subcontractor of Contractor to procure and maintain the insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the City. All coverage shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Contractor pursuant to this Section 204 for the statutes of limitation and repose. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

Contractor shall obtain and maintain the minimum insurance coverages set forth below, unless specified otherwise in the Special Conditions. By requiring such minimum insurance, the City shall not be deemed or construed to have assessed the risk that may be applicable to Contractor. Contractor shall assess its own risks and if it deems appropriate and / or prudent, maintain higher limits and / or broader coverages.

* 1. Insurance Coverages
     1. ***Commercial General Liability – ISO CG 00001 or equivalent. Coverage to include:***
        + Premises and Operations
        + Explosions, Collapse and Underground Hazards
        + Personal / Advertising Injury
        + Products / Completed Operations
        + Liability assumed under an Insured Contract (including defense costs assumed under contract)
        + Broad Form Property Damage
        + Independent Contractors
        + Designated Construction Projects(s) General Aggregate Limit, ISO CG 2503 (1997 Edition)
        + Additional Insured—Owners, Lessees or Contractors Endorsement, ISO Form 2010 (2004 Edition or equivalent)
        + Additional Insured—Owners, Lessees or Contractors Endorsement, Completed Operations, ISO CG 2037 (7/2004 Edition or equivalent)
        + The following exclusions are absolutely prohibited and shall not be included in Contractor’s policy if applicable to the work:
        + No exclusion for “third-party action over suits” or any similar restriction of coverage applicable to claims brought against others by an employee of Contractor or its Subcontractors
        + No damage to Work performed by Contractor exclusion (CG 22 94 or similar)
        + No residential or habitational exclusion or coverage limitation
        + No exclusion for EIFS (Exterior Insulation Finish System) or any similar exclusion applicable to the Work
        + No exclusion for subsidence, which is specifically prohibited for any work involving excavation, soil stabilization, earth retention, concrete, structural steel, landscaping, waterproofing, fire protection and plumbing.
        + No exclusion for low-level radioactive isotopes
     2. ***Automobile Liability including all:***
        + Owned Vehicles
        + Non-Owned Vehicles
        + Hired Vehicles

Automobile Liability Coverage endorsements CA9948 and MCS-90 are required if Contractor is transporting any type of hazardous materials.

* + 1. ***Excess/Umbrella Liability***
* Excess of Commercial General Liability, Automobile Liability, and Employers' Liability.
* Coverages should be as broad as primary.
* The City reserves the right to require higher limits.
  + 1. ***Workers’ Compensation***
* Statutory Benefits (Coverage A)
* Employers Liability (Coverage B)
  + 1. ***Installation Floater***
* ***“***All Risk
* Faulty workmanship
* Labor costs to repair damaged work
  + 1. ***Contractors Pollution Liability/Environmental Impairment Liability***

The City requires this coverage whenever work at issue under this contract involves potential pollution risk to the environment or losses caused by pollution conditions including but not limited to asbestos, building enclosure systems, plumbing, roofing, heating, ventilation, air conditioning, drywall, insulation, building foundations, or any work which includes Microbial Matter, Mold, Fungi, or Bacteria and any work which will involve the use of hazardous materials that may arise from the operations of Contractor (and its subcontractors) described in Contractor’s bid and specifications. Policy shall cover Contractor’s completed operations. Such coverage shall be on an occurrence basis and include:

* + - * Bodily Injury, sickness, disease, mental anguish or shock sustained by any person, including death.
      * Property Damage including natural resource damages, physical injury to or destruction of tangible property including resulting loss of use, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed.
      * Defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
      * Cleanup costs, removal, storage, disposal, and or use of the pollutant; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.
      * Coverage shall apply to sudden and gradual pollution conditions resulting from the escape of release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos).
    1. ***(If applicable) Professional Liability Policy***

For Contractor and any subcontractor of any tier that is providing any professional services, including but not limited to: design, architecture, engineering, testing, surveying, or design/build services, temporary engineering, engineered excavations and shoring systems, post-tension supply, structured steel, specialized millwork that is performance specified, roofing or waterproofing systems, curtainwall, mechanical, fire protection systems, electrical, fire alarm systems.

Contractor and/or all subcontractors providing professional services shall provide and maintain Professional Liability Insurance coverage. Coverage shall include coverage for contractual liability. Contractor and subcontractors shall maintain for the statute of repose, following completion of the project. Any erosion of insurance limits required will be reinstated to the required amounts prior to commencing the contracted work and if during the contracted period claims are made against the design professional’s policy the necessary reduction of available limits will be repurchased to the contractually required amounts.

1. Limits Required

Contractor shall carry the following limits of liability as required below:

1. ***Commercial General Liability***

|  |  |
| --- | --- |
| General Aggregate | $5,000,000 |
| Products/Completed Operations Aggregate | $5,000,000 |
| Each Occurrence Limit | $2,000,000 |
| Personal/Advertising Injury | $1,000,000 |
| Fire Damage (Any One Fire) | $ 50,000 |
| Medical Payments (Any One Person) | $ 5,000 |
| 1. ***Excess/Umbrella Liability (as needed)***   General Aggregate Limit | $5,000,000 |
| Products/Completed Operations Aggregate | $5,000,000 |

1. ***Automobile Liability***

Bodily Injury/Property Damage (Each Accident) $3,000,000

1. ***Workers’ Compensation***

Coverage A (Workers’ Compensation) Statutory

Coverage B (Employers Liability)

Each Accident $ 2,000,000

Disease Ea. Employee $ 2,000,000

Disease-Policy Limit $ 2,000,000

**NOTE: Independent contractors that do not carry Workers’ Compensation are required to complete an independent contractor's form provided by the City.**

1. ***Installation Floater/Builder’s Risk***

For materials and equipment to be installed:

Shall be written for 100% of the completed value (replacement cost basis)

Deductible maximum is $10,000.00

Waiver of Subrogation applies on Installation Floater/Builder’s Risk

1. ***Contractors Pollution Liability/Environmental Impairment Liability (as needed)***

Per Loss $1,000,000

Aggregate $1,000,000

If Contractor’s work includes remediation of asbestos or mold, then the minimum limits required shall be:

Each Occurrence $ 5,000,000

Aggregate $ 5,000,000

Maximum allowable deductible, to by paid by Contractor $ 25,000

1. ***Professional Liability***

Each Claim $ 1,000,000

Aggregate $ 1,000,000

Maximum allowable deductible, to be paid by Contractor $ 25,000

1. ADDITIONAL INSURANCE REQUIREMENTS

Failure of Contractor to fully comply with these requirements during the term of this Contract may be considered a material breach of contract and may be cause for immediate termination of this Contract at the option of the City.

* 1. All insurers must be licensed or approved to do business within the State of Colorado, and unless otherwise specified, all policies must be written on a per occurrence basis (excepting Professional Liability).
  2. Contractor shall name **“The City of Boulder, its elected and appointed officials, directors, officers, employees, agents and volunteers” as additional insured** (“Additional Insured”) where commercially available.
  3. All policies of insurance shall be written on a primary basis, non- contributory with any other insurance coverages and/or self-insurance carried by the City.
  4. A Separation of Insureds Clause must be included in general liability policies.
  5. Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limit. At its own expense, Contractor will reinstate the aggregate limits to comply with the minimum requirements and shall furnish to the City a new certificate of insurance showing such coverage is in force.
  6. Contractor’s insurance carrier shall possess a minimum A.M. Best’s Insurance Guide rating of A- VI.
  7. Commercial General Liability Completed Operations policies must be kept in effect for the statute of repose.
  8. Contractors Pollution Liability policies must be kept in effect for the statute of repose.
  9. Contractor, or Contractor’s insurance broker, shall notify the City of any cancellation or reduction in coverage or limits of any insurance within seven (7) days of receipt of insurer’s notification to that effect. Contractor shall forthwith obtain and submit proof of substitute insurance in the event of expiration or cancellation of coverage.
  10. **The Certificate Holder shall be identified as: City of Boulder, P.O. Box 791, Boulder, CO 80306**.
  11. Contractor is responsible for any damage or loss to its own vehicles or equipment.
  12. The City and Contractor shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.
  13. Contractor and its insurers shall waive subrogation in favor of Additional Insured parties.
  14. Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this contract by reason of its failure to procure or maintain insurance or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

1. RISK OF LOSS OR DESTRUCTION OF THE WORK DURING CONSTRUCTION

Contractor shall bear the risk of any loss or destruction to the work at any time before the City issues a certificate of substantial completion pursuant to Section 613, Substantial Completion. Contractor shall bear any cost or expense arising out of the work, or from Contractor’s actions, or from the action of the elements such as wind, flood, snow, hail, etc., or from ground water, or from subsidence or failure of subjacent support, or any other obstruction or difficulty which may be encountered in the work.

1. INSURANCE TERM

All required insurance in this Article II, except builder’s risk, shall remain in effect for the statute of repose. In the event of non-renewal or cancellation of any insurance coverage, Contractor shall notify the Project Manager immediately and shall suspend work under this Contract until the City issues written instructions to proceed with the work.

1. INDEMNIFICATION

Contractor shall defend, indemnify and hold harmless the City, its directors, officers, employees, elected and appointed officials and agents from and against all claims, damages, losses, obligations, demands, assessments, fines, penalties (whether civil or criminal), liabilities, costs, expenses, bodily and other personal injuries, damage to tangible property, of any kind or nature suffered or incurred by the City directly or indirectly arising from or related to: (i) any act or omission by contractor its employees, agents, subcontractors or its representatives or other parties for which contractor may be legally responsible in the performance of contractor’s obligations under this contract, or (ii) any material breach in a representation, warranty, covenant or obligation of contractor contained in this contract. . These shall include without limitation reasonable attorneys’ fees and costs of defense. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section 208.

1. CITY SALES AND USE TAX

Contractor is deemed to be the consumer of the materials used in all construction projects in Boulder. Therefore, all tangible personal property used in the construction project is subject to the current City sales or use tax pursuant to Section 3-2-2, B.R.C. 1981. The City sales tax is imposed on all sales, rentals, leases and taxable services used in the construction project. The City’s construction use tax is imposed upon tangible personal property and taxable services purchased for construction use in the City whether purchased inside or outside of the City. Both non-residents and residents of the City engaged in a construction project in the City are liable to pay the City construction use tax. No credit will be given for taxes paid to another municipality. The general contractor is liable for the payment of the City’s sales and use tax for the total project including tax due by its subcontractors.

210. STATE SALES AND USE TAX

Pursuant to Section 39-26-114, C.R.S., all materials to be incorporated into city projects are exempt from the RTD and State of Colorado sales and use taxes. Bids shall exclude these taxes.

# ARTICLE III. TERM

1. CONSTRUCTION PROGRESS SCHEDULE

Contractor shall submit to the Project Manager a proposed construction progress schedule within five (5) days following the notice to proceed. The construction progress schedule shall be subject to the Project Manager’s approval, which approval shall not be unreasonably withheld. The construction progress schedule shall comply with the specifications of the contract documents and shall be in the form of a graphic display indicating the proposed construction sequence for key elements of the work and the anticipated start and finish dates for each of the key elements. The schedule shall be coordinated with the critical times and dates contained in the contract documents. The City will use the construction progress schedule to monitor progress of the work. Contractor shall keep an annotated copy of the construction progress schedule in Contractor’s office. Contractor shall adhere to the construction progress schedule, subject to the other requirements of the contract documents and shall provide the Project Manager with a detailed and accurate update of the actual construction with its monthly application for payment and at regularly scheduled construction meetings. Acceptance of the updates or the making of any payment by the City does not constitute approval of any change in the construction progress schedule or other requirements of the contract documents, nor does it constitute or imply acceptance of any of the work. In addition to liquidated damages as provided in Section 306, Liquidated Damages, for failure to substantially complete the work in the time period required by this Contract, if Contractor fails to keep up with the construction progress schedule, as revised to reflect approved change orders for time extensions, delays caused by Contractor, the City or the A/E, and delays caused by inclement weather, Contractor shall indemnify the City for all liability, loss or expense incurred by the City due to Contractor’s failure to remain on schedule. If the City acknowledges that Contractor is off schedule and allows Contractor to continue the work or if the City accepts the work as meeting other contract specifications such forbearance or acceptance shall not limit any action the City may have against Contractor for failure to remain on schedule.

1. PERIOD FOR PERFORMANCE

The contract documents shall specify a time period for performance, which may be based on days excluding weekends and City holidays. Alternatively, completion may be required before a certain specified date. Each date or time period specified in the contract documents shall be deemed material to the performance of this Contract. The contract time for performance shall run from the date on which the notice to proceed is issued until the date specified for completion. Contractor must begin work no later than ten (10) days after the notice to proceed is issued. If Contractor fails to substantially complete the work within the allotted time, Contractor shall be liable for liquidated damages as set forth in Section 306, Liquidated Damages. Contractor acknowledges and agrees that the contract time for performance is a reasonable period in which to complete the work.

1. CONTRACT DAYS

A contract that specifies that construction will be completed within a certain number of consecutive calendar days contemplates that all days, whether weekend, holiday, or days of normal inclement weather will be included in the contract time. Unless the term “calendar days” is used, the term “day” shall refer to a day between Monday and Friday, excluding Saturdays, Sundays, or City-observed holidays.

1. SATURDAY, SUNDAY, HOLIDAY, AND NIGHT WORK

If Contractor believes it necessary to work on Saturdays, Sundays, holidays, or from 5:00 P.M. to 7:00 A.M., Contractor shall make prior arrangements with the Project Manager and receive written approval before the work commences, which approval shall not be unreasonably withheld. Such approval may be revoked by the Project Manager for good cause, including, without limitation, failure to maintain adequate equipment and lighting at night for the proper implementation, control and inspection of the work. If work is done without the Project Manager’s prior approval and as a result the Project Manager is unable adequately to inspect the work, the work done during these periods of time may be declared defective, solely on the grounds that it was not properly inspected. No extra money will be awarded to Contractor by the City due to labor overtime or other increased costs of performing the work on Saturdays, Sundays, holidays, or at night, so long as such work was not caused by the actions or inactions of the City. If inspectors charge overtime or other incidental expenses for performing inspections on Saturdays, Sundays, holidays, or at night, Contractor shall be responsible to pay for all such charges and shall not be granted a contract price increase for such charges.

1. TIME EXTENSIONS AND CONTRACTOR’S DELAY

Contractor specifically waives any and all claims against the City for monetary damages resulting from any hindrance or delay during the performance of this Contract that impede Contractor’s performance, except those that qualify for an extension of contract time. Contractor may be granted a time extension as expressly provided below only with respect to any hindrance or delay that impedes its performance and is described in Subsections A, B, and C, for which the City will not claim actual damages. Contractor shall provide to the Project Manager written notice of any delays within three (3) days from the beginning of the delay. The written notice shall explain the causes(s) and the expected duration of the delay. Contractor shall file a written request for a change order extending this Contract performance period within five (5) days after the period of delay has ceased. If Contractor fails so to notify the Project Manager of any such delay, Contractor shall be deemed to have waived any right to request a time extension and may be held in default on this Contract. All time extensions shall be made by written change order. Extensions of time will be granted only to the extent that equitable time adjustments for affected activities exceed the total float along their paths. The Project Manager will grant time extensions, by written change order, beyond the original schedule of performance for the following reasons only:

* 1. Suits, Delays by the City, Force Majeure, and Similar Events
     1. A suit or other legal action against the City that causes a delay in the work, other than a suit or legal action asserted by Contractor, will entitle Contractor to an equivalent extension of time unless the period of such delay exceeds three (3) months. When such period is exceeded, the City will, upon a request by Contractor in writing, elect either to terminate this Contract or to grant a further extension of time, whichever shall at that time appear most advantageous to the City.
     2. If a suspension of work or stop work order caused by a breach of a contract condition by the City or its agents or the negligence of the City or its agents occurs, which, in the opinion of the City, justified delay of Contractor’s performance, then the City will grant a reasonable time extension equivalent to the delay. Contractor has the burden to prove the events which caused each such delay and that Contractor made timely requests for time extensions pursuant to this section. Stop work orders due to improper work or otherwise due to Contractor’s acts shall not be cause for extension of time.
     3. If, in the City’s reasonable opinion, Contractor’s performance is delayed by acts of God, wars, epidemics, pandemics, or other causes beyond its control or anticipation, then, upon Contractor’s written request, the City will grant a reasonable time extension equivalent to the delay. No such extensions shall be granted for delays caused by events within the control of Contractor, nor for delays which Contractor could have foreseen and avoided, prevented, or significantly ameliorated by exercising reasonable prudence or diligence, nor for any delays caused in whole or in part by Contractor itself, nor by its subcontractors or suppliers, including without limitation, freight carriers, nor for any delays caused by labor unrest. In all instances, Contractor shall use its best efforts to minimize the length of delay. Contractor shall have the burden to prove the events which caused the delays, and that it made timely requests for time extensions pursuant to this section. This paragraph (3) shall not govern cases where the work is suspended for the City’s convenience by written change order. Such cases will be governed by Section 803, Suspension of Work for the City’s Convennience.
  2. Changes in Specified Work

If the volume of specified work, measured in dollars, is increased by written change order over the total value shown in Contractor’s bid proposal at the time that this Contract is awarded, Contractor may be granted an extension proportionately equal to the increase in total value, if Contracto requests a time extension in writing within twenty-one (21) days after service of the change order. If a change order requires work more complex or more difficult than that originally specified and shown on the plans and specifications and such work requires more time to execute than the proportional increase in dollar value, Contractor may be granted a further time extension if Contractor requests such extension in writing within twenty-one (21) days after service of the change order.

* 1. Excusable, Inclement Weather
     1. If Contractor believes that a contract extension should be granted due to delays caused by excusable, inclement weather, it may request a contract extension in writing from the Project Manager. The Project Manager shall thereon grant -- subject to the provisions of Subsection (4) below -- an extension equal, in the Project Manager’s reasonable opinion, in duration to the delay, if any, that was caused by excusable, inclement weather.
     2. The contract time will be extended for as many calendar days in excess of the allotted number of days of excusable, inclement weather, as set forth in Subsection (4) below, as Contractor is prevented by excusable, inclement weather, or conditions resulting immediately therefrom, from proceeding with an activity on the critical path of the Project Construction Schedule.
     3. Excusable, inclement weather is snowfall, rainfall, freezing temperatures or excessive wind conditions, the degree or duration of which varies in excess of the average conditions expected, which is unusual for the particular time and place where the work is to be performed, or which could not have been reasonably anticipated by Contractor, as determined from U.S. Weather Bureau records for the location closest to the site or the work for the preceding 10-year period. No extensions of contract time will be allowed for any inclement weather that could reasonably have been predicted from such weather records.
     4. Contractor shall include in its construction schedule the following anticipated number of calendar days lost due to adverse weather conditions for each month based on National Oceanic and Atmospheric Administration (NOAA) data for the Boulder area: Jan. 7; Feb. 4; Mar. 4; Apr. 4; May. 6; June 3; July 4; Aug. 2; Sep. 3; Oct. 3; Nov. 2; Dec. 5.

No extension of the contract time limit due to excusable, inclement weather will be considered by the City until after the number of days of excusable, inclement weather allocated to the construction schedule up to the time in question has been reached. No reduction in contract time shall be made if the allocated number of days of excusable, inclement weather is not reached.

1. LIQUIDATED DAMAGES

Time is of the essence for every time period set forth in this contract. Except for delays specified in Section 305, Time Extensions and Contractor’s Delay, if Contractor fails to perform the work within the time limit set forth in this Contract, or as adjusted by written change orders, Contractor shall be liable to the City for liquidated damages, not as a penalty, for the amount set forth in the contract agreement for each and every calendar day that substantial completion of the work is delayed. The City may extend the contract period for performance without impairing its right to collect liquidated damages. The City shall have the right to deduct liquidated damages from any amount due, or that may become due, to Contractor, or to collect such liquidated damages directly from Contractor or the surety. The City has the option to enforce liquidated damages or to waive such damages.

Liquidated damages are intended only to apply to Contractor’s delay in performance and are intended to compensate the City for additional City personnel efforts in administering this Contract after normally scheduled completion dates, and for City government and citizen inconvenience, lost opportunities, and loss of confidence in government and morale of government when work is not completed on time. Such damages are uncertain in amount and difficult to measure accurately.

By executing this Contract, Contractor agrees that the liquidated damages specified in the contract documents are reasonable in amount and are not disproportionate to actual anticipated damages. Liquidated damages do not include any sums of money to reimburse the City for extra costs which the City may become obligated to pay on other contracts that were delayed or extended because of Contractor’s failure to complete the work within the contract time. Should the City incur such additional costs due to delays or extensions to other contracts resulting from Contractor’s unexcused failure or delay in performing this Contract, as extended, the City will assess these extra costs against Contractor in addition to the stipulated liquidated damages. In addition, liquidated damages are not intended to cover attorney’s fees and costs incurred by the City in any action involving Contractor nor any other actual costs that do not result directly from Contractor’s delay in performance. In order to recover liquidated damages, the City is under no obligation to prove the actual damages sustained by the City due to Contractor’s delay in performance. In addition, Contractor shall pay interest, which shall accrue on liquidated damages from the date on which such damages arise, at the average rate earned by the City on its invested funds during the quarterly fiscal period prior to the period during which the interest was accrued. Liquidated damages shall be incurred in the amount calculated by the Project Manager as set forth in the Special Conditions and in this Contract, but in no case less than $1,000 per day for each calendar day the project is incomplete beyond the substantial completion date specified herein.

# ARTICLE IV. CHANGE IN CONTRACT TERMS

1. RIGHT TO CHANGE WORK

The City may order changes by addition, deletion or modification of the work at any time without invalidating this Contract. The City reserves the right to contract with any person or entity other than Contractor for any or all extra work authorized by change orders. In the event that the City contracts with a person or entity other than Contractor for such extra work, the City shall be responsible for coordinating the efforts of Contractor and the other person or entity, in order to avoid, insofar as practicable, any interference with Contractor’s work.

1. DIFFERING SITE CONDITIONS

Contractor shall promptly, upon discovery, and before the conditions are disturbed, provide written notice to the Project Manager of any subsurface or latent physical conditions at the site that differ materially from those indicated in the drawings and specifications issued by the City, or unknown physical conditions at the site of an unusual nature that differ materially from those ordinarily encountered and generally recognized as being inherent in work of the character provided for in this contract or that could have not been determined at the required pre-bid site investigation.

The Project Manager shall investigate the site conditions promptly after receiving the notice. If the conditions do so materially differ as to cause an increase or decrease in Contractor’s cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, then the contract price shall be equitably adjusted by a change order as provided in this Article IV upon claim by either party and made within five (5) days after the conditions first become apparent. If Contractor disputes the change order price, Contractor may appeal pursuant to Section 409, Contract Grievance Appeal Procedure. Contractor shall have the burden to prove that actual conditions under the surface or in an existing building vary materially from those shown in the contract documents and/or that the differing site conditions could not have been discovered at the required pre-bid site investigation.

No request by Contractor for an equitable adjustment to this Contract for differing site conditions shall be allowed if made after final payment under this Contract.

1. FIELD ORDERS

By field order, the form of which is attached as Form 5, the Project Manager or Project Inspector may make minor changes within the scope of the work as long as such changes are reasonable. Contractor is not entitled to extra compensation for such minor changes which are within the scope of this Contract nor is a change order required. Such changes shall be effected by written field order and shall be binding on the City and Contractor. Contractor shall carry out such written orders promptly.

1. CHANGE ORDERS

A change order is a written order from the Project Manager, issued after the execution of this Contract, authorizing a change in the work and a related adjustment in the contract price or the contract time.

Only the Project Manager is authorized to sign a change order. The contract price and the contract time of up to ten percent (10%) may be changed only by a change order, the form of which is attached as Form 4. Changes in contract price or contract time that exceed 10% must be made by contract amendment. Any change order signed by both the Project Manager and the Superintendent or any other representative of Contractor shall be considered a part of this Contract and subject to every term and requirement of the contract documents. A change order that changes the contract price must be signed by both the Project Manager and the City Manager or the City Manager’s delegate in the Purchasing Division. No change order shall be issued that causes the aggregate amount due Contractor under this contract to exceed the original contract price unless the City provides Contractor with a written assurance that funds sufficient to cover the cost of the change have been lawfully appropriated. Any waiver of any general condition may be made only by written amendment to this Contract. It is Contractor’s duty to notify the surety that issued the bonds required by Section 201, Bond Requirements, of any changes affecting the general scope of the work or change in the contract price and, if requested by the City, to increase the amount of the bonds accordingly.

If the Project Manager determines that a change order requires Contractor to do work that is a substitute for other work originally called for in the bid proposal, and if the Project Manager determines that the change order does not require Contractor to use substantially more materials or labor than were originally called for in the bid proposal, then, and to that extent, the Project Manager shall not allow Contractor extra compensation. Contractor shall have the right to dispute the Project Manager’s determination.

1. CHANGE IN THE CONTRACT TIME

If Contractor believes that a change order will significantly affect the contract schedule of performance and require Contractor to spend more time on the project than was earlier anticipated, Contractor shall submit a written request to the Project Manager for a time extension within ten (10) days after service of the change order. Such requests for time extensions shall be evaluated as set forth in Section 305, Time Extensions and Contractor’s Delay, Paragraph B.

1. CHANGE IN THE CONTRACT PRICE

If any instruction of the Project Manager or any condition of the work appears to Contractor to require a change in the work for which Contractor should receive extra compensation, Contractor shall make a written request to the Project Manager for a change order. Except for claims by Contractor arising from design error which is caused by the City or an A/E hired by the City or an agent or employee thereof, no extra compensation shall be authorized for work performed more than ten (10) days before a written request for a change order is received by the Project Manager. The change order may reflect the agreement of Contractor and the City to a contract price adjustment for the change. On unit price contracts, the change order shall indicate the unit prices that apply. The cost or credit to the City resulting from a change order shall be determined in one or more of the following ways:

* 1. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data;
  2. By unit price adjustments as determined in Section 502, Unit Prices and Altered Quantities; or
  3. By actual costs as determined in Section 408, Extra Work.

407. ELIMINATED ITEMS

After the execution of this Contract, should any item contained in Exhibit B, the bid proposal, be found unnecessary for the proper completion of the work, the City will by change order eliminate such item from this Contract, and reduce the contract price insofar as is possible, according to the prices set forth in the bid proposal. If any change order shall cause the loss of any work or materials already furnished by Contractor under the terms of the original contract, Contractor shall be reimbursed for the actual cost of such work, and the net cost of salvaging such materials. The City may purchase any such materials at the actual cost to Contractor. However, Contractor shall be awarded transportation, storage, installation, and salvage costs which have been incurred for eliminated items, provided Contractor can provide invoices or receipts or other evidence that such costs were incurred by it.

1. EXTRA WORK

Contractor may be called upon to perform extra work that is not provided for in this Contract, but which is essential to the satisfactory completion of this Contract or is found desirable to include in this Contract because of timing, mobilization, or other factors. Any extra work authorized by the Project Manager shall be compensated for and performed under the general provisions of this Article IV or by mutually satisfactory negotiation, whichever the City deems most appropriate. Once an agreement has been reached between Contractor and Project Manager, the Project Manager may issue a Work Directive, the form of which is attached as Form 3, authorizing Contractor to proceed with the extra work. Work Directives shall serve as the basis for negotiating subsequent change orders.

Should any oral or written order or instructions appear to Contractor to involve extra work for which, in its opinion, it should receive extra compensation and/or time extension, Contractor shall, within ten (10) calendar days of receiving the order or instruction, submit a written request for extra compensation to the Project Manager. This written request should include the costs for which Contractor feels it should be compensated. If a request is not made within this time period, Contractor shall waive any right to compensation and/or time extension for the extra work. No extra work shall be performed by Contractor until approved by the Project Manager.

In the event the parties cannot agree on compensation for the extra work, compensation will be paid on a time and materials basis as follows:

* 1. Labor

Contractor shall receive the rate of wage agreed upon in the bid proposal for all labor employed in performing the extra work. If the extra work requires labor for which the rate of wage was not earlier established in the bid proposal, but for which the parties reach agreement concerning the rate of wage, Contractor will receive the rate of wage agreed upon in writing before beginning the extra work. If the City and Contractor are unable to agree upon an acceptable rate of wage before beginning the extra work, Contractor shall perform the work and will be paid at the hourly rates as certified by payroll records, plus 50%. The certified payroll record shall include the employee’s hourly rate and all fringe benefits resulting from collective bargaining units (trade unions). The 50% loading factor shall not be applied to the fringe benefits but is intended to compensate Contractor for such items as overhead, bonds, insurance, taxes, and profit. Only the employees directly involved in the extra work shall be included in this calculation. Project superintendents or foremen, who generally direct the extra work, but who have overall project responsibilities, shall not be included. This paragraph addresses only the cost of labor for employees of Contractor. If Contractor must subcontract out all or a portion of the extra work, reimbursement for those expenses is addressed in paragraph D, below.

* 1. Materials

For materials accepted by the City and used in the work, Contractor shall receive the actual cost of such materials, including transportation charges (exclusive of equipment rentals as set forth in paragraph C, below). Contractor shall furnish invoices to the City for all materials used and the cost of transporting the materials to the site. If the materials used in performing the extra work are taken from Contractor’s stock, then in lieu of invoices Contractor shall furnish an affidavit, certifying that such materials were taken from its stock, that the quantity claimed was actually used in the work, and that the price and transportation claimed represent the actual cost to Contractor. Contractor shall be paid an additional fifteen percent (15%) of the sum of all materials used to cover overhead and profits, unless otherwise agreed by the parties.

* 1. Equipment Rental Rates

Contractor shall be paid according to rental rates agreed upon by the parties in writing before the extra work is begun for any machinery or special equipment (other than small tools) necessary for performing the extra work. The rental rates shall include fuel, lubricants, and the costs of transporting the special equipment to the site. Equipment rates shall be charged only for the time the equipment is operating. Standby time shall only be paid when the Project Manager determines the equipment is needed at the site, even though it is not operating. Non-listed equipment needed for specific jobs will be paid for at hourly rates for operating time only if agreed to in writing before the work begins.

* 1. Other Miscellaneous Expenses

Contractor shall be reimbursed for the actual cost of other services or expenditures that the parties agree are necessary to complete the extra work, including, without limitation, use of materials testing laboratories, employment of design professionals and surveyors, bond premiums, and any other cost directly related to accomplishment of the extra work but not provided for in other categories in this section. Additional allowance shall not be made for overhead, general superintendence, the use of small tools, further profit, or any other cost for which no specific allowance is provided herein.

* 1. Sales and Use Taxes

Contractor shall charge and pay to the City all sales and use taxes which accrue from the extra work. Contractor shall not receive final payment for the extra work until Contractor pays all applicable sales and use taxes.

1. CONTRACT GRIEVANCE APPEAL PROCEDURE

If Contractor disputes any decision made by the Project Manager, Contractor may appeal such decision informally to the City Manager. If the City Manager denies such appeal or does not respond to the appeal within fifteen (15) days after receiving it, Contractor shall be required to submit a formal notice of intent to claim pursuant to Section 410, Notice of Intent to Claim.

1. NOTICE OF INTENT TO CLAIM

If after receiving a decision from the Project Manager that a change order will not be issued as requested by Contractor, or Contractor does not agree with the Project Manager’s decision on a change in price or time or Contractor disputes any decisions of the Project Manager and Contractor intends to submit a claim therefor, Contractor shall submit in writing a notice of intent to claim to the City Manager.

The written notice of intent to claim shall be clearly titled as such and all notices shall be numbered sequentially. The notice shall contain the following:

* 1. Date of the event giving rise to the claim.
  2. A description of the claim.
  3. The reasons why Contractor believes additional compensation is due, additional time should be permitted, or charges were wrongly assessed.
  4. An estimate of any additional costs associated with the claim.
  5. Contractor’s plan for mitigating costs or delays associated with the claim, if mitigation is feasible, or an explanation as to why mitigation is not feasible.

The notice of intent to claim described above shall be submitted within ten (10) days after denial of any request for a change in the contract amount or contract time or within ten (10) days after an informal appeal pursuant to Section 409, Contract Grievance Appeal Procedure is denied or deemed to be denied pursuant to that Section.

1. SUBMITTAL OF CLAIM

Contractor shall, within twenty (20) days after it submits a notice of intent to claim, submit to the City Manager a complete and itemized claim that includes any claimed increase in contract time and contract amount. Contractor may request an extension of time to submit the claim, which extension may be granted by the City Manager for good cause shown. The claim must be described in sufficient detail to allow the City Manager to evaluate the basis of and costs associated with said claim. A claim for increase in contract amount shall be submitted based on actual costs whenever possible, rather than estimate or opinion, and shall be supported by invoices, timecards, and other business records commonly accepted in the construction industry. The claim shall be accompanied by copies of all contract provisions or other documents relied on and a summary of the factual theories supporting the claim. A claim for time extension must be accompanied by a revised construction schedule reflecting the effects of the delay on the critical path and showing actions that Contractor has taken or proposes to take to minimize the effects of the delay. The claim shall also identify any reasonable measures the City can take to minimize the claim.

Contractor shall furnish upon request all additional information and data that the City reasonably determines would be needed to aid in resolving the claim through negotiation or that is required to complete an evaluation of the claim. Contractor shall give the City Manager access to its books, correspondence, records and other materials relating to the work described in the claim, shall require its subcontractors and suppliers to provide the City with such access, and shall make its personnel and that of its subcontractors and suppliers available to discuss and answer cost, schedule and other questions related to its claim. Clear copies of all necessary supporting records shall be provided to the City at no cost. Failure to submit requested information may be the basis for denial of a claim; provided, however, the City may not deny a claim on the basis of incomplete information if Contractor can convincingly demonstrate that the missing information is in the possession of a subcontractor or supplier, and, despite Contractor’s diligence efforts, the subcontractor has failed or refused to provide Contractor with the information.

Contractor shall submit with its claim a sworn and notarized certificate that:

* 1. The claim is made in good faith;
  2. All supporting data are reasonably accurate and complete to the best of Contractor’s knowledge and belief as of the time of submitted by Contractor;
  3. The amount requested is not overstated or inflated and fairly and accurately reflects that contract adjustment for which Contractor believes the City is liable; and
  4. To the best of Contractor’s knowledge and belief, the prices stated for material and equipment are the lowest reasonably available to Contractor and include all available discounts.

If Contractor is an individual, the certification shall be executed by that individual. If Contractor is not an individual, the certification shall be executed by (i) a senior company official in charge of the work performed under this contract; or (ii) an officer or general partner of Contractor.

The City Manager or their designee shall in good faith investigate, review and evaluate the claim and make a determination. Such determination shall normally be made in writing within thirty (30) days of receipt of a completed and fully documented claim; however, if special circumstances exist or the claim is unusually complex, Contractor will be notified of a longer period not to exceed sixty (60) days.

Contractor shall proceed diligently with performance of this contract, pending final resolutions of any claim made under this Section 411, and shall comply with any reasonable decision of the City pending final resolution of the claim. Failure to proceed with the work shall be grounds for suspension or termination of this Contract.

If Contractor agrees with any determination or resolution by the City requiring a change in contract time or amount, it shall be processed as a change order.

Failure to meet any of the requirements of this Section in a timely and complete manner shall constitute a waiver by Contractor of any right to adjustments of contract time or amount either by administrative review or by any other action at law or equity.

# ARTICLE V. PAYMENT

1. CONSIDERATION (THE CITY’S PROMISE TO PAY)

The City shall pay Contractor only for the contract price as set forth in this Contract, and for additional price adjustments authorized by change orders. The City shall take all necessary action to ensure that sufficient funds are appropriated for all work performed by the construction manager.

1. UNIT PRICES AND ALTERED QUANTITIES

If payments for portions of the work are based on specially identified units of construction rather than on a lump sum price, this Contract is referred to as a unit price contract. The number of units of any specific designation set forth in the proposal is an approximation and may not correspond to the number of units actually completed. When the accepted quantities of work vary from the quantities in this Contract, Contractor shall be paid, so far as contract items are concerned, at the contract unit prices for the accepted quantities of work done. Contractor shall also set forth unit prices in all subcontracts to which they apply.

Should the final pay quantity of any major contract item increase or decrease by more than twenty percent (20%) from the quantity in this Contract, the contract unit price will be adjusted to balance fixed and job indirect costs as by the parties to this Contract. A major contract item is any item having an original contract value in excess of ten percent (10%) of the original contract amount. The new unit prices negotiated will be distributed over, and will apply to, the total final pay quantity for the item, and not solely the excessive overrun or excessive under run quantities.

1. PROGRESS PAYMENTS FOR COMPLETED WORK

Before Contractor submits its first application for payment, the form of which is attached as Form 6, for a lump sum or cost-plus contract, Contractor shall submit to the Project Manager a schedule of values allocated to the various portions of the work, subject to the Project Manager’s reasonable approval. For portions of the work based on unit prices, the unit prices shall serve as the schedule of values. This schedule shall be used only as a basis for Contractor’s application for payment. Contractor shall submit a signed written statement of the total value of the work completed, together with such data or schedules as may be required, at the end of each month to the Project Manager as an application for payment. The application shall be accompanied by a copy of Contractor’s current construction progress schedule with those shop drawing schedules, procurement schedules and other data specified for periodic submission in the Special Conditions or reasonably required by the Project Manager. The Project Manager shall, within five (5) days, either recommend payment or return the application to Contractor indicating in writing the reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the application. The City shall, within thirty (30) days of presentation to it of an acceptable application for payment, pay Contractor the amount recommended by the Project Manager. Contractor shall receive progress payments for work authorized by change orders as Contractor completes such work. Ninety-five percent (95%) of the calculated value of completed work shall be paid. Pursuant to Section 2-8-9(e), B.R.C. 1981, the City may include other retainage provisions in contracts not covered by state law. All of the funds that have been retained pursuant to this Section 503 shall be retained until the work is completed and finally accepted by the City. Contractor warrants that it shall pay each subcontractor promptly upon receipt of payment from the City the amount to which the subcontractor is entitled. Notwithstanding anything to the contrary, Contractor shall not be required to pay a subcontractor or supplier that has not performed in accordance with its subcontract or purchase order. Contractor shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to the subcontractor’s sub-subcontractors in similar manner. The City may furnish to each subcontractor information regarding the percentages of completion or the amounts applied for by Contractor.

1. PROGRESS PAYMENTS FOR MATERIALS

The paid invoice price of materials and equipment delivered to the construction site but not yet incorporated in the work may be included as a part of progress payments. Any payment for materials is conditioned upon Contractor’s furnishing to the City adequate information to establish the City’s title to such materials or otherwise protect the City’s interest, including without limitation applicable insurance and transportation to the site for those materials. By submission of a request for a progress payment, Contractor warrants that title to all materials and equipment covered by application for payment will pass to the City either by incorporation in the construction or upon receipt of payment by Contractor, free and clear of all liens, claims, security interest, and encumbrances. Contractor further warrants that no such materials or equipment will be subject to an interest or encumbrance of the seller of such materials or equipment. Payment by the City for such materials and equipment shall not relieve Contractor of responsibility for the care of such materials and equipment, and the City does not assume ownership of the materials or equipment until they are incorporated into the completed work and the certificate of substantial completion is signed by the City and Contractor.

1. PROGRESS PAYMENTS TO SUPPLIERS AND SUBCONTRACTORS

Contractor shall make partial payments of the amount due to each of Contractor’s suppliers and subcontractors in the same manner as the City is required to pay Contractor under Section 503, Progress Payments for Completed Work, provided that the suppliers and subcontractors are performing to Contractor’s satisfaction. If the City is notified that Contractor is in arrears in payments to Contractor’s suppliers or subcontractors, the Project Manager shall notify Contractor and determine why such funds are being withheld. If the Project Manager determines that no legitimate basis exists for Contractor’s withholding of such payments, the City may, five (5) days after the mailing of written notice to Contractor, make such payments directly to Contractor’s suppliers or subcontractors from funds which otherwise would be due to Contractor, unless Contractor objects to such payments within said five (5) day period, and provides reasonable documentation to support its position.

1. DISPUTE RETAINAGES

In addition to the retainages set forth in Section 503, Progress Payments for Completed Work, the City may retain up to one hundred percent (100%) of any disputed line item or portion thereof included in progress payments for any unsatisfactory performance of the work, including without limitation:

* 1. Failure to repair or replace defective work.
  2. Claims filed against Contractor, or reasonable evidence indicating that claims may be filed against Contractor.
  3. Failure of Contractor to make adequate payments to subcontractors or suppliers for labor or materials.
  4. Failure to obtain necessary permits or licenses, or to comply with applicable laws, ordinances, codes, rules or regulations, unless such noncompliance is due to reasons beyond the control of Contractor, or due to acts of the City or an A/E hired by the city, or agents or employees thereof.
  5. Failure to satisfy affirmative action and equal employment opportunity requirements.
  6. Failure to maintain an adequate rate of progress.
  7. Failure to maintain Contractor’s portion of the work in a clean and orderly manner.
  8. Failure to repair or replace City or private property damaged during the progress of the work.
  9. A reasonable doubt that this Contract will be completed for the balance of the contract price then unpaid.
  10. As a set off for amounts due to the City, whether liquidated or unliquidated, including, without limitation, liquidated damages as provided by this Contract.
  11. Collusion with other bidders in preparing the bid.

If the reasons for such retainage no longer exist, the City shall make payment to Contractor of the sums withheld pursuant to this Section, subject to the amounts required to be retained pursuant to Section 503, Progress Payments for Completed Work.

1. PAYMENT OF CITY SALES AND USE TAXES

There are two options for payment of City sales and use taxes: Estimated Percentage Basis or Monthly payments for holders of a City sales tax license. If Contractor selects the second method to pay sales and use tax, Contractor and all the subcontractors, after the bid is awarded, must obtain a Boulder Sales and Use Tax License from the City Sales and Use Tax Division, pursuant to Section 3-17-3, B.R.C. 1981.

1. Estimated Percentage Basis

For any contract in which the contract price is $50,000 or more, Contractor shall pay City construction use tax based upon the following percentages:

|  |  |
| --- | --- |
| Type of Contract | Percentage of Contract Amount to Which Tax Is Applied |
| Building construction, landscape installation, playground installation and construction | 50 percent |
| Construction in the City’s right-of-way; sewer or water line installation or rehabilitation | 30 percent |

For such contracts, Contractor shall pay the construction use tax to the City based on the contract price at the time it applies for a building or right-of-way permit. Payment of the sales and use tax at this time will give Contractor proof that tax has been paid and therefore, prevent duplicate payment of taxes to suppliers.

At the time that Contractor applies for final payment it must submit to the Lead Sales Tax Auditor (“auditor”) for the City the “Payment of Boulder Sales and Use Tax” election, the form of which is attached as Form 9. The auditor will determine the total amount paid by the City for the work under this Contract, which includes all work performed pursuant to a change order and compute the total use tax due based on the above percentages. After the total tax payment is received by the City’s Sales and Use Tax Division, it will approve Form 7. At this point Contractor may request an audit by the City in accordance with Section 509, Sales and Use Tax Audits, rather than paying using the percentage method. Depending upon the determination of the City’s auditor, Contractor will either be refunded use tax by the City or pay the City additional use tax.

For any contract in which the contract price is under $50,000, Contractor may pay all estimated sales and use taxes due on the work based upon the contract price at the time that this Contract is executed. The tax due under this procedure will the rate in effect during the term of this contract multiplied by fifty percent (50%) of the contract price for building construction, landscape installation, playground installation and construction and (30%) for construction in the City’s right-of-way, sewer or water line installation or rehabilitation.

1. Actual Basis on Monthly Return

If Contractor elects to obtain a Boulder Sales and Use Tax License from the City Sales and Use Tax Division, pursuant to Section 3-17-3, B.R.C. 1981, Contractor shall pay the actual use tax due by the 20th day of each month for each purchase of tangible personal property and payment of taxable services made during the previous calendar month. Contractor shall be granted a credit for Boulder sales taxes paid to a vendor, if any, upon purchase of tangible personal property or taxable services when filing this monthly return, but not for taxes paid to other municipalities. Contractor shall retain a copy of each monthly report as evidence that sales and use taxes have been paid. Under this method, Contractor shall cause each of its subcontractors and suppliers to obtain a Boulder Sales and Use Tax license and to pay the actual sales and use tax which it owes by the 20th day of each month. Contractor shall be liable for the payment of all sales and use taxes which any of its subcontractors or suppliers fails to remit to the City. The permit pulled for this form of payment will not show that Boulder use tax has been paid therefore, by using this form of payment Contractor and its sub-contractors will not have the protection from duplicate taxation. The City will audit the project at completion and will not give credit to taxes paid to other municipalities.

If additional information is required, please contact the City’s Sales and Use Tax Division at 303-441-3288.

1. PAYMENT OF CITY SALES AND USE TAXES FOR CHANGE ORDERS

Contractor is responsible for payment of all City sales and use taxes paid on authorized additional work authorized by any change order, as well as on any extra work.

1. SALES AND USE TAX AUDITS

In the event a contractor requests a tax audit, the City’s auditor will request the following from Contractor and Contractor shall provide this information:

* 1. List of all subcontractors and the related information from Contractor.
     1. Type of work performed;
     2. Contract amount; and
     3. Name, address, phone and contact person for Contractor.
  2. A copy of the general contractor’s job cost reports and related invoices, as well as additional information which may be requested.
  3. The auditor will contact all of the subcontractors by letter requesting job cost information. As a part of the letter to subcontractors, the auditor will request detailed information regarding the materials billed to Contractor.
  4. Subcontractors will complete Contractor’s letter and return it to the auditor. Rental of equipment is taxable as a cost of the construction project.

If additional information is required, please contact the City’s Sales and Use Tax Division at 303-441-4192.

1. REQUIREMENTS FOR FINAL PAYMENT

Contractor shall not receive the final payment due under this Contract until the following conditions have been satisfied and the correct forms or certifications have been submitted to the Project Manager:

* 1. Contractor passes final inspection, and the Project Manager formally accepts the work in writing, the form of which is attached as Form 8.
  2. The City Sales and Use Tax Form is completed, submitted and signed by the Lead Sales Tax Auditor for the City. If additional information is required, please contact the City’s Sales and Use Tax Division at 303-441-4192.
  3. Either (1) Contractor files claim releases signed by all suppliers and subcontractors with the Project Manager certifying that all outstanding claims for payment have been paid, the form of such certification being attached as Form 10; or (2) Contractor files conditional claim releases signed by all suppliers and subcontractors from which it has not obtained unconditional claims release and agrees to give the City within ten (10) days after final payment unconditional claims releases from each such subcontractor or supplier or copies of canceled checks showing that each of these subcontractors and suppliers has been completely paid.
  4. The surety on the labor and material bond signs the surety release, the form of which is attached as Form 12.
  5. Contractor obtains written certification from the surety that final settlement may be made with Contractor and that the performance bond shall be in effect throughout the guarantee period.
  6. Contractor has given the Project Manager the copy of the contract documents and the as-built drawings that reflect all changes in the work.

1. FINAL PAYMENT PROCEDURE

Prior to receiving final payment, Contractor shall make application for final payment following the procedure for progress payments set forth in Section 503, Progress Payments for Completed Work. The application for final payment shall contain a final estimate of the total value of all work done under this Contract. This shall include all extra work performed pursuant to change orders. All prior estimates and payments shall be subject to correction in the final estimate and payment. However, in the absence of error, manifest mistake, or fraud, all estimates, when approved by the Project Manager, shall be conclusive evidence of the work done and materials furnished. Prior to final payment the Project Manager will inspect the work and review the application for final payment to determine whether Contractor has fulfilled its obligations under this Contract. The Project Manager will, within five (5) days of receipt of the application for final payment, give written notice to Contractor that the work is acceptable or return the application for final payment indicating in writing the reasons for refusing final payment in which case Contractor shall make the necessary corrections. After making the necessary corrections Contractor shall resubmit its application for final payment, which shall be reviewed as outlined above, along with the Affidavit That All Claims Are Satisfied, the form of which is attached as Form 11. Final payment shall not be made to Contractor until the City advertises a notice of final settlement at least twice in a newspaper of general circulation in Boulder County at least ten (10) days prior to the date of final settlement, pursuant to Section 38-26-107, C.R.S. If no claims are filed before final settlement and if the sureties consent by executing Form 10, the City shall pay the advertised amount to Contractor, after deducting all payments previously made to Contractor under this Contract and all other charges properly chargeable to Contractor under the terms of this Contract.

1. PROCEDURE FOR WITHHOLDING ALL OR PART OF FINAL PAYMENT

The City is required to comply with Section 38-26-101, *et seq*., C.R.S. This statute generally allows a supplier or a subcontractor to file a verified statement of claim, upon which the City is required to withhold funds from Contractor as set forth in the statute. Further, the statute allows unpaid subcontractors and suppliers who have filed verified statements of claim to file a notice of *lis pendens* with the City, in which event the City must continue to withhold amounts from Contractor longer than ninety (90) days after the date of final settlement.

1. WAIVER OF CLAIMS UPON FINAL PAYMENT

The acceptance of final payment shall constitute a waiver of all claims by Contractor except those previously made in writing and identified by Contractor as unsettled at the time of the final application for payment. The making of final payment shall constitute a waiver of all claims by the City excepting those arising from:

* 1. Unsettled liens;
  2. Faulty or defective work appearing after substantial completion;
  3. Failure of the work to comply with the requirements of the contract documents;
  4. Terms of any special warranties required by the contract documents; or
  5. Claims for contribution or indemnification as provided by the contract documents.

# ARTICLE VI. CONTRACTOR’S WARRANTY AND GUARANTEE

1. CONTRACTOR’S WARRANTY AND GUARANTEE

Contractor’s guarantee shall continue for a period of two (2) years after the date of substantial completion, notwithstanding the warranty period of any product which may be incorporated into the work which would otherwise expire before the expiration of this two-year warranty period.

Contractor warrants and guarantees to the City that all materials and equipment will be new, unless otherwise specified, suitable for the purpose intended and will be of the highest quality, new, merchantable, and fit for the purpose for which they are intended, and that the work will be performed using the best skills and workmanship to provide a project of the highest quality. Contractor also warrants and guarantees that the workers who perform the work will be sufficiently skilled to produce a high-quality product that is free of faults or defects, including blemishes (surface defects) and flaws (internal defects), and in accordance with the requirements of the contract documents and of any inspections, tests or approvals required.

Contractor further warrants that it has full title to all equipment, components and other items conveyed to the City under the terms of this contract, that its transfer of such title to the City is rightful and that all such equipment, components and other items shall be transferred free and clear from all security interests, liens, or encumbrances, whatsoever. Contractor agrees to warrant and defend such title against all persons claiming the whole or any part thereof at no cost to the City.

All subcontractors’, manufacturers’ and suppliers’ warranties and guarantees, expressed or implied, for any part of the work and any materials used therein, shall be obtained by Contractor for the benefit of the City, whether or not such warranties have been assigned or otherwise transferred to the City, and enforced by Contractor during its guarantee period. Contractor shall assign or transfer such warranties and guarantees to the City if the City requests Contractor to do so. If within ten (10) days after written notice by the Project Manager to Contractor, or its agent, requesting such repairs or replacement, Contractor shall neglect to make or undertake with due diligence to do the same, the City may make such repairs or replacement in accordance with the terms of Contractor’s performance bond at Contractor’s and/or surety’s expense; provided, however, that in the case of emergency where, in the judgment of the Project Manager, delay would cause serious loss or damage, repairs or replacement may be made without notice being sent to Contractor.

The duties and obligations imposed by these general contract conditions and the rights and remedies available hereunder and, in particular, but without limitation, the warranties, guarantees and obligations imposed upon Contractor and the remedies available to the City thereunder, shall be in addition to and not a limitation of any otherwise imposed or available by law, by special guarantee or other provisions of the contract documents.

Nothing herein shall be construed to establish a period of limitation with respect to any other obligation that Contractor might have under the contract documents. The establishment of the warranty period set forth above relates only to the specific obligations of Contractor to correct known defects in the work that are discovered and called to Contractor’s attention during the warranty period and has no relationship to the time within which its obligation to comply with the contract documents may be sought to be enforced nor to the time within which proceedings may be commenced to establish Contractor’s liability with respect to its obligations and resulting damages. Nothing herein shall limit the City’s right to seek recovery for latent defects which are not observable until after the warranty periods have run.

Contractor shall repair or replace all damaged or defective work immediately upon discovering any damage or defect, provided such damage or defect is not due to a design error caused by the City or an A/E hired by the City or an agent or employee thereof. Contractor’s warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the construction manager, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage to the extent the above do not arise out of contractor’s action or failure to act. Contractor shall promptly, without cost to the City and in accordance with the Project Manager’s written instructions, either correct such defective work, or, if it has been rejected by the City, remove it from the site and replace it with non-defective work. Contractor’s guarantee shall cover all materials and equipment incorporated in the work and shall cover the work of Contractor and any subcontractors and their employees and agents engaged in the work.

As used in this contract, the terms “warranty” and “guarantee” shall be synonymous, and the terms “warranty period” and “guarantee period” shall be synonymous.

1. EXPERIMENTAL CONSTRUCTION METHODS

If Contractor proposes to use any method or product that can reasonably be considered to be experimental, Contractor must advise the Project Manager of that proposed method or product in writing. Contractor shall not employ any such experimental method or product until advised to proceed by the Project Manager in writing. The City may require special guarantees of Contractor to cover the work produced by the experimental method or product. By failure to require any such special guarantees, however, the City does not excuse Contractor for liability due to damages resulting from the use of experimental methods or products.

1. MATERIALS

Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials to be used in the work. All materials used shall be, unless otherwise specified in the bid proposal, the standard stock products of reputable manufacturers. From the time of commencement of the work until its completion, Contractor shall be solely responsible for the care of all materials delivered at the site intended for use in the work, unless the materials are damaged by an act of the City or an employee or agent thereof. All injury or damage to any materials, whether or not incorporated into the work, shall be repaired or replaced at Contractor’s expense before final payment shall be made unless the injury or damage is caused by an act of the City or an employee or agent thereof. Contractor shall provide suitable protection for all materials intended for use in the work, as well as for all completed work. Contractor may use a portion of the work site for storage of materials and equipment, provided that the use of this portion of the site is approved in writing by the Project Manager, which approval shall not be unreasonably withheld, and that it is protected from wind as provided in Section 137, Protection Against Weather. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the particular manufacturer, fabricator, or processor.

1. MATERIALS TESTS

If the contract documents require any portion of the work to be tested or specially inspected, Contractor shall give the Project Manager forty-eight (48) hour advance notice of its readiness in order that the Project Manager may observe such testing. In addition, the Project Manager may order testing or special inspection of any materials employed in the work. The City shall bear all costs of tests or special inspections not called for by this Contract. If such testing or special inspection reveals a failure of the work to comply with the requirements of this Contract, Contractor shall bear all costs of replacement thereof including retesting. Contractor shall provide such facilities as the City may require for collecting and forwarding samples and for conducting materials tests. The Project Manager may require that Contractor not use the materials represented by the samples which have been requested by the Project Manager until the Project Manager has informed Contractor that the materials satisfy the requirements of the contract documents. Contractor shall furnish the required samples to the City. If testing results require that Contractor obtain new or additional materials, these shall be obtained at Contractor’s expense. In addition, Contractor shall pay all incidental expenses associated with procuring such new or additional materials, including, without limitation, transportation and shipping costs.

1. PROJECT INSPECTOR

A City Project Inspector is assigned to a project to keep the City informed as to the progress of the work and the manner in which it is being done; to keep records; act as liaison between Contractor and the City; and to call the attention of Contractor to any deviations from this Contract. The Project Manager shall inform Contractor as to who will be serving as the Project Inspector.

Contractor shall permit the City Project Inspector unlimited access to the work, as well as whatever access is needed to off-site facilities used to store or manufacture materials and equipment to be incorporated into the work.

1. AUTHORITY OF PROJECT INSPECTOR

The Project Inspector may communicate to Contractor any work directives, change orders, field orders, or other modifications in the work ordered by the Project Manager. The Project Inspector is authorized to reject any work or materials that do not conform with this Contract, and if necessary, to suspend operations until corrective measures are taken, but may not order any modifications in this Contract, or in the materials or construction methods employed by Contractor, unless specifically authorized by the Project Manager by a field order or change order.

The Project Inspector shall not have the power to waive obligations of Contractor, to revoke, alter, enlarge or reduce the requirements of this Contract, to delay the fulfillment of this Contract by failure to inspect materials and work with reasonable promptness, or to approve or accept any portion of the work or issue instructions contrary to this Contract. Contractor may not rely upon information or instruction offered by any person other than the Project Manager unless the Project Manager has authorized such other person in writing to deliver or otherwise communicate instructions to Contractor.

If Contractor questions or disagrees with any communication of a Project Inspector, Contractor shall notify the Project Manager, who shall inform Contractor in writing how to proceed. Contractor shall not be entitled to claim damages because Contractor relied on information or instructions offered by a Project Inspector and as a result performed work that was defective or had to be repaired or replaced, unless the information or instruction was in the form of or pursuant to a writing issued and signed by the Project Manager.

The presence or absence of a Project Inspector on the job will be at the sole discretion of the City and such presence or absence of a Project Inspector will not relieve Contractor of its responsibility to obtain the construction results specified in this Contract.

1. INSPECTION OF WORK BY PROJECT INSPECTOR

The Project Manager and Project Inspector shall at all times have the right and access to inspect the work and materials during normal working hours. Contractor shall furnish all reasonable aid and assistance required by the Project Manager or Project Inspector for the proper examining of the work and all parts thereof. Subject to the other provisions of this Section 607, unless otherwise directed by the Project Manager, no work shall be done or materials used without inspections by the Project Manager or the Project Inspector having been performed, and no work shall be covered up or backfilled until the Project Manager’s or Project Inspector’s inspections are completed.

All material and workmanship (if not otherwise designated by the specifications) shall be subject to inspection, during manufacture and/or construction and at any and all places where such manufacture and/or construction is carried on.

Observations, inspections, and tests by the Project Manager, Project Inspector, or others are for the express purpose of providing quality assurance for the sole benefit of the City. Such activities shall not relieve Contractor from its quality control obligations or from its obligations to perform the work strictly in accordance with the requirements of the contract documents.

Nothing in this Article VI shall in any way be construed as to require or to place responsibility for the method, manner or supervision of the performance of the work under this contract upon the Project Inspector or the City. Such responsibility rests solely with Contractor.

Failure of the Project Inspector to call the attention of Contractor to faulty work or deviations from this Contract shall not, however, constitute acceptance of said work.

1. UNCOVERING OF WORK

If any portion of the work is covered contrary to the request of the Project Manager or to requirements specifically expressed in the contract documents, it must, if required in writing by the Project Manager, be uncovered for the Project Manager’s observation and shall be replaced at Contractor’s expense. If any other portion of the work has been covered which the Project Manager has not specifically requested to observe prior to being covered, the Project Manager may request to see such work and it shall be uncovered by Contractor. If such work is found in accordance with the contract documents, the cost of uncovering and replacement shall, by appropriate change order, be charged to the City. If such work is found not in accordance with the contract documents, Contractor shall pay such costs unless it be found that this condition was caused by the City or a separate contractor, in which event the City or Contractor shall be responsible for the payment of such costs.

1. FIELD ORDERS

Contractor shall submit any requests for explanation or clarification of any document included in this Contract to the Project Manager. When the City responds to such requests, it will issue a written explanation (“Field Orders”) (Form 5), which shall consist of a written explanation with or without amended drawings. Field orders do not provide for either time extensions or changes in contract prices. If Contractor believes that the field order will require a time extension or extra payment, Contractor shall inform the Project Manager in writing within ten (10) days of the field order or Contractor shall be deemed to have waived the right to make the request.

1. SUGGESTIONS TO CONTRACTOR

Any plan of action, method of work, or construction procedure suggested to Contractor by any city representative other than the Project Manager shall be adopted or followed at the sole risk and responsibility of Contractor. This Section 610 shall not apply to change orders or field orders that have been duly issued by the Project Manager.

1. CORRECTION OR REMOVAL OF DEFECTIVE WORK

If required by the Project Manager prior to final payment, and subject to Contractor’s right to subsequently dispute the decision of the Project Manager, Contractor shall promptly, without cost to the City and as specified by the Project Manager, either correct any defective work, whether or not fabricated, installed, or completed, or, if the work has been rejected by the Project Manager, remove it from the site and replace it with non-defective work. If Contractor does not correct such defective work or remove and replace such rejected work, all as specified in a written notice from the Project Manager within a reasonable time, the City may have the deficiency corrected or the rejected work removed and replaced. All direct or indirect costs of such correction or removal and replacement, including without limitation, compensation for additional professional services and costs of additional testing and inspections, shall be paid by Contractor, and an appropriate deductive change order shall be issued. Contractor shall also bear the expenses of making good all work of others destroyed or damaged by the correction, removal, or replacement of its work. The City’s failure to reject any material or work at the time of its use in the project shall not constitute a waiver of any rights hereunder. Contractor shall not be entitled to any time extension for performance of the work as a result of the correction of defective work by Contractor or the City.

1. NEGLECTED WORK BY CONTRACTOR

If Contractor should fail to prosecute the work in accordance with this Contract, including any requirements of the progress schedule, the City, after seven (7) days written notice to contractor, and subject to Contractor’s rights to subsequently dispute the decision of the Project Manager, may, without prejudice to any other remedy it may have, make good such deficiencies, and the cost thereof (including compensation for additional professional services) shall be charged against contractor, in which case a change order shall be issued incorporating the necessary revisions in this Contract including an appropriate reduction in the contract price. If the payments then or thereafter due contractor are not sufficient to cover such amount, contractor shall pay the difference to the City.

1. SUBSTANTIAL COMPLETION

“Substantial completion” means that the work is completed to the point that the City may occupy and fully utilize the facilities and no nuisance is created, to the satisfaction of the City. All equipment shall be installed and operational, or temporary arrangements satisfactory to the City shall be made. All performance testing need not be completed prior to the date of substantial completion. The last date for which liquidated damages may be assessed against Contractor for failure to complete work on time shall be the date of substantial completion of the work or designated portion unless otherwise provided in the certificate of substantial completion. The City may, in its sole discretion, choose to allow a portion of the work to be deemed substantially complete prior to substantial completion of all the work.

When contractor considers the work ready for full occupancy or utilization by the City, contractor shall declare in writing to the Project Manager that the work is substantially complete. Within a reasonable time thereafter, the Project Manager and Contractor shall make an inspection of the work to determine the status of completion. If the Project Manager does not consider the work substantially complete, Contractor shall be notified in writing giving reasons therefore. If the Project Manager considers the work substantially complete, Contractor shall receive a “Certificate of Substantial Completion,” the form of which is attached as Form 7, which shall establish the date of substantial completion and which shall set forth the responsibilities of the City and contractor for security maintenance, heat, utilities, damage to the work, and insurance. The certificate of completion shall be signed by both Contractor and the Project Manager and shall include a tentative list of items to be completed or corrected before final acceptance. *See* Section 615, Final Inspection.

Portions of the work not essential to the City’s operation, which can be completed without interruption to the City’s operation, may be completed after the work is accepted as substantially complete.

1. PARTIAL UTILIZATION

The City has the right to take possession or use of any completed or substantially completed portions of the work at any time, but such action will not be deemed an acceptance of any work not completed in accordance with this Contract.

The City’s use of any work so identified in this Contract will not be grounds for extension of the contract time or change in the contract price. The City’s use of any work not specifically identified in this Contract will be in accordance with conditions agreed to prior to such use and any extra costs or delays in completion incurred and properly claimed by contractor will be equitably adjusted by change order.

Guarantee periods for accepted or substantially completed work, including mechanical and electrical equipment, will commence upon the start of continuous use by the City. The issuance of a certificate of substantial completion for one portion of the work does not indicate final acceptance of the overall work.

1. FINAL INSPECTION

When the work is complete and ready for final inspection, Contractor shall file a written notice with the Project Manager to that effect. The Project Manager and Contractor shall then together make a final inspection of the work to determine whether the work has been completed in accordance with this Contract. Following the final inspection, the Project Manager shall send Contractor a final inspection report, which shall notify Contractor of any incomplete, unsatisfactory, or questioned work noted by the Project Manager. Subject to the right to dispute the Project Manager’s final inspection report, Contractor must satisfy any remaining questions or repair or replace the incomplete or unsatisfactory work promptly as directed by the Project Manager. If Contractor does not begin to take such action within five (5) days after receipt of notice or does not pursue such action diligently, the City may, without further notice and without impairing this Contract, make other arrangements to have the questions answered and the work completed in a satisfactory manner at Contractor’s expense. Contractor shall be liable for any costs so expended by the City and such costs may be deducted from any payments due or which may become due to Contractor under this Contract. If Contractor contests any such deductions from payments owed Contractor, Contractor must file a written appeal pursuant to Section 409, Contract Grievance Appeal Procedure, with the City Manager within five (5) days after receiving notice of the pending deduction. Contractor shall not become eligible for final payment from the City until the Project Manager finally accepts the work by certifying in writing that the work has been completed and that Contractor has passed the final inspection. Contractor shall be deemed to have finally completed the work when Contractor has remedied all deficiencies to the reasonable satisfaction of the Project Manager and delivered all construction records, maintenance and operating instructions, schedules, guarantees, certificates of inspection, and other documents required by this Contract and the City issues a favorable final inspection report (Form 8).

1. PERFORMANCE DURING THE GUARANTEE PERIOD

The Project Manager will notify Contractor in writing of any damage or defects that are discovered during the guarantee period, and, subject to its rights to dispute such notice, Contractor shall begin to repair or replace any such defects within ten (10) days of receipt of such notice without cost to the City and in conformance with the Project Manager’s written instructions. If Contractor does not begin to repair or replace such damage or defects within ten (10) days of receipt of notice, or does not pursue such action diligently, the City may, without further notice and without impairing this Contract, make the repairs or replacements at the expense of Contractor or the City may request that the surety repair or replace the defects. If the City Manager determines that immediate action is necessary to make repairs or replacements because of emergency conditions or to prevent further loss or damage, the City may proceed without prior notice to Contractor but at the expense of Contractor. In any event, Contractor shall be notified of the situation and of the action taken. If Contractor disputes that it is responsible for the damage or defects, Contractor may appeal to the City Manager pursuant to Section 409, Contract Grievance Appeal Procedure. If Contractor does not deliver a notice of appeal specifying the issues in dispute to the Project Manager within ten (10) days after the Project Manager serves notice on Contractor of the defects, Contractor shall be deemed to have waived any right to appeal. In any event, Contractor shall correct the damage or defect as specified in this Section 616 and the question of responsibility for the expense will be determined subsequently by the City Manager if an appeal is taken pursuant to Section 409, Contract Grievance Appeal Procedure.

1. EXTENSION OF THE GUARANTEE PERIOD AND ADDITIONAL BOND REQUIREMENTS

If the City notifies Contractor of any defect in the work, other than a defect resulting from a design error caused by the City or by an A/E hired by the City, or damage or defects caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage, Contractor shall remedy the defect pursuant to Section 615, Final Inspection. Contractor shall guarantee the replacement work for two (2) years from the date of the City’s acceptance of the replacement work. In addition, if the bonds provided for in Article II, Bonding, Insurance, and Taxes, expire prior to the expiration of this extended guarantee period, then Contractor shall procure a new bond or bonds to be in effect until the expiration of the extended guarantee period. Such new bonds shall be in an amount equal to the cost of the replacement work that is the subject of the extended guarantee. The new bonds shall meet the requirements set forth in Sections 201 through 203, except to the extent that they conflict with this Section 617.

1. GUARANTEE PERIOD INSPECTION

The Project Manager shall make at least one (l) complete inspection of the work after the work has been accepted, and before the guarantee period expires. This shall be known as the guarantee period inspection. The Project Manager shall schedule and notify Contractor of this inspection, which shall be made during the last month of the guarantee period. The Project Manager shall send a written report of the guarantee period inspection to Contractor within ten (10) days after the completion of the inspection. If the report calls for repairs by Contractor, and if Contractor does not begin work to repair or replace the damage and defects within ten (10) days following receipt of this report or does not pursue such action diligently, the City may, without further notice and without impairing this Contract, make the repairs or replacements at Contractor’s expense, subject to Contractor’s right to dispute the guarantee inspection. If the City Manager determines that immediate action is necessary to make repairs or replacements because of emergency conditions or to prevent further loss or damage, the City may proceed without prior notice to Contractor but at the expense of Contractor. In any event, Contractor shall be notified of the situation and of the action taken. If Contractor disputes that it is responsible for the damage or defects, Contractor may appeal to the City Manager pursuant to Section 409, Contract Grievance Appeal Procedure. In any event, Contractor shall correct the damage or defect as specified in this Section 618 and the question of responsibility for the expense will be determined subsequently by the manager if an appeal is taken pursuant to Section 409, Contract Grievance Appeal Procedure. The form of the guarantee period inspection report is attached as Form 13.

1. RIGHT OF OCCUPANCY

At the end of the time for completing the work specified in this Contract, subject to reasonable insurance requirements contained in policies required by Article II, Bonding, Insurance, and Taxes, the City shall have the right to take possession of and to use any completed or partially completed portions of the work. If the City possesses any portion(s) of the work or makes regular use of it before Contractor has completed the work, the City shall take all reasonable steps to avoid interfering with the work to be performed by Contractor. If such use or occupancy by the City exposes damage or defects, such damage or defects shall be replaced or repaired by Contractor immediately. The City’s possession or use of the work will not be grounds for an extension of the project time or a change in the contract price, except as stated immediately hereafter. When the City partially occupies a facility, it shall share with Contractor the costs of energy to heat and light the facility and the costs of water and sanitary sewer service. The City’s share of these costs will be determined by the Project Manager on an equitable basis and Contractor will be reimbursed by a change order. Contractor may appeal the Project Manager’s apportionment to the City Manager pursuant to Section 409, Contract Grievance Appeal Procedure.

1. ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

If the Project Manager prefers to accept defective or non-conforming work, the Project Manager may do so instead of requiring its removal and correction, in which case a change order will be issued to reflect an appropriate and equitable reduction in the contract price. Such adjustment shall be made whether or not final payment has been made. Contractor may appeal the Project Manager’s reduction in the contract price to the City Manager pursuant to Section 409, Contract Grievance Appeal Procedure.

1. CONTRACTOR’S CONTINUING DUTY TO WARN OF DESIGN OR PRODUCT DEFECTS

Contractor is under a continuing duty to warn the Project Manager of (i) any possible defect in the design of the work and materials incorporated in the work, as soon as Contractor discovers the possible defect or has notice that a product may be unsafe, and (ii) against potentially unsafe uses of products incorporated in the work that may cause personal injury or property damage. Contractor’s duty under this Section 621 shall be continuing and shall not expire until three years after the date of final payment. If Contractor fails to warn the City of a design or product defect of which Contractor is aware, and if personal or property damage thereafter results from such design or product defect, Contractor shall be liable jointly and severally with any other party responsible at law for all damages resulting from such defect.

# ARTICLE VII. MAINTENANCE OF RECORDS

1. CONTRACTOR’S MAINTENANCE OF RECORDS

Contractor shall maintain a complete file of all records, communications, and other documents that pertain to this Contract at its main office in Colorado or at its main office outside Colorado if it has no office in Colorado. Contractor shall maintain such records for a period of three (3) years after the date of completion of this Contract, and for such longer period as may be necessary to resolve any matters that may be pending at that time.

1. THE CITY MAY AUDIT CONTRACTOR’S RECORDS

Subject to a requirement of confidentiality in the treatment of Contractor’s confidential business records, including trade secrets, privileged information, or confidential commercial, financial, geological, or geophysical data, Contractor shall, and shall cause its subcontractors to, provide to the City (and internal and external auditors, inspectors, regulators and other representatives that the City may designate from time to time) access at reasonable hours to Contractor’s personnel and to these records and other pertinent information to the extent relevant to Contractor’s obligation under this contract including, but not limited to, the bid estimate and all bid work papers and take-offs, receipts, memoranda, vouchers, and accounts of every kind and nature pertaining to the performance of the work, including, but not limited to, job cost ledgers, invoices from and payments to subcontractors and material suppliers, records of home and field office overhead, as well as complete summaries and reports setting forth all reimbursable personnel- hours expended and payroll and equipment records, and shall permit the City to audit or inspect its records during the term of this contract, for a period of three (3) years following the completion of this Contract, and for such further periods as may be necessary to resolve any matters that may be pending at that time. The purpose of this provision is to assure Contractor’s compliance with the terms of this Contract and to evaluate Contractor’s costs and performance under this Contract. Any audit conducted shall be at the sole expense of the City. Contractor shall provide any assistance reasonably requested by the City or its designee in conducting any such audit.

1. RECORDS OF SUBCONTRACTORS AND CONSULTANTS

Contractor shall require all of its subcontractors and consultants to maintain all of their records that pertain to the project in the same manner and for the same length of time as Contractor is required to do and to allow the City the same access to those records as it has to Contractor’s records.

# ARTICLE VIII. SUSPENSION AND TERMINATION

1. SUSPENSION OF WORK BECAUSE OF CONTRACTOR DEFAULT

The Project Manager may suspend the work or any part of the work, without invalidating this Contract, because Contractor has materially breached any of this Contract’s conditions. A suspension shall not absolve Contractor or Contractor’s sureties of any duties or responsibilities except for the performance of the work which has been suspended during the suspension period. If Contractor later resumes work that the City previously suspended because Contractor had materially breached any of this Contract’s conditions, the City shall not be liable to Contractor for additional costs caused by the suspension or for extra start-up costs that result from resuming the suspended work. If this Contract is not performed within the time limit set forth, due to suspension for Contractor’s default, the City shall be entitled to liquidated damages for such delay as set forth in this Contract.

1. SUSPENSION BECAUSE OF ORDER OF STATE OR FEDERAL COURT

In the event a state or federal court order requires suspension of work, the order of suspension shall identify the court order that caused the suspension and shall extend the time limit of this Contract by the amount of time specified by the court order. If the court order causes suspension for an indefinite period of time and, as a result, a time extension cannot be established, the order of suspension will also be for an indefinite period of time. In the event that this Contract is suspended for an indefinite period of time, the City may elect to terminate this Contract. Should this occur, Contractor shall be paid for all work performed to the date of suspension and for all other costs which Contractor actually incurs as a result of the suspension. Contractor and the City shall decide which work shall be required to protect completed work and to restore utility service to the area under construction. Payment for such work shall be according to the unit prices listed or, if not specifically covered under this Contract, at a price to be determined by the Project Manager, construction manager, and contractor. In the event that the City elects to terminate this Contract because of a suspension due to a court order, arising from the methods or activities of Contractor or its subcontractors in constructing the project, Contractor hereby waives all claims for damages because of such inability to complete the project as planned, including, without limitation, damages for loss of anticipated profits.

1. SUSPENSION OF THE WORK FOR THE CITY’S CONVENIENCE

The City may, at any time and without cause, suspend the work or any portion thereof by written change order that fixes the date upon which work on the project shall be recommenced and state that the suspension is expressly for the City’s convenience. If the suspension applies to only a part of the work, a time extension will be authorized based on the Project Manager’s estimate of the delay to the entire project caused by the partial suspension. Liquidated damages will not be assessed by the City during the extended period caused by suspension for the City’s convenience under this Section 803. In all cases of suspension for the City’s convenience, a price adjustment will be made by the Project Manager by change order to reflect the reasonable, demonstrable cost to Contractor of the suspension. Contractor shall consult with the Project Manager about the cost of suspension, if the Project Manager so requests. Equipment rates shall be charged only for the time the equipment is operating. Standby time shall only be paid when the Project Manager determines the equipment is needed at the site, even though it is not operating. Upon receiving such an order of suspension, Contractor shall immediately protect and maintain the work in a condition that will permit its resumption for the least possible start-up cost. If the City wrongfully suspends this Contract, this shall be treated as a suspension of the work for the City’s convenience. If a portion of the work is suspended for more than three (3) months by the City, Contractor may then terminate that part of this Contract. Contractor shall have the right to dispute any decisions made by the Project Manager.

1. THE CITY MAY TERMINATE THIS CONTRACT FOR CAUSE

Without prejudice to any other right or remedy, the City may terminate this Contract or reassign all or any portion of the work pursuant to Section 806, City May Reassign the Work, for any of the following reasons:

1. Contractor assigns work to be performed under this Contract to a subcontractor without the written permission of the Project Manager.
2. A petition for bankruptcy is filed relating to the affairs of Contractor. As used in this Section 804, “Contractor” shall be deemed to include Contractor, or any of its officers, employees or major shareholders possessing at least ten percent (10%) of Contractor’s equity.
3. A general assignment of Contractor’s assets is made for the benefit of Contractor’s creditors or any of the funds due to Contractor under this contract are assigned for the benefit of Contractor’s creditors.
4. A trustee or receiver is appointed for Contractor or any of Contractor’s property.
5. The work is being unjustifiably delayed by Contractor, making allowance for any time extensions.
6. The City learns that Contractor has been guilty of collusion with other bidders in preparing the bid.
7. A surety that has bonded Contractor for the work becomes insolvent, bankrupt, or loses its right to do business in the State of Colorado and Contractor does not provide a substitute bond within the time set forth in Section 201, Bond Requirements.
8. Contractor refuses or fails to supply enough properly skilled workers or proper materials, unless it can convincingly demonstrate to the City that such workers or materials cannot be obtained by exercising reasonable diligence.
9. Contractor fails to make proper payment to subcontractor or suppliers.
10. Contractor breaches any of the conditions of this Contract or executes this Contract in bad faith or otherwise not in accordance with the terms of this Contract
11. Contractor disregards any law, ordinance, regulation, role, or order of any public body having jurisdiction.

If the City lawfully terminates this Contract and reassigns all or any portion of the work, the City may take possession of the work and of all materials thereon owned by Contractor and finish the work by whatever method it may deem expedient. In the event of such a default the City shall give Contractor ten (10) days’ written notice and the opportunity to cure such default. In the event of termination, Contractor shall not be entitled to receive any further payment until the work is completed and accepted. Contractor and Contractor’s surety shall reimburse the City for all expenses sustained by the City in completing this Contract, including, without limitation, administrative expense and other expenses incurred even if they exceed the contract price, but not including extra which is authorized after the termination. Where Contractor’s services have been so terminated or reassigned by the City, said termination shall not affect any rights of the City against Contractor then existing or that may thereafter accrue. Any retention or payment of moneys by the City due Contractor shall not release Contractor from liability.

1. CONTRACTOR SHALL NOTIFY THE CITY OF CERTAIN EVENTS

Contractor shall notify the Project Manager of the following events:

1. Any of the events described in Subsections A, B, C or D of Section 804, City May Terminate the Contract for Cause.
2. Any change in Contractor’s legal relationship with the surety that may affect this Contract.
3. Bankruptcy or insolvency of the surety, or any other event that prevents the surety from doing business in the State of Colorado.
4. Assignment of any of the funds due to Contractor under this Contract.
5. Any adverse occurrence that may materially affect Contractor’s ability to perform this contract.
6. Proceedings that could lead to the revocation of any of the licenses that are necessary for Contractor to perform work under this Contract.
7. The grant of a security interest by Contractor in any of the materials or equipment to be incorporated into the work to any third party.
8. The violation by any subcontractor or supplier of any of the terms of this contract, or occurrence of any event listed in Subsections A through G of this Section 805, with respect to a subcontractor or supplier.
9. THE CITY MAY REASSIGN THE WORK

If Contractor remains in breach of any of the conditions of this Contract after all applicable cure periods have expired, the City may reassign any part of the work to another party in lieu of terminating this Contract. Such reassignment shall not lessen any of Contractor’s responsibilities to perform the work on any part of this Contract that was not reassigned. The contract price shall be decreased in proportion to the amount of the work that was reassigned. In the event that the City reassigns work, the City may deduct from payments due to Contractor and may claim against Contractor for costs incurred by the City, including without limitation reasonable attorney fees for effecting the reassignment.

1. CONTRACT TERMINATION FOR REASONS BEYOND THE CONTROL OF E CONTRACTOR OR THE CITY

In the event that the work cannot be completed within the time set forth in this Contract because of a force majeure event, the City, acting by and through its City Manager and Project Manager, may terminate this Contract or any portion thereof by giving at least seven (7) days’ written notice to Contractor. When this Contract is terminated under this Section 807 before completion of the work in this Contract, payment at the contract price will be made for the actual items of work completed. For items that are only partially completed, the City shall pay for the portion of the item actually completed. Contractor also shall be awarded compensation for costs associated with materials that must be returned, rental contracts that this Contract or has entered into but may not terminate, and other reasonable costs that Contractor legitimately incurs as a result of the termination. If Contractor disputes the Project Manager’s valuation of work completed, Contractor may appeal pursuant to Section 409, Contract Grievance Appeal Procedure. Acceptable materials, obtained or ordered by Contractor for the project, but not yet incorporated in the work at the time of such termination, may, at the option of the City, be purchased from Contractor at actual cost as shown by receipted bills and actual cost records at the point of delivery. The intent of this Section 807 is to provide a method of equitable settlement with Contractor in the event of termination of this Contract because of conditions or circumstances beyond the control of either the City or Contractor. It is also intended by this Section 807 that a settlement for the work performed shall not relieve Contractor or its surety from responsibility for defective work and/or materials on the completed portion of the work nor for payment for labor and materials as guaranteed by the surety bond or bonds.

1. TERMINATION OF CONTRACT FOR CONVENIENCE
2. As provided in Section 803, Suspension of Work for the City’s Convenience, the performance of work under this contract may be terminated by the City in whole or in part for any reason whenever the City determines in its sole discretion that such termination is in the best interest of the City or whenever the City is prohibited from completing the work because of conditions beyond the control of either the City or Contractor. Such termination shall be effected by giving not less than three (3) days’ written notice to Contractor specifying the extent to which performance of work under this contract is terminated and the date upon which such termination becomes effective.
3. Upon receipt of notice of such termination, Contractor shall:
4. Stop work as specified in the notice;
5. To the fullest extent possible, terminate all orders and subcontracts except as necessary to complete work that is not terminated;
6. If directed by the City, assign all right, title and interest in subcontracts and materials in progress, as long as Contractor is released from all prospective liability, to subcontractors and suppliers, in which case the City will have the right, in its discretion, to settle or pay any and all claims arising out of the termination of such subcontracts;
7. Negotiate or otherwise settle outstanding liabilities and claims with the approval of the City or its designated representative and, upon receipt of all payments due from the City for termination for convenience, pay the amounts that were agreed upon in the settlements;
8. Complete performance of such part of the work as has not been terminated; and
9. Take such other actions as may be necessary, or as may be directed by the City, for the protection and preservation of the property related to this Contract.
10. Except as provided above, any inventory resulting from the termination of this contract may, with written approval of the City, be sold or acquired by Contractor under the conditions prescribed by and at prices approved by the City. Upon receipt of the notice of such termination, Contractor shall submit to the City a request for payment of its termination costs, in the form and with any reasonable certification prescribed by the City. Such request shall be submitted promptly but in no event later than six (6) months from the effective date of termination, unless extended in writing by the City upon the written request of Contractor within such six (6) month period. If the City determines that the facts justify it, a request may be received and acted upon after six (6) months.
11. Contractor shall be entitled to receive reimbursement for the reasonable cost of the work as of the date of termination, including a release of retainage. The City will additionally reimburse Contractor for other reasonable costs resulting from said termination such as restocking charges and protection of the work. Contractor shall not be entitled to loss of other anticipated profits, profits lost on other work not obtained or any other consequential damages, or any reimbursement for any costs incurred due to Contractor’s fault or failure to mitigate as a result of any such termination for convenience, and in no event shall the total sums paid Contractor exceed the contract price.
12. In arriving at the amount due Contractor under this section, there shall be deducted:
13. All unliquidated advance or other payments theretofore made to Contractor, applicable to the terminated portion of this contract;
14. Any claim which the City may have against Contractor in connection with this Contract;
15. The agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired or sold by Contractor or sold pursuant to the provisions of this Article VIII not otherwise recovered by or credited to the City; and
16. Any outstanding subcontractor claims.
17. The City may, from time to time, under such terms and conditions as it may prescribe, authorize partial payments and payments against costs incurred by Contractor for the terminated portion of this Contract if it is estimated that the total of such payments will not exceed the amount to which Contractor will be entitled. If the total of such payments is in excess of the amount to which this Contract will be entitled, the excess shall be payable by Contractor to the City upon demand.
18. A settlement for the work performed shall not relieve Contractor or its surety from responsibility for defective work and/or materials on the completed portion of the work or for the payment of labor and materials as guaranteed by the payment and performance bonds.
19. Upon reasonable notice to Contractor, the City shall be given full access to all books, correspondence, records and other materials of Contractor relating to this contract in order to determine the amounts to be paid on account of the termination of this Contract. Contractor shall, as requested by the City furnish clear copies of any such materials.
20. THE CITY SHALL HAVE ACCESS TO CONTRACTOR’S RECORDS

Upon reasonable notice to Contractor, the Project Manager shall be given full access to all books, correspondence, and papers of Contractor that are necessary to determine the amounts to be paid on account of the termination of this Contract or for any other application for payment made by Contractor, or to determine the amounts paid by Contractor to subcontractors or suppliers or their agents, employees, or assigns.

1. CONTRACTOR MAY TERMINATE THIS CONTRACT

Contractor may terminate this Contract for any of the following reasons:

1. The work is suspended for more than three (3) months by the City for its own convenience under Section 803, Suspension of Work for the City’s Convenience, or by an order of a court or other public authority, provided the suspension does not result from an act or omission of Contractor.
2. The City fails to issue a check or warrant to Contractor within thirty (30) days after payment is approved by the Project Manager.

If any of these conditions exist, Contractor may, ten (10) days after service of written notice on the Project Manager, terminate this Contract. The City shall have the right to remedy and/or cure the problem prior to expiration of the 10-day period. In such event, Contractor shall be entitled to payment for all work executed based on the proportion of the work completed. When this Contract is terminated before completion of all items of work in this Contract, payment will be made for the actual items of work completed at the contract price. For items that are only partially completed, the City shall pay for the portion of the item actually completed. Contractor may appeal such determination pursuant to Section 409, Contract Grievance Appeal Procedure.

1. CONTRACTOR MAY SUSPEND WORK

In lieu of terminating this Contract under Section 810, Contractor May Terminate This Contract, if the City fails to issue a check or warrant for payment more than thirty (30) days after approval by the Project Manager, Contractor may, seven (7) days after service of notice on the Project Manager, suspend the work until payment is received.

1. MEDIATION

If disputes remain unresolved after negotiations between the City and Contractor, the parties shall submit the disputes to nonbinding mediation. The mediator shall be a trained mediator with experience on municipal construction projects. The parties shall attempt to jointly select the mediator from a list of proposed mediators generated by the parties. The parties may seek the assistance of the American Arbitration Association in generating a list of potential mediators. In the event that the parties are unable to agree on a mediator, the Chief Judge of Boulder District Court should appoint one. Each party shall bear its own costs associated with presenting any disputes to the mediator, which costs shall not be recoverable as part of a change order or in any subsequent litigation or arbitration.

No decisions or statements of the mediator may be admitted as evidence in any subsequent litigation or arbitration between the parties nor may the mediator be called to testify in any litigation or arbitration between the parties concerning such disputes. The submittal of disputes to non-binding mediation shall be a condition precedent to commencing litigation or arbitration by either party.

In the event any dispute, mediation, arbitration, or litigation arises under this contract and during the time such dispute, mediation, arbitration, or litigation is pending, Contractor shall continue performance under this contract in accordance with the terms and conditions hereof. The failure of Contractor to continue expeditious performance due to a dispute arising under this contract shall, at the option of the City, be construed as a material breach of this contract justifying termination or such other action as the City deems appropriate.

1. NO ARBITRATION

No claims, disputes, or other disagreements arising out of this Contract or the Work shall be decided by binding arbitration before an extra-judicial body or person. Any provision to the contrary shall be null and void.

# APPENDIX 1: DEFINITIONS AND ABBREVIATIONS

1. Addenda. Written or graphic instruments issued prior to the execution of the contract agreement that modify or interpret the contract documents by additions, deletions, clarifications, or corrections.
2. Boulder Revised Code (B.R.C.). The Boulder Revised Code, which is referred to herein as “B.R.C. 1981,” is the code of ordinances adopted by the City of Boulder. This code may be reviewed at the Boulder Public Library, which is located at 1000 Canyon Boulevard, Boulder, Colorado and is also available online at [www.bouldercolorado.gov.](http://www.bouldercolorado.gov/)
3. Calendar Day or Day. Any day of the week, including Saturdays, Sundays, and City-observed holidays.
4. Calendar Week. A week which begins on Monday and ends on Sunday.
5. Change Order. A written order, set forth as Form 4, issued by the Project Manager to Contractor, covering changes in the plans or quantities within the scope of the contract and establishing the basis of payment and time adjustments for the work affected by the changes.
6. City Attorney. The City Attorney of the City of Boulder, Colorado, who must sign the contract agreement for it to be effective and approve as to form changes to the General Conditions or Special Conditions of the contract. The City Attorney may be contracted at Office of the City Attorney, P.O. Box 791, Boulder, Colorado 80306; telephone, 303-441-3020.
7. City Manager. The City Manager of the City of Boulder, Colorado, who alone has the authority to solicit bids for a contract and must sign the contract agreement for it to be effective. Contractor may appeal decisions by the Project Manager to the City Manager pursuant to Section 125, Protection of Municipal Service Facilities, as set forth in the General Conditions. The City Manager may be contacted at the Office of the City Manager, P.O. Box 791, Boulder, Colorado 80306; telephone 303-441-3090.
8. Colorado Revised Statutes (C.R.S.). The Colorado Revised Statutes, which are referred to herein as C.R.S., are the statutes adopted by the State of Colorado. If necessary, Contractor may review these statutes at the Office of the City Attorney, P.O. Box 791, Boulder, Colorado 80306; telephone, 303-441-3020.
9. Construction Bonds. The approved form of security, executed by Contractor and Contractor’s surety(s), which guarantee complete execution of the contract and all supplementary agreements pertaining thereto and the payment of all legal obligations pertaining to the performance of the work.
10. Contract. The entire agreement between Contractor and the City. See Section 5.A. of the contract agreement.
11. Contract Agreement. The executed document to which these General Conditions are attached.
12. Contract Completion Date. The contract completion date shall be the day that Contractor passes final inspection, as set forth on Form 8. *See* Section 615, Final Inspection.
13. Contract Documents. All written documents that define the construction work and the obligations of the City and Contractor in performing the work.
14. Contract Performance Period. The contract performance period runs from the date the notice to proceed is issued until the certificate of substantial completion (Form 7) is issued by the Project Manager.
15. Contract Price. The amount which the contract agreement states the City shall pay Contractor for its work under this contract, as that amount may be adjusted by change orders.
16. Contractor. The individual, firm, or corporation with whom the City contracts for the performance of the work. The term “contractor” shall also be deemed to include any subsidiaries that are at least 80% owned by Contractor.
17. Drawings and Specifications. All documents approved by the City for the purpose of describing the work under the contract. *See* Sections 108, Drawings and Specifications, and Section 110, Inconsistencies in Contract Documents.
18. Extra Work. Work not provided for in the contract documents but found desirable to include in the contract because of timing, mobilization, or other factors. *See* Section 408, Extra Work.
19. Field Orders. A writing issued by the Project Manager to explain or clarify any of the drawings and specifications or other contract documents. *See* Section 609, Field Orders, and Form 5.
20. Final Settlement. The date of final settlement shall be the day upon which the Project Manager authorizes final payment to Contractor. The date of final settlement may be the same date as the contract completion date (*see* definition (12) herein), but may not occur before the contract completion date.
21. Force Majeure. Acts of war, terrorism, hurricanes, earthquakes, epidemics, pandemics, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party’s reasonable control.
22. General Conditions. This document.
23. Growing Season. The growing season for plant materials planted or altered by Contractor (*see* Section 133, Planting, Protection and Guarantee of Plant Materials, and Section 134, Work in Existing Buildings) shall begin April 1 and end August 31.
24. Inclement Weather. Snowfall, rainfall, freezing temperatures, or excessive wind conditions, which cause a delay in Contractor’s performance. *See* Subsection C of Section 305, Time Extensions and Contractor’s Delay.
25. Laws. Without limitation, all applicable federal, state, and City codes, charters, ordinances, standards, statutes, rules, and regulations.
26. Notice to Proceed. The date of purchase order issued by the Purchasing Agent is the official notice to proceed. It shall be the beginning date of the contract for purposes of determining the contract performance period and liquidated damages.
27. Project Inspector. An authorized representative of the City assigned to make inspections of the work performed and the materials furnished by Contractor. The inspector’s duties are outlined further in Article I, Construction Site Requirements.
28. Plans. All City-approved drawings or reproductions pertaining to the construction of the work and appurtenances thereof.
29. Project. The entire work that Contractor has been hired to perform under the contract documents. The project shall be identified by a project number. The project shall also include extra work.
30. Project Manager. The City employee who supervises the implementation of the contract and represents the City in all matters and questions arising under the contract.
31. Purchase Order. The purchase order is the document issued by the City’s Purchasing Division that commits the payment of City funds for the work. The purchase order is also the notice to proceed, which is the official beginning date of the contract.
32. Purchasing Agent. An employee of the City’s Purchasing Division. The Purchasing Agent’s signature is required on all change orders (Form 4) in which the contract price is adjusted. The Purchasing Agent may be contacted at the Purchasing Division, P.O. Box 791, Boulder, Colorado 80306 and telephone number 303-441-3230.
33. Special Conditions. The document attached to the contract agreement as Exhibit D by which additions or revisions to the General Conditions may be made and/or address special aspects of particular contracts.
34. Specifications. All directions, conditions, requirements, and written agreements that pertain to the method and manner of performing the work, or to the quantities and qualities of materials to be furnished under the contract.
35. Subcontractor. An individual, firm, or corporation with whom Contractor contracts to perform part of the work, but not including one who only furnishes material.
36. Substantial Completion. The date of substantial completion of the work or designated portion thereof is the date certified by the Project Manager when construction is substantially complete in accordance with the contract documents. *See* Form 7 and Section 613, Substantial Completion.
37. Superintendent. The individual designated by Contractor to act on behalf of Contractor in all matters related to the contract. Unless otherwise agreed, the Superintendent shall serve on a full- time basis. *See* Section 106, Supervision at the Job Site.
38. Surety. The corporation, partnership, or individual, other than Contractor, which executed a bond or bonds with Contractor guaranteeing the complete execution of the contract and all supplementary agreements pertaining thereto.
39. Work. The construction required by the contract documents, including all labor, materials, and equipment. Work not described in the contract documents will not be required unless it is consistent therewith and is reasonably necessary to produce the results intended in the contract documents.
40. Work Directive. The document executed by the City’s Project Manager authorizing Contractor to proceed with the extra work. Work Directives serve as the basis for negotiating subsequent change orders. *See* Form 5.
41. Abbreviations. Wherever the following abbreviations are used, they are to be given the meaning which follows the abbreviation:

AAN American Association of Nurserymen

AASHTO American Association of State Highway and Transportation Officials ACI American Concrete Institute

AI Asphalt Institute

AGC Associated General Contractors

AIA American Institute of Architects

AISC American Institute of Steel Construction

AISI American Iron and Steel Institute

AITC American Institute of Timber Construction

ALS American Lumber Standards

ANSI American National Standards Institute (successor to USASI) APA American Plywood Association

APWA American Public Works Association ASA American Standards Association

ASCE American Society of Civil Engineers

ASTM American Society for Testing and Materials AWI American Woodworkers Institute

AWPI American Wood Preservers Institute AWS American Welding Society

AWWA American Water Works Association

BHMA Builders Hardware Manufacturers Association CDOT Colorado Department of Highway

CDH Colorado Division of Health

CLFMA Chain Link Fence Manufacturers Association CRSI Concrete Reinforcing Steel Institute

CSI Construction Specification Institute

EPA Environmental Protection Agency

FS Federal Specifications

MUTCD Manual on Uniform Traffic Control Devices NACE National Association of Corrosion Engineers NCMA National Concrete Masonry Association

NEC National Electric Code

NEMA National Electrical Manufacturers Association NFPA National Fire Protection Association

NFPA National Fireman’s Protection Association

NRMCA National Ready Mix Concrete Association NWMA National Wood Manufacturers Association OSHA Occupational Safety and Health Administration PCA Portland Cement Association

SDA Steel Door Association

SMACNA Sheet Metal and Air Conditioning Contractors National Association

UBC Uniform Building Code

UL Underwriter’s Laboratory

UMC Uniform Mechanical Code

UPL Uniform Plumbing Code

WCLB West Coast Lumber Inspection Bureau

WPCF Water Pollution Control Federation

WWPA Western Wood Products Association

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|  | **APPENDIX 2: CONSTRUCTION FORMS** |
| Form 1 | Performance Bond |
| Form 2 | Labor and Material Bond |
| Form 3 | Field Order |
| Form 4 | Change Order |
| Form 5 | Work Directive |
| Form 6 | Application for Payment |
| Form 7 | Certificate of Substantial Completion |
| Form 8 | Final Inspection Report |
| Form 9 | Payment of Boulder Sales and Use Tax |
| Form 10 | Claim Release |
| Form 11 | Affidavit that All Claims are Satisfied |
| Form 12 | Surety’s Consent to Final Payment |
| Form 13 | Guarantee Period Inspection Report |