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**GENERAL PROVISIONS**  
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- (h) “Subcontractor” A person, firm, or corporation, other than the Contractor, supplying labor and materials, or labor only, on work at the site of the project, having a direct contract with the Contractor and including one who furnishes material worked to a special design according to the plans and specifications of this work, but not including one who merely furnishes material not so worked.
- (i) “Surety” The person, firm, or corporation that has executed, as surety, the Contractor’s Performance and Payment Bonds.

### **3.102 SITE EXAMINATION**

- (a) Bidders shall inform themselves of the conditions under which the work is to be performed, concerning the site of the work, the structure of the ground, obstacles which may be encountered, availability of labor and all other relevant matters concerning the work to be performed. Where soil reports or test boring logs indicating underground conditions are provided or shown on the plans, such information shall be considered only as indicative of conditions as observed at the time and place indicated, and the City in no way warrants the accuracy or reliability of said reports or boring logs and is not responsible for any deduction, interpretation or conclusion drawn therefrom by the Contractor. Contractor acknowledges that the City shall not be held responsible for any variance in conditions or unforeseen conditions encountered at the time of actual construction. It shall be the responsibility of the Contractor to satisfy himself by such methods as he deems necessary prior to the letting as to underground conditions, structures, and obstacles to be encountered.
- (b) The Contractor to whom a contract is awarded will not be allowed any extra compensation by reason of any matter or thing concerning which he might fully have informed himself, prior to the bidding. Misunderstanding as to the amount of work, availability of materials or labor shall be no cause for failure to enter into the contract or to perform the same.
- (c) The successful Contractor will be required to employ, so far as possible, such methods and means in the carrying out of his work as will not cause any interruption or interference with any other Contractor.

### **3.103 SPECIFICATION REQUIREMENTS**

- (a) The bidder is expected to base his bid on materials and equipment complying fully with the plans and specifications, and in the event he names in his bid, materials or equipment which do not conform, he will be responsible for furnishing materials and equipment which fully conform at no change in his bid price.
- (b) Before submitting a proposal, each Contractor should read the complete specifications and plans, including all related documents contained herein, all of which contain provisions applicable not only to the successful bidder, but also to his subcontractors.

### **3.104 SUSPENSION AND DEBARMENT**

- (a) Bidder acknowledges that as of the solicitation submittal date, neither the Contractor, nor its subcontractor(s), is (a) debarred, suspended, or subject to any proceeding for debarment or suspension with a final determination still pending; declared ineligible or voluntarily excluded (as

such terms are defined in any of the Debarment Regulations) from participating in procurement or non-procurement transactions with any Federal, State, or City government department or agency pursuant to any of the Debarment Regulations, or (b) indicted, convicted or had a Judgment rendered against the Contractor, or its subcontractor(s) for any of the offenses listed in any of the Federal, State, or City's Debarment Regulations and no event has occurred and no condition exists that is likely to result in the debarment or suspension of the Contractor, or its subcontractor(s), from contracting with the City of Pueblo, Federal or State government, or any agency or instrumentality thereof.

### **3.105 STATEMENT OF BIDDER'S PLANT AND FINANCIAL CONDITION**

(a) Each bidder shall be prepared to submit the following data within seven (7) days upon demand of the Purchasing Agent.

- (1) A statement that the bidder maintains a permanent place of business and address thereof;
- (2) A statement of the equipment which the bidder proposes to use on the project, together with a statement identifying that equipment previously mentioned which the bidder owns and that which he does not own, but is certain he will be able to rent or otherwise procure for use on the project;
- (3) A financial statement, duly sworn to and in form approved by the City, listing assets and liabilities;
- (4) Statement listing projects of similar nature which the bidder has constructed or in the construction of which the bidder was actively engaged in a responsible capacity;
- (5) A statement that the bidder: (i) is not presently debarred or suspended by the Colorado State purchasing director or the head of any Colorado purchasing agency, (ii) is not listed on any federal government list of debarments, suspensions or voluntary exclusions, including but not limited to, the List of Parties Excluded From Federal Procurement or Nonprocurement Programs maintained by the General Services Administration, and (iii) neither bidder nor any person or firm who has an interest in bidder's firm is a person or firm ineligible to be awarded a federal government contract by virtue of any provision of federal law. In the event bidder cannot truthfully make the required statement, bidder shall furnish a detailed statement indicating the reasons therefore.

(b) By submitting a bid, bidder authorizes the City to obtain information concerning bidder's performance on other projects it has performed during the prior five (5) years, including those listed by bidder and those not listed which City may become aware of. The bidder also waives and releases all claims against owners, architects, and engineers, and their agents and representatives, relating to or arising from the furnishing of such information to the City concerning bidder's performance on prior projects. In order to effectuate the intent of this clause, bidder may be required by City to execute information release authorization forms.

(c) Any bidder may be required by the City to submit additional data to satisfy the City that such bidder is prepared to fulfill the contract if it is awarded to him.

(d) The failure of bidder to furnish any information which is or may be required to be furnished under this section shall be grounds for determining bidder not responsible.

### **3.106 CONDITIONS IN A BIDDER'S PROPOSAL**

A bidder shall not stipulate in his proposal any conditions not contained in the Contract Documents.

### **3.107 QUANTITIES**

Bidders must satisfy themselves by personal examination of the locations of the proposed work and by such other means as they may prefer as to the correctness of any quantities listed in the proposal and shall not after submission of their proposal, dispute or complain of such estimate, nor assert that there was any misunderstanding in regard to the nature or amount of work to be done.

### **3.108 COPIES OF DOCUMENTS**

Bid documents (including plans and specifications) can be obtained on the City website at [www.pueblo.us/purchasing](http://www.pueblo.us/purchasing) or via the Rocky Mountain E-Purchasing System (RMEPS) website [www.bidnetdirect.com/colorado](http://www.bidnetdirect.com/colorado).

Proposers must follow the submittal procedures outlined in the documents. The bid form must not be separated from the required proposal submittal packet as defined in the Mandatory Submittals checklist.

## **3.11 BIDS**

### **3.111 DATA SHEETS**

Where data sheets concerning equipment to be furnished are included in the Specification Documents as a part of the proposal, the bidder shall furnish the required information by filling in the data sheets complete in every detail. In the event that such data sheets are insufficient, or do not readily lend themselves to the correct description of the equipment, the bidder shall file with the bid additional statements setting out the necessary information. Failure to furnish such information as is required on the data sheets will be considered as grounds for rejecting the bid.

### **3.112 SUBMISSION AND CONSIDERATION OF BIDS**

- (a) Each proposal shall be firmly sealed in an envelope labeled as designated in the Advertisement for Bids and delivered to the office of the Purchasing Agent, City of Pueblo.
- (b) All bids are to be made only on forms of proposal furnished by the City and included in this volume. Total bid prices are to be written both by words and by figures; in case of conflict, former will apply. Unit bids may be made by figures only. No bid will be accepted which does not contain an adequate or reasonable price for each and every item named in the bidding schedule on the contract bid form.
- (c) Only proposals which are made out upon the regular proposal forms attached hereto will be considered. Any correction on the proposal form must be initialed by the same person signing the bid.
- (d) The City reserves the right to waive any informality in bids.
- (e) The City reserves the right to reject any or all bids, or any or all parts of bids
- (f) A Colorado resident bidder shall be allowed a preference against a nonresident bidder to the extent authorized by, and subject to the limitations of, Articles 18 and 19 of Title 8, Colorado Revised

Statutes; provided however, that this paragraph (f) shall be suspended to the extent any such preference is inconsistent with a requirement of federal law or the terms and conditions of any grant or cooperative agreement to which the City is a party which relates to the Project.

**3.113 BID SECURITY**

(a) No proposal will be received unless accompanied by a certified check, cashier's check, money order, bid bond or other suitable collateral, as set forth in the Request for Bids, payable to the City as a guarantee that if the bid is accepted, the bidder will execute and file the proposed contract and bonds within ten (10) business days from the date of the award of the contract. On failure of the successful bidder to execute the contract and furnish bonds, he shall forfeit the deposit as agreed as liquidated damages, and the acceptance of the bid will be contingent upon the fulfillment of this requirement by the bidder.

(b) The bid security of the three lowest formal bidders for each contract may be held until the contract is executed and approved and then returned to the bidders. The balance of bid securities submitted will be returned within seven (7) days after the opening of bids.

**3.114 SIGNING OF BIDS**

(a) Bids which are not signed by individuals making them should have attached thereto a power of attorney evidencing authority to sign the bid in the name of the person for whom it is signed.

(b) Bids which are signed for a co-partnership should be signed by all of the co-partners or by an attorney-in-fact. If signed by an attorney-in-fact, there should be attached to the bid a power of attorney evidencing authority to sign the bid.

(c) Bids which are signed for a corporation should have the correct corporate name thereof signed in handwriting or typewritten and the signature of the president or other authorized officer of the corporation should be manually written below the written or typewritten corporate name following the words "by": \_\_\_\_\_, \_\_\_\_\_.  
Name Title

(d) If bids are signed for any other legal entity, the authorization of the person signing for such legal entity should be attached to the bid.

**3.115 MODIFICATION OF BIDS**

Modification of bids already submitted will be permitted, provided such modification be in writing and transmitted to the Purchasing Agent of the City prior to closing time. Such modification shall not reveal the total amount of the original or revised bid.

**3.116 WITHDRAWAL OF BIDS**

Any bidder may withdraw his bid any time prior to the closing time, but no bid shall be withdrawn for a period of one hundred twenty (120) days after closing time. Negligence or mistake on the part of the bidder shall not constitute a right to withdraw after closing time. Any bid received after closing time will be rejected.

**3.117 DUPLICATION OF BIDS**

If more than one bid be offered by one party, all such bids shall be returned unopened. If duplicate bids are not discovered until after opening, such duplication shall be cause for immediate rejection of such bids. A party who has quoted prices to a bidder is not thereby disqualified from quoting prices to other bidders, or from submitting a direct bid on his own behalf.

### **3.118 ALTERNATES**

- (a) If the proposal forms include alternates, each bidder shall bid on each alternate unless otherwise directed in the Special Conditions or other Contract Documents.
- (b) Each bidder must submit such special data, if any, in respect to such alternate which any section of the Contract Documents requires to be submitted with each bid.

### **3.119 SUPPLEMENTAL UNIT PRICES**

- (a) On a lump sum contract, or partial lump sum contract, the City reserves the right to reject any or all supplemental unit prices which it deems to be excessive or unreasonable.
- (b) In cases where any part or all of the bidding is to be received on a unit price basis, the quantities stated are not intended to govern. The quantities stated, on which unit prices are to be invited are approximate only, and each bidder will be required to make his own estimates of amounts, and to calculate his unit price bid accordingly. Bids will be compared on the basis of the stated number of units in the proposal form. Such estimated quantities, while made from the best information available, are approximate only. Payment on the contract will be based on actual number of units installed on the completed work. In the event of an error in the extension of prices, the unit price bid shall govern.

## **3.12 CONTRACTS**

### **3.121 AWARD OF CONTRACT**

- (a) The contract shall be awarded to the responsible bidder submitting the lowest and most responsive bid within one hundred twenty (120) days from the date of opening of said bids. Award shall be at the sole discretion of the City.
- (b) Subject to execution of the Contract Agreement by the Director of Finance certifying that a balance of appropriation exists and funds are available, the amount of money appropriated is equal to or in excess of the Contract price; provided, however, that if construction is phased and subject to annual appropriation, funds only in the amount of initial appropriation are available and contractor shall confirm availability of funds before proceeding with work exceeding initial and subsequent annual appropriations.

### **3.122 DEFINITION OF AWARD**

The contract shall be deemed to have been awarded when formal Notice of Award shall have been duly served upon the intended awardee (i.e., the bidder to whom the City contemplates awarding the contract) by the Purchasing Agent of the City.

### **3.123 EXECUTION OF CONTRACTS AND BONDS**

- (a) The successful bidder shall enter into a written contract agreement with the City on the form attached hereto. The bidder must comply with all State and Federal Laws as to provision of Workers'

Compensation. Such contract agreement shall be subject to the Charter of Pueblo, the Code of Ordinances, City of Pueblo, and the Ordinance, if any, creating any Special Improvement District formed to carry out this project.

(b) Each contract shall be executed in one (1) original counterpart, unless instructed otherwise in Notice of Award, and there shall be executed original counterparts of the Contractor's Performance Bond and Payment Bond in equal number to the executed original counterparts of the contract. Not less than two (2) copies of such executed documents will be retained by the City and one (1) copy will be delivered to the Contractor. The successful contractor must provide workers' compensation insurance and public liability and property damage insurance as outlined in the General Conditions of the Contract. The costs of executing the bonds and contract and insurance, including all notarial fees and expense, are to be paid by the Contractor to whom the contract is awarded.

### **3.124 CONTRACT SECURITY**

The Contractor shall furnish a good and sufficient Performance Bond and Payment Bond on the forms attached hereto each in an amount not less than the full amount of the Contract price, as security for the faithful performance of the contract and for the payment of all persons performing labor and furnishing material in connection with the work. Said bonds shall be executed by a corporate surety duly authorized to issue bonds in the State of Colorado. Said bonds shall also be complete surety for all guarantees of materials and workmanship required by any provision of the Contract Documents or the specifications. If at any time during the continuance of the contract a Surety on either of the Contractor's bonds becomes irresponsible or insolvent the City shall have the right to require additional and sufficient sureties which the Contractor shall furnish within ten (10) days after written notice to do so.

### **3.125 VERBAL AGREEMENTS**

No verbal agreements or conversations with any agent or employee of the City, either before or after execution of the Contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising said contract.

### **3.126 SCHEDULE OF UNIT PRICES**

(a) Promptly following the execution of the contract documents for all lump sum contracts, the Contractor shall prepare and transmit to the Engineer two copies of an itemized breakdown showing the unit quantities of each major construction item and the corresponding unit prices. Such unit prices shall contain all costs including profit, of each item complete in place. The total cost of all the items shall equal the contract price for the project. This breakdown when approved by the Engineer, will be used primarily in determining payment due the Contractor on periodical estimates. If, in the opinion of the Engineer, any unit price submitted by the Contractor is unbalanced, a detailed breakdown of the items contained in the unit will be required.

(b) For contracts bid on a unit price basis, unit bid prices for substantially completed work will be used in determining payment due the Contractor on periodical estimates. Partially completed units may be paid for in periodical estimates.

## **3.13 SUBCONTRACTS**

### **3.131 SUBCONTRACTORS**

(a) The Contractor shall as soon as possible after the execution of the Contract, notify the City in writing of the names of the subcontractors proposed on the Contract, and shall not employ any subcontractor that the City objects to as incompetent, unfit or otherwise disqualified. Additionally, Contractor shall not employ in the work any subcontractor, nor obtain materials from any supplier, who is (1) debarred or suspended by the Colorado state purchasing director or head of any Colorado purchasing agency or (2) listed on any federal government list of debarments, suspensions or voluntary exclusions, including but not limited to, the List of Parties Excluded from Federal Procurement or Nonprocurement Programs maintained by the General Services Administration.

(b) The Contractor agrees to be fully responsible to the City for the acts or omissions of his subcontractors and of any one employed directly or indirectly by him or them and this contract obligation shall be in addition to the liability imposed by law upon the contractor.

(c) Nothing contained in the contract documents shall create any contractual relationship between any subcontractor and the City.

(d) The Contractor agrees to bind every subcontractor (and every subcontractor of a subcontractor) by the terms of the General Provisions and the Special Provisions of the Contract, Plans and Specifications as far as applicable to his work, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the City.

### **3.132 ASSIGNMENT OF CONTRACT**

No assignment by the contractor of any principal construction contract or any part thereof or of the funds to be received thereunder by the contractor, will be recognized unless such assignment has had the written approval of the City and the Surety has been given due notice of such assignment and has furnished written consent thereto. Such written approval by the city shall not relieve the contractor of the obligations incurred by him under the terms of this contract. In addition to the usual recitals in assignment contracts, the following language must be set forth:

"It is agreed that the funds to be paid to the assignee under this assignment are subject to a prior lien for services rendered or materials supplied for the performance of the work called for in said contract in favor of all persons, firms or corporations."

### **3.133 OTHER CONTRACTS**

The City may award other contracts for additional work, at the site of the project (or other locations) and the Contractor shall fully cooperate with such other contractors and carefully fit his own work to that provided under other contracts as may be directed by the City. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor.

## **3.2 INDEMNITY AND INSURANCE**

### **3.21 INDEMNITY**

The contractor and his sureties shall indemnify, defend and save harmless the City of Pueblo and all of its officers, agents and employees from all suits, actions or claims of any character, name and description brought for or on account of any injuries or damage received or sustained by any person or persons or property, on account of any negligent act or fault of the Contractor, his agents or employees, in performance of said contract; or on account of the failure of the Contractor to provide necessary barricades, warning lights or signs; and shall forthwith pay any judgment, with costs, which may be obtained against the City, its officers, agents or employees, growing out of such injury or damage.

### **3.22 CONTRACTORS INSURANCE**

The Contractor shall not commence work under this contract until he has obtained at his own expense and without cost to the City all insurance required under this paragraph and such insurance has been approved by the City Attorney, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. The Contractor shall maintain such insurance until the final acceptance by the City of all construction covered by the contract.

(a) Commercial General Liability Insurance

The Contractor shall secure and maintain during the period of this contract and for such additional time as work on the project is being performed, Commercial General Liability Insurance issued to and covering the liability of the contractor with respect to all work performed by him and all his subcontractors under the contract, to be written on a Commercial General Liability policy form CG 00 01. This insurance shall be written in amounts not less than \$1,000,000 for each occurrence and aggregate for personal injury including death and bodily injury and \$1,000,000 for each occurrence and aggregate for property damage. This policy of insurance shall be endorsed naming the City of Pueblo, its agents, officers, and employees as additional insureds. To the extent that Contractor's work, or work under his direction, may require blasting, explosive conditions, or underground operations, the commercial general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of building, or damage to underground property. The policy shall also provide coverage for contractual liability assumed by Contractor under the provisions of the Contract, and "Completed Operations and Projects Liability" coverage.

(b) Comprehensive Automobile Liability Insurance

The Contractor shall procure and maintain during the period of the contract and for such additional time as work on the project is being performed, Comprehensive Automobile Liability Insurance. This insurance shall be written with limits of liability for and injury to one person in any single occurrence of not less than \$350,000 and for any injury to two or more persons in any single occurrence of not less than \$1,000,000. This insurance shall include uninsured/underinsured motorist coverage and shall protect the Contractor from any and all claims arising from the use both on and off the site of the project of automobiles, trucks, tractors, backhoes, and similar equipment whether owned, leased, hired, or used by Contractor.

(c) Workers' Compensation Insurance

The Contractor shall procure and maintain during the period of this contract and for such additional time as work on this project is being performed, Workers' Compensation Insurance, including Occupational Disease Provisions, fully complying with the provisions of the Workers' Compensation Act, as amended, of the State of Colorado. Such insurance shall be obtained notwithstanding that Contractor may have no employees as defined under said Act or that Contractor might otherwise avail itself of an exemption under the Act from any legal requirement to obtain such coverage. Such insurance shall cover all employees of Contractor performing work on the project irrespective of whether such employees may be shareholders, managers, partners or owners of Contractor or exempt employees under the Act.

If any class of employees engaged in hazardous work under this contract at the site of the project is not protected by the Workers' Compensation Statute, the Contractor shall provide, and similarly shall cause each subcontractor to provide, special insurance for the protection of such employees not otherwise protected. Workers' Compensation policy shall contain an endorsement waiving subrogation against the City.

(d) Builder's Risk Insurance

When specified in Article 2, Special Provisions, the Contractor shall secure and maintain during the period of this Contract, Builder's Risk "All-Risk" Completed Value Insurance coverage (including vandalism) upon 100% of the cost of the entire project which is the subject of this Contract and including completed work, work in progress, and materials delivered to the site for incorporation therein. Such insurance shall include as additional named insureds, the City, its officers, agents and

employees, and any other person with an insurable interest designated by the City as an Additional Named Insured. Such insurance may have a \$2,500 maximum deductible clause, which deductible amount shall be the responsibility of the Contractor. In the event the project site is located within the floodway or floodplain, or located within 500 feet of any lake, stream, river or other natural watercourse, the policy shall contain a flood endorsement.

(e) Any Subcontractor Performing Work for the Contractor

Any subcontractor performing work for the Contractor under the contract shall provide certificates of insurance protection to the Contractor and to the City of Pueblo, Colorado, of the same type and in the same amounts as required by the Contractor.

(f) The Insurance Coverage

The insurance coverage enumerated in the above subparagraphs constitutes the minimum requirements and said enumeration shall in no way lessen or limit the liability of the Contractor under the terms of the contract. The Contractor shall procure and maintain, at his own cost and expense, any additional kinds and amounts of insurance that, in his own judgement, may be necessary for his proper protection in the prosecution of the work.

(g) Certificates of Insurance

Certificates of Insurance for Workers' Compensation Insurance, Commercial General Liability Insurance, and Comprehensive Automobile Liability Insurance shall be filed with the City prior to the execution of the contract. Certificates for Builder's Risk Insurance shall also be filed with the City when such insurance is required for the project. Said insurance shall not thereafter be canceled, permitted to expire, or be changed without 30 days advance written notice to the City.

### **3.3 GUARANTEES, PATENTS, PERMITS**

#### **3.31 GUARANTEES**

(a) All work shall be constructed in compliance with applicable building and construction codes, and must be guaranteed for a period of two (2) years from the date of final acceptance, or for such other period as may be required in the Special Provisions.

(b) In placing orders for equipment, the Contractor shall purchase same only under a written guarantee from the respective manufacturer that the equipment supplied will function satisfactorily as an integral part of the completed project in accordance with the plans and specifications. Furthermore, the Contractor shall require that the manufacturer agree in writing at the time the order for equipment is placed, that he will be responsible for the proper functioning of the equipment in cooperation with the Contractor, and that whenever necessary during the installation period or tuning up period following construction period the manufacturer will supply, without additional cost to the City, such superintendence and mechanical labor and any additional parts and labor needed to make the equipment function satisfactorily, even if same was not shown on approved shop drawings.

(c) The provisions of this section concerning guarantee by Contractor shall be construed in a manner consistent with the requirements and limitations of 23 CFR § 635.413.

#### **3.32 PERMITS, SURVEYS, AND COMPLIANCE WITH LAWS**

(a) Except as may otherwise be indicated in the contract documents, the Contractor shall procure at his own expense all permits, licenses, and bonds necessary for the prosecution of his work, and/or required by Municipal, State, and Federal regulations and laws, including, but not limited to, permits for transportation of materials and equipment, blasting, environmental permits, and any other permit required for the project or contractor's operations, regardless of whether the necessity for such permit is disclosed in the plans and specifications.

(b) The City will furnish all site surveys, easements, and rights of way necessary for construction of any permanent works required in the specifications, where such work is to be done on property other than the City's.

(c) The Contractor shall give all notices, pay all fees and taxes, including City Sales and Use Taxes, and comply with all Federal, State and Municipal laws, ordinances, rules, and regulations and building and construction codes bearing on the conduct of the work. This contract as to all matters not particularly referred to and defined herein shall notwithstanding be subject to the provisions of all pertinent ordinances of the Municipality within whose limits the work is constructed, which ordinances are hereby made part hereof with the same force and effect as if specifically set out herein.

(d) This contract is specifically subject to the provisions of the Charter of Pueblo, all applicable portions of the 1971 Code of Ordinances of Pueblo, Colorado, and of the ordinance, resolution or order of the City Council authorizing this improvement. The aggregate payment on this contract may not exceed the estimates of the Engineer nor the amount budgeted for the project. If the cost of the improvement to be constructed under this contract is to be assessed upon the owners of land benefited by such improvements, upon complaint of any such landowner that the improvement is not being constructed in accordance with the contract, the Council may consider the complaint and make such order in the premises as shall be just, and such order shall be final and conclusive.

### **3.33 DEFENSE OF CLAIMS OR SUITS BY REASON OF PATENT INFRINGEMENT**

The Contractor shall pay for all royalties and patents for any patented product used by him or incorporated in the work, and shall defend all claims or suits for infringement of any patent right brought against himself thereof; except such claims or suits arising by reason of patent infringements or unauthorized use of patented processes where such is the direct result of specification requirements (as distinguished from patented articles, apparatus, or equipment).

### **3.34 LICENSE OR ROYALTY FEES**

If the project is designed so as to require or permit the use of a process or processes (as distinguished from articles, apparatus, or equipment) for which license or royalty fees will be charged, such fees for the use of such processes will be paid by the Contractor to the Patentee, Licensee or owner of such process, and bidder shall include such fees in their bid.

## **3.4 PLANS AND SPECIFICATIONS**

### **3.41 PLANS AND SPECIFICATIONS**

(a) All work shall be executed in strict conformity with the plans and specifications, and the Contractor shall do no work without proper drawings and instructions.

(b) The City will furnish to the Contractor one (1) complete set of contract documents, including drawings. Additional copies of same or any part thereof shall be furnished at the expense of the Contractor.

(c) Figured dimensions on the plans shall be taken as correct but shall be checked by the Contractor before starting construction. Any errors, omissions, or discrepancies shall be brought to the attention of the Engineer and his decision thereon shall be final. All notes on the plans shall be followed.

Corrections of errors, or omissions on the drawings or specifications may be made by the Engineer when such correction is necessary for the proper execution of the work.

### **3.42 INTENT OF CONTRACT DOCUMENTS**

- (a) The sections of the contract documents and the contract plans are complementary, and what is called for by any one shall be binding as if called for by all. The intention of the contract documents is to include in the contract price the cost of all labor and materials, water, fuel, tools, plant, equipment, light, transportation, and all other expense as may be necessary for the proper execution of the work.
- (b) Any work shown on the plans and not covered in the specifications, or included in the specifications and not shown on the plans shall be executed by the Contractor as though shown both on the plans and included in the specifications. If the plans and specifications should be contradictory in any part, the specifications shall govern.
- (c) If the Contractor, in the course of the work, finds any discrepancy between the plans and the physical layout, or any errors or omissions in plans or layout, he shall immediately so inform the Engineer, and the Engineer shall promptly verify them. Any work done after such discovery without written consent of the Engineer authorizing same shall be done at the Contractor's risk.
- (d) Any minor items not specifically called for in the plans and specifications, but which are necessary to complete the work ready for use in accordance with the requirements of good practice, as determined by the Engineer, shall be included as a part of the Contractor's bid price and furnished at no additional cost to the City.
- (e) In interpreting the contract documents, words describing materials or work which have a well-known technical or trade meaning, unless otherwise specifically defined in the contract documents, shall be construed in accordance with such well-known meaning recognized by architects, engineers, and the trade.

### **3.43 INTERPRETATION OF CONTRACT DOCUMENTS**

If any person contemplating submitting a bid for this contract is in doubt as to the true meaning of any part of the plans, specifications, or other contract documents, he may submit to the Engineer a written request for an interpretation thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation of the documents will be made only prior to closing time and by written addendum duly issued or delivered to each person receiving a set of such documents. The City will not be responsible for any other explanations or interpretations of the documents.

### **3.44 STANDARD MANUFACTURER**

Wherever the terms "standard", "recognized" or "reputable" manufacturer are used, they shall be construed as meaning manufacturers who have been engaged in the business of fabricating materials, equipment, or supplies of the nature called for by the specifications for a reasonable period of time prior to the date set for opening of bids, and who can demonstrate to the satisfaction of the City that said manufacturer has successfully installed equipment, materials, or supplies of the type proposed to be furnished in at least three instances and that the performance of such materials, equipment, or supplies for a period of over twelve months prior to the date fixed for opening bids shall, prima facie, be deemed to have been engaged in such business for a reasonable length of time.

### **3.45 "OR EQUAL" CLAUSE**

Whenever in any section of the contract documents, plans or specifications, any article, material, or equipment is defined by describing a proprietary product, or by using the name of a manufacturer or

vendor, the term "or equal" if not inserted, shall be implied. The specific article, material, or equipment mentioned shall be understood as indicating the type, function, minimum standard of design, efficiency, and quality desired and shall not be construed in such a manner as to exclude manufacturers products of comparable equality, design, and efficiency.

### **3.46 MATERIALS AND WORKMANSHIP**

(a) The Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, heat, transportation, and other facilities necessary for the execution and completion of the contract. Unless otherwise stipulated in the specifications, all workmanship, equipment, materials, and articles incorporated in the work covered by this Contract are to be new and of the best grade of their respective kinds for their purpose. The Contractor shall furnish to the Engineer, for his approval, the name of the manufacturer of machinery, mechanical and other equipment, which he contemplates installing, together with their performance capacities and other pertinent information.

(b) If not otherwise provided, material or work called for in this contract shall be furnished and performed in accordance with well-known established practice and standards recognized by architects, engineers, and the trade in so far as possible.

(c) When required by the specifications, or when called for by the Engineer, the Contractor shall furnish for approval full information concerning the materials or articles which he contemplates incorporating in the work. Samples of materials shall be submitted for approval when so directed. Machinery, equipment, materials, and articles installed or used without such approval shall be at the risk of subsequent rejection. All materials and workmanship shall be guaranteed by the Contractor and Surety for a period of two (2) years from date of final acceptance, or for such period as may be required in the Special Provisions.

(d) No material of any kind shall be installed in the project until it has been inspected and approved by the Engineer. All material rejected shall be immediately removed from the site of the work and not again offered for inspection. Any materials or workmanship found at any time to be defective shall be remedied at once regardless of previous inspections.

(e) At any time during the course of construction of this project when in opinion of the Engineer, provisions of the plans, specifications, or contract provisions are being violated by the Contractor or his employees, the Engineer shall have the right and authority to order all construction to cease or material to be removed, until arrangements satisfactory to the Engineer are made by the Contractor for resumption of the work in compliance with the provisions of the contract.

### **3.47 SHOP DRAWINGS**

(a) The Contractor, as soon as possible after approval of the source and the purchase of items of materials and equipment, shall submit to the Engineer all shop or setting drawings and schedules required for the work, including those pertaining to structural and reinforcing steel. The Contractor shall make any corrections in the drawings required by the Engineer, and resubmit same without delay.

(b) Three final copies of all shop or setting drawings shall be submitted to the Engineer, who after checking will retain two copies and return one copy to the Contractor. The Engineer's approval of shop drawings of equipment and material shall extend only to determining the conformity of such equipment and materials with the general features of the design drawings prepared by the Engineer. Shop drawings are not part of the Contract Documents and do not modify the Contract Specifications. It shall be the

responsibility of the Contractor to determine the correctness of all dimensions and minor details of such equipment and materials so that when incorporated in the work correct operations will result.

### **3.5 ENGINEER, INSPECTION, AND TESTING**

#### **3.51 AUTHORITY OF ENGINEER**

- (a) The Engineer shall decide all questions which may arise as to the fulfillment of the contract on the part of the Contractor and his decision thereon shall be final and conclusive. He shall have authority to reject all work and materials which do not conform to the contract and to decide questions which arise in the execution of the work.
- (b) If, in the opinion of the Engineer, the work being done by the Contractor is in violation in any way with the terms of the contract, he shall forthwith notify the Contractor to cease said violation.
- (c) The Engineer shall, upon presentation to him, make prompt decisions in writing on all claims of the Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the Contract documents. All such decisions of the Engineer shall be final and conclusive.
- (d) The Contractor shall submit schedules which shall show the order in which the Contractor proposes to carry on the work, but the right to stipulate the order in which the contract shall be carried out is reserved to the Engineer.
- (e) In the event either City or Contractor remains dissatisfied with the final decision of the Engineer hereunder, the City or Contractor may seek judicial review thereof pursuant to Rule 106, C.R.C.P. In no event shall the Contractor slow or stop the work while a determination is pending under this section 3.51, and the City will continue to make payment in accordance with the contract documents except as to any amount in dispute.

#### **3.52 TESTING OF MATERIALS**

- (a) Attention of the Contractor is directed to the materials tests required on this contract. All laboratory tests shall be approved by an approved testing laboratory. The specific test requirements are set forth in the sections of these specifications which describe the materials or apparatus to be tested. The Contractor shall furnish the Quality Control materials to be tested and shall pay transportation charges and costs of testing on any samples required to be submitted to the laboratory.
- (b) Where certified test reports are required to be furnished by the manufacturer, the Contractor shall furnish duplicate copies of the reports before the material will be approved for use.

#### **3.53 STAKING WORK**

- (a) The Engineer will set control stakes for general layout and all necessary grade stakes for construction work. The protection and care of such stakes shall be the responsibility of the Contractor. The Contractor may, at the discretion of the Engineer, be required to pay the cost of replacing stakes which are lost or destroyed. The detail layout of structures and staking of individual items shall be done by the Contractor subject to verification by the Engineer as to compliance with the contract plans and specifications. In any case, the Contractor shall be responsible for the correctness and accuracy of the detail layout of finished structures.

(b) Any personnel engaged in the surveying work on the project by the Contractor or his subcontractors, who is judged by the Engineer to be incompetent shall be removed from the work and replaced by competent personnel.

### 3.54 FAILURE TO COMPLETE WORK ON TIME

In case the Contractor shall fail to fully perform and complete the work in conformity with the provisions and conditions of the contract within the specified time limit set forth in the Proposal Form or within such further time as, in accordance with the provisions of this agreement shall be fixed or allowed for such performance and completion, the Contractor shall and will pay to the City of Pueblo for each and every day of the additional time in excess of the contract time and any granted extensions thereof, the sum given in the following schedule which said sum per calendar day is agreed upon, fixed and determined by the parties hereto. The amounts shown are considered to be liquidated damages to reimburse the City for the additional costs caused by delayed completion and in no case constitute a penalty. The amounts set forth below may be reduced or supplemented for project specific considerations as provided for in Article 2 – Special Provisions.

ORIGINAL CONTRACT AMOUNT	AMOUNT OF LIQUIDATED DAMAGES PER DAY
Less than \$49,999	\$200.00
\$50,000 to \$99,999	\$250.00
\$100,000 to 249,999	\$300.00
\$250,000 to \$499,999	\$400.00
\$500,000 to \$999,999	\$500.00
\$1,000,000 and above	\$1,000.00 plus any additional amount specified in Article 2 – Special Provisions

### 3.55 INSPECTION

(a) The Engineer and his authorized representatives shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide proper and safe facilities for such access and for inspection.

(b) The Engineer shall have the right to reject materials and workmanship which are defective, or require their correction. Rejected workmanship shall be satisfactorily corrected and rejected materials shall be removed from the premises without charge to the City. If the Contractor does not correct such condemned work and remove rejected materials within a reasonable time fixed by written notice, the City may remove them and charge the expense to the Contractor.

(c) Should it be considered necessary or advisable by the Engineer at any time before final acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall on request promptly furnish all necessary facilities, labor, and materials. If such work is found to be defective in any material respect due to fault of the Contractor or his subcontractors he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the actual cost of labor and material necessarily involved in the examination and replacement, plus fifteen (15) percent, will be allowed the Contractor.

(d) All materials to be incorporated in the work, all labor performed, all tools, appliances, and methods used shall be subject to the inspection and approval or rejection of the Engineer.

(e) If the Engineer shall point out to the Contractor, his foreman or agent any neglect or disregard of the contract provisions, such neglect or disregard shall be remedied and further defective work shall be at once discontinued.

(f) The Contractor shall execute the work only in the presence of the Engineer or authorized inspectors, unless provision has been made for the work to proceed without complete engineering supervision or inspection. The presence of the Engineer or Inspector shall in no way relieve the Contractor of the responsibility of this contract, or be any warrant for the furnishing of bad material or poor workmanship.

(g) The inspection and supervision of the work by the Engineer is intended to aid the Contractor in applying labor, materials, and workmanship in compliance with the contract provisions. Such inspection and supervision, however, shall not operate to release the Contractor from any of his contract obligations.

### **3.6 CONTRACTOR'S WORKING CONDITIONS**

#### **3.61 SUPERINTENDENCE**

(a) The Contractor shall give his personal superintendence to the work or have at the site of the work at all times a competent foreman, superintendent, or other representative satisfactory to the Engineer and having authority to act for the Contractor. All directions given to him shall be as binding as if delivered to the Contractor. Such directions shall be confirmed upon written request to the Engineer by the Contractor or his superintendent.

(b) In so far as it is practicable and except in the event of discharge by the Contractor or in the event of proven incompetence, the individual who has been designated to represent the Contractor shall so act, and shall follow without delay instructions of the Engineer in the prosecution of the work in conformity with the contract.

#### **3.62 LABOR**

(a) The Contractor shall employ none but competent and skilled workmen and foremen in the conduct of work on this contract. The Contractor shall at all times enforce strict discipline and good order among his employees. The Engineer shall have the authority to order removal from the work of any Contractor's employee who refuses or neglects to observe any of the provisions of these plans or specifications, or who is incompetent, unfaithful, abusive, threatening, or disorderly in his conduct, and any such person shall not again be employed on this project without permission of the Engineer.

(b) Colorado labor shall be employed to perform the work to the extent of not less than eighty percent (80%) of each type of class of labor in the several classifications of skilled and common labor employed on this project, as required and defined in Article 17 of Title 8 of C.R.S.; provided, however that this subsection (b) shall be suspended and of no effect to the extent prohibited or inconsistent with a requirement of federal law or regulation or the terms and conditions of any grant or cooperative agreement to which the City is a party and which concerns the Project.

#### **3.63 USE OF JOB SITE AND PRIVATE LAND**

(a) The Contractor shall confine his equipment, apparatus, the storage of materials and operations of his workmen to limits indicated by law, ordinances, permits or directions of the City and shall not encumber the premises with his materials.

(b) The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety. The Contractor shall enforce the Engineer's instructions regarding signs, advertisements, fires, and smoke.

(c) The Contractor shall not use any vacant lot or private land as a plant site, depository for materials, or as a spoil site without the written authorization of the owner (or his agent) of the land, a copy of which authorization shall be filed with the City. The Contractor shall not interrupt, constrict, or alter established drainage ways on vacant lots or private land without first obtaining permission from the Engineer and the property owner.

### **3.64 PROTECTION OF THE PUBLIC, WORK, AND PROPERTY**

(a) The Contractor shall provide and maintain all necessary watchmen, barricades, red lights, and warning signs and take all necessary precautions for the protection of the public. He shall continuously maintain adequate protection of all work from damage, and shall take all reasonable precautions to protect the City's property from injury or loss arising in connection with the contract. He shall make good any damage, injury, or loss to his work and to the property of the City, except such as may be due to errors in the contract documents, or caused by agents or employees of the City.

(b) The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the City's and adjacent property from injury arising from or in connection with this contract.

(c) The Contractor will be responsible for any and all damage to property, public or private, that may be caused by his operations in the performance of this contract, and the Contractor shall defend any suit that may be brought against himself or the City on account of damage inflicted by his operations, and shall pay any judgements awarded to cover such damage; provided, however, that if either party to this contract should suffer injury or damages in any manner because of any wrongful act or neglect of the other party or of anyone employed by him, then he shall be reimbursed by the other party for such damage. Notice of pending claim for such reimbursement shall be made in writing to the party responsible within a reasonable time of the first observance of such damage, and the claim shall be filed and adjusted prior to the time of final payment.

### **3.65 ACCIDENT PREVENTION**

Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable local ordinances, State, and Federal laws, and building and construction codes shall be observed. Machinery, equipment, and all hazards shall be guarded or eliminated in accordance with the safety provisions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, to the extent that such provisions are not in contravention of applicable law.

### **3.66 INTERFERENCE WITH TRAFFIC**

In executing the work on this project the Contractor shall not unnecessarily impede or interfere with traffic on public highways or streets. Any question as to what constitutes unnecessary interference with

traffic or a hazard to traffic shall be determined by the Engineer and the Traffic Engineer of the City. The Contractor shall confer with and keep Police and Fire Departments of the City fully informed as to street or alleys which are to be closed to traffic for construction purposes. The Contractor shall be responsible for coordination of his work with all affected utilities.

### **3.67 SANITARY CONVENIENCES**

The Contractor shall provide and maintain at the site of the construction work at all times, suitable sanitary facilities for use of those employed on this contract without committing any public nuisance. Pit type toilets shall be of proper design and fly tight. All toilet facilities shall be subject to the approval of the Pueblo City-County Health Department.

### **3.68 WORK IN BAD WEATHER**

No construction work shall be done during stormy, freezing or inclement weather, except such as can be done satisfactorily, and in a manner to secure first class construction throughout, and then only subject to the permission of the Engineer.

### **3.69 STATE-IMPOSED MANDATES PROHIBITING WORKERS WITHOUT AUTHORIZATION FROM PERFORMING WORK UNDER THIS CONTRACT**

(a) At or prior to the time for execution of this Contract, Contractor shall submit to the Purchasing Agent of the City its certification that it does not knowingly employ or contract with a “worker without authorization”, as that term is defined within §8-17.5-101 (9), C.R.S. (herein “Worker without Authorization”), who will perform work under this Contract and that the Contractor will participate in either the “E-Verify Program” created in Public Law 208, 104th Congress, as amended and expanded in Public law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security or the “Department Program” established pursuant to section 8-17.5-102(5)(c), C.R.S. that is administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract.

(b) Contractor shall not:

(i) Knowingly employ or contract with a Worker without Authorization to perform work under this Contract;

(ii) Enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with a Worker without Authorization to perform work under this Contract.

(c) The following state-imposed requirements apply to this Contract:

(i) The Contractor shall have confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either the E-Verify Program or Department Program.

(ii) The Contractor is prohibited from using either the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.

(iii) If the Contractor obtains actual knowledge that a subcontractor performing work under this contract knowingly employs or contracts with a Worker without Authorization to perform work under this Contract, the Contractor shall be required to:

A. Notify the subcontractor and the Purchasing Agent of the City within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with a Worker without Authorization; and

B. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (c)(iii)A. above, the subcontractor does not stop employing or contracting with the Worker without Authorization ; except that the Contractor shall not terminate the contract with the subcontractor if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a Worker without Authorization.

(iv) The Contractor is required to comply with any reasonable request by the Colorado Department of Labor and Employment (hereinafter referred to as "CDLE") made in the course of an investigation that CDLE is undertaking pursuant to its authority under §8-17.5-102(5), C.R.S.

(d) Violation of this Section by the Contractor shall constitute a breach of contract and grounds for termination. In the event of such termination, the Contractor shall be liable for City's actual and consequential damages.

(e) Nothing in this Section shall be construed as requiring the Contractor to violate any terms of participation in the E-Verify Program.

### **3.7 CLEANUP AND FINAL COMPLETION**

#### **3.71 CLEANING UP AND FINAL INSPECTION**

(a) The Contractor shall at all times keep the site of the work free from accumulations of waste materials or rubbish caused by his employees or work and at the completion of the work he shall remove all his rubbish from and about the work and all his tools, equipment, scaffolding and surplus materials and shall leave his work clean and ready to use. In case of dispute, the City may remove the rubbish and surplus materials and charge the cost to the Contractor. This requirement shall not apply to property used for permanent disposal of rubbish or waste materials in accordance with permission of such disposal granted to the Contractor by the City therefore.

(b) All sewers, conduits, pipes and appurtenances and all tanks, pump wells, chambers, buildings, and other structures shall be kept clean during construction; and as the work or any part thereof approaches completion, the Contractor shall systematically and thoroughly clean and make any needed repairs to them. He shall furnish at his own expense, suitable tools and labor for removing all water and cleaning out all dirt, mortar, and foreign substances. Any undue leakage of water into the structures such as to make the work, in the opinion of the Engineer, fall short of first class work, shall be promptly corrected by the Contractor at his own expense. Cleaning and repairs shall be arranged, so far as practical, to be completed upon finishing the construction work. Notice to begin the final cleaning, and repairing, if such is needed, will be given by the Engineer, who at the same time will make his final inspection of the work. The Engineer will not approve the final estimate of any portion of the work until after the final inspection is made and the work found satisfactory.

#### **3.72 CUTTING AND PATCHING**

(a) The Contractor shall do all cutting, fitting or patching of his work that may be required to make its several parts fit together or to receive the work of other contractors shown upon, or reasonably implied by, the plans and specifications of the completed project.

- (b) Any cost caused by defective or ill-timed work shall be borne by the party responsible therefore.
- (c) The Contractor shall not endanger any work by cutting, digging or otherwise, and shall not cut or alter the work of any other contractor without the consent of the Engineer.

### **3.73 FINAL TESTS**

After completion of the work the Contractor shall make any and all tests required by the specifications or by municipal or state regulations, and where so provided in said regulations shall furnish the City with certificates of inspection by the municipal or state regulatory bodies. The Contractor shall also make all tests required by the National Board of Fire Underwriters for the purpose of determining insurance rates or other protection of City or the Public.

### **3.74 CORRECTION OF WORK AFTER FINAL PAYMENT**

Neither the final payment nor any provision in the contract documents shall relieve the Contractor of the responsibility for negligence or faulty materials or workmanship, whether latent or patent, within the extent and period provided by law.

### **3.75 TERMINATION FOR CAUSE**

(a) In the event the Contractor shall be adjudged a bankrupt, or shall make a general assignment for the benefit of his creditors, or a receiver shall be appointed on account of his insolvency, or if he shall persistently or repeatedly refuse or should fail to supply enough properly skilled workmen or proper materials, or shall fail to maintain required insurance, or shall fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, or ordinances or the instructions of the Engineer, or otherwise be guilty of a substantial violation of any provisions of the contract, the City may serve written notice upon the Contractor and the Surety of its intention to terminate the contract, and unless within ten days after the serving of such notice upon the Contractor, such violation shall cease and satisfactory arrangement for correction be made, the contract shall, upon the expiration of said ten days cease and terminate. In the event of any such termination, the City shall immediately serve notice thereof upon the Surety and the Contractor, and the Surety shall have the right to take over and perform the contract; provided, however, that if the Surety does not commence performance thereof within thirty days from the date of the mailing to such Surety of a notice of termination, the City may take over the work and prosecute the same to completion for the account and at the expense of the Contractor, and the Contractor and his Surety shall be liable to the City for any excess cost thereby occasioned the City. If the unpaid balance of the contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. The expense incurred by the City herein provided, and the damages incurred through the Contractor's default, shall be determined by the Engineer whose decision thereon shall be final and conclusive.

(b) Where the contract has been terminated by the City, said termination shall not affect or terminate any of the rights of the City as against the Contractor and his Surety then existing or which may thereafter accrue because of such default. Any retention by the City of the moneys due the Contractor under the terms of the contract shall not release the Contractor or his Surety from liability for his default.

### **3.76 FINAL ACCEPTANCE OF THE WORK**

(a) The contract shall be deemed as having been finally accepted by the City upon authorization of final payment issued by the Engineer.

(b) Use of part of the improvement by the City before completion of the entire project is not to be construed by the Contractor as an acceptance by the City of that part so used.

### **3.77 COMMENCEMENT AND COMPLETION OF WORK**

(a) The Contractor shall commence work within three (3) calendar days of the date of execution of the contract (unless otherwise stated in the Proposal Form) and complete the contract within the number of calendar days from the date of the Notice of Award as stated in the Proposal Form.

(b) The dates fixed for commencement and completion of the work shall be extended for a period equivalent to the time lost because of severe and unusual weather, non-delivery of properly ordered materials, or other cause over which the Contractor is not responsible. The Contractor shall document reasons for requesting any such extensions in a letter to the Engineer, and the Engineer shall fix the period of extensions, if any, his decision being binding upon both parties. If satisfactory execution and completion of the Contract shall require work or materials in substantially greater amounts or quantities than those set forth in the contract, then the contract time shall automatically be increased in the same proportions as the cost of the additional work bears to the original contracted for. No allowance will be made for delays or suspension of the prosecution of the work due to the fault of the Contractor or his subcontractors or suppliers.

### **3.78 LIQUIDATED DAMAGES**

(a) In the event that the contract has not been completed within the specified time (including any approved time extensions as described in Paragraph 3.77) the amounts set forth in Paragraph 3.54 will be deducted from the amount paid the Contractor, as liquidated damages.

(b) No other liquidated damages will be charged for noncompletion within the specified time unless specifically stated in the Special Provisions.

### **3.79 WAIVER OF STATUTORY LIMITATIONS AND CONDITIONS**

The rights and remedies available to City under the Contract Documents, including the City's right to recover liquidated damages, are in addition to, and not limited by, any rights, remedies and limitations provided under law. By bidding upon and entering into this Contract, the Contractor specifically waives all provisions of Chapter 8 of Article 20 of Title 13, Colorado Revised Statutes including, without limitations, those relating to defects in the work under the Contract, limitation of damages and notice of claim process.

## **3.8 MEASUREMENT AND PAYMENT**

### **3.81 MEASUREMENT OF WORK**

(a) If the proposal for the work under this contract is on a unit price basis, the actual number of units of each item of work to be constructed may be more or less than the corresponding number given in the proposal sheet or plans, but no variation will be made in the contract unit prices on the account. No extra measurement of any kind will be allowed in measuring the units of work under this contract, but the actual units of work shall be considered and all lengths will be measured on the centerline of the work, whether straight or curved. The Contractor will be paid the contract price for each unit of work done, which price will include the cost of all work described in the unit specifications.

(b) The method of measurement shall be as described in that part of the specifications covering the particular units of work or materials furnished.

### **3.82 PAYMENTS**

(a) The Contractor shall prepare and submit to the Engineer a detailed estimate of the work performed during the preceding calendar month, and at the time of completion of the work under the Contract, the Contractor shall prepare and submit to the Engineer a detailed estimate of the work performed since the last calendar month for which he has submitted an estimate, such estimates to be used after approval as a basis for periodical and final payments. When approved, one copy of such estimate will be returned to the Contractor.

(b) Not later than the 21st day after approval of periodic estimate and receipt of all other required payment submittals as detailed in Article 2 – Special Provisions, the City will make partial payment to the Contractor on the basis of a duly certified and approved estimate of the work performed by the Contractor during the preceding calendar month. The City, at its discretion, may include in such monthly estimates payment for materials that will eventually be incorporated in the project, provided that such material is suitably stored on the site of the project at the time of submission of the estimate for payment. Payment for materials on hand but not in place, unless otherwise provided in the Special Provisions, shall be based on the Contractor's cost of such materials stored at the job site, as evidenced by material bills and freight bills. No additional allowances will be made for handling or drayage by the Contractor's forces, nor overhead, insurance, profit, or other incidental costs. The Contractor shall, if required by the Engineer, present certified copies of receipted bills and freight bills for such materials. Such material when so paid for by the City shall become the property of the City, and in case of default on the part of the Contractor, the City may use or cause to be used by others these materials in construction of the project.

(c) The City will retain a percentage of the amount of each periodical estimate until the final completion and acceptance by the City of all work included in this contract. Unless otherwise specified in Article 2 - Special Provisions, the percentage retained shall be 10%, except that the retainage on the periodic estimate considered to be the final estimate may be reduced by the Engineer to an amount deemed by him sufficient to complete minor work, effect minor repairs or perform minor cleanup, provided, however, that in no event may retainage be reduced to less than five percent (5%) of the original contract amount. Nothing in this section shall be construed to limit or restrict the City's right to withhold additional amounts pursuant to Section 3.83 of these General Provisions.

(d) Final payment of the percentage retained by the City on the monthly periodical estimates and on the final estimate will be paid to the Contractor not more than thirty (30) days after final acceptance by the City of the work on this contract and publication of the statutorily required Notice of Final Settlement.

### **3.83 WAIVER OF STATUTORY RETENTION LIMITS**

Contractor acknowledges that the City will retain up to 10% of each periodical estimate as set forth in paragraph 3.82(c) above. By bidding upon and entering into this Contract, the Contractor knowingly and voluntarily waives any and all right or entitlement it may have for a lesser percentage to be retained from payments pursuant to Section 24-91-103(1)(a) of the Colorado Revised Statutes.

### **3.84 CITY'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATIONS THEREOF**

(a) The City may withhold, in addition to retained percentages, from any payment to the Contractor, such an amount or amounts as may be necessary to cover:

- (1) Claims filed with the City for labor or materials furnished in connection with the work;

- (2) Correction of defective work not promptly remedied by Contractor;
- (3) Amounts owed to his suppliers, subcontractors, and workers;
- (4) An amount sufficient to ensure completion if a reasonable basis exists to believe that the contract cannot be completed for the balance then unpaid;
- (5) Damage caused by Contractor to another contractor or public or private property;
- (6) Excess cost of field engineering and inspection;
- (7) City Sales and Use Tax to which the City is entitled;
- (8) Liquidated damages.

(b) The City may disburse and shall have the right to act as agent for the Contractor in disbursing such funds as have been withheld pursuant to this paragraph to the party or parties who are entitled to payment therefrom. The City will render to the Contractor a proper accounting of all such funds disbursed in behalf of the Contractor.

(c) Neither the final payment nor any part of the retained percentage shall become due until 30 days after publication of Notice of Final Settlement on the Project and after the Contractor shall have delivered to the City a complete release for himself and all materialmen and subcontractors of all claims or liens arising out of the contract, or receipt in full in lieu thereof. The Contractor may, however, furnish a bond, satisfactory to the City Attorney, to indemnify the City against any claim or lien. If any claim or lien remains unsatisfied after all payments are made, the Contractor and his Surety shall be liable to the City for all moneys that the latter may be compelled to pay in discharging such claim or lien, including all costs and reasonable attorney's fees.

### **3.85 UNCORRECTED WORK**

All work performed incorrectly or of incorrect materials shall be replaced before final payment. Final payment will be withheld until such corrections have been accomplished.

### **3.86 CHANGE ORDERS**

(a) The Engineer, in writing, may direct that changes be made in the work to be performed or the materials to be furnished pursuant to the provisions of this contract. A written change order which causes any increase in the original Contract Price shall include a statement that lawful appropriations have been made sufficient to cover the costs of the change order.

(b) Adjustments, if any, in the amounts to be paid to the Contractor by reason of any such change shall be determined by one or more of the following methods:

- (1) By unit prices contained in the Contractor's original bid and incorporated in this construction contract;
- (2) By a supplemental schedule of prices contained in the Contractor's original bid and incorporated in this construction contract; or by schedule of unit prices approved by Engineer pursuant to Section 3.126 of this Article;

- (3) By an acceptable lump sum proposal from the Contractor;
- (4) On a cost-plus-limited basis not to exceed a specified limit (defined as the cost of labor, materials, and insurance plus a specified percentage of the cost of such labor, materials, and insurance; provided the specified percentage does not exceed fifteen (15) percent of the aggregate

cost of such labor, materials, and insurance and shall in no event exceed a specified limit). Provided, however, that the aggregate payment of all work shall in no case exceed the estimate of the Engineer.

(c) No claims for an addition to the contract sum shall be valid unless authorized in writing as aforesaid.

(d) In cases where a lump sum proposal is submitted by the Contractor in excess of \$500.00 (Five Hundred Dollars) and the Engineer considers the proposal so submitted is excessive or unreasonable for the changes or added work contemplated, the City reserves the right to request a proposal for the same changed items from other contractors. If a proposal for such added work is obtained from other contractors at a lesser amount, the City reserves the right to make an award for such work to another contractor unless the Contractor on this contract agrees to do the added or changed work for the price named by the other contractor.

(e) It shall be expressly understood and hereby agreed to by the Contractor that no claim for extra work will be recognized by the City unless claim for such added work has been filed by the Contractor within ten (10) days after such alleged extra work was performed.

### **3.87 SIGNIFICANT CHANGES IN CHARACTER OF THE WORK**

(a) The Engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the Contract nor release the surety, and the Contractor agrees to perform the work as altered.

(b) If the alterations or changes in quantities significantly change the character of the work under the Contract, whether such alternations or changes are in themselves significant changes to the character of the work, or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding loss of anticipated profit, will be made to the Contract Price. The basis for adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon for any reason what so ever, then an adjustment will be made either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable.

(c) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the Contract, the altered work will be paid for as provided elsewhere in the Contract.

(d) As used in this section, the term "significant change" shall be construed to apply only to the following circumstances:

(1) When the character of the work as altered differs substantially and materially in kind or nature from that involved or included in the original proposed construction, or

(2) When a major item of work is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed. A major item is defined to be any item having an original contract value in excess of 10 percent of the original contract amount.

### **3.9 CONTRACTOR'S RIGHT TO TERMINATE**

#### **3.91 CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT**

If the work should be stopped under an order of any court, or other public authority, for a period of three (3) months, through no act or fault of the Contractor or of anyone employed by him, or if the Engineer should fail without cause to issue any estimate within thirty (30) days after it is due, then the Contractor may, upon ten (10) days written notice to the City of Pueblo, stop work or terminate the contract and recover from the City payment for all work executed plus any loss sustained upon any plant or material plus reasonable profit and damages.

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