

APPENDIX C - GENERAL CONDITIONS FOR CAPITAL CONSTRUCTION

Rifle Falls SFU - Isolation Building
SCA23A

General Conditions for Capital Construction

July 18, 2018



State of Colorado
Department of Natural Resources

Colorado Parks and Wildlife

TO ALL CONTRACTORS

The General Conditions for Capital Construction dated 2018 are a part of all contracts.

It shall be the responsibility of the Contractor to possess and retain this document for bidding purposes for all Colorado Parks and Wildlife projects.

**GENERAL CONDITIONS
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SECTION 1 - DEFINITIONS AND TERMS

1.1 ABBREVIATIONS:

Wherever the following abbreviations are used in these Specifications or on the Plans they shall be construed the same as the respective expressions represented:

AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway Officials
ACI	American Concrete Institute
AGC	Associated General Contractors of America
AGA	American Gas Association
AI	Asphalt Institute
AIEE	American Institute of Electrical Engineers
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
ANSI	American National Standards Institute, Inc.
ARA	American Railway Association
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating Refrigeration and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society of Testing and Materials
AWG	American Wire Gauge
AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
CDOT	Colorado Department of Transportation
CDPHE	Colorado Department of Health and Environment
CRS	Colorado Revised Statutes, 1973, as amended
CRSI	Concrete Reinforcing Steel Institute
DFPA	Douglas Fir Plywood Association
DIPRA	Ductile Iron Pipe Research Association
EIA	Electronic Industries Association
FHWA	Federal Highway Administration
FSS	Federal Specifications and Standards
GC	General Conditions for Capital Construction
GSA	General Services Administration
ICBO	International Conference of Building Officials
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineers Society
IMSA	International Municipal Signal Association
IPCEA	Insulated Power Cable Engineers Association
ITE	Institute of Transportation Engineers
NBS	National Bureau of Standards
NEC	National Electrical Code
NEMA	National Electrical Manufacturers' Association
OSHA	Occupation Safety and Health Association
IPC	International Plumbing Code
IBC	International Building Code
UL	Underwriters' Laboratories Incorporated

ADVERTISEMENT: A public announcement inviting Proposals for work to be performed or materials to be furnished.

AWARD: The acceptance by the Division of a Proposal.

BASIS OF PAYMENT: The terms under which "work" is paid, designated as a "Pay Item," which is paid for in accordance with the quantity measured and the "Pay Unit."

BID DOCUMENTS: All documents, whether attached or incorporated by reference, utilized for soliciting Proposals. The advertisement will indicate with reasonable accuracy the quantity and location of the work to be done or the character and quantity of the material to be furnished and the time and place of the opening of Proposals. These documents may be called Invitation for Bid (IFB), Documented Quotation (DQ) or Request for Proposal (RFP).

BIDDER: An individual, firm, corporation, or other legal entity submitting a Proposal for the advertised work. A contractor intending to contract with the Division for performance of prescribed work.

CALENDAR DAY: Each and every day shown on the calendar, beginning and ending at midnight.

CAPITAL PROGRAM MANAGER: The Capital Program Manager of the Division authorized by the Director to represent the Division in the functions of carrying out the capital construction program acting either directly or through authorized representatives.

CERTIFIED INVOICE: An invoice from a supplier which has been endorsed by the Contractor guaranteeing that the material, service or labor was purchased and received for the project and establishing the value of same for which reimbursement is to be made.

CHANGE ORDER: A written order issued to the Contractor by the Division covering contingencies, extra work, increases or decreases in contract quantities, and additions, deletions, or other alterations to the Bid Documents within the scope of the Contract, and establishing the basis of payment and time adjustments for the work affected by the changes. The Change Order is the only method authorized for changing the Contract.

CITY OR TOWN: A subdivision of the county used to designate or identify the location of the proposed work.

CONSTRUCTION REQUIREMENT: Specifications covering performance of work required for proper completion and acceptance.

CONTRACT: The written agreement between the Division and the Contractor setting forth the rights and obligations of the parties thereunder, including but not limited to the performance of the work, the furnishing of labor and materials and the basis of payment. The Contract Documents which may include but not limited to Purchase Order, Bid Documents, General Conditions for Capital Construction, Contract Proposal, Agreement, Bid Schedule, Contract Bond, Certificate of Insurance, Specifications, Special Conditions, general and detailed Plans, Letter of Award and Notice to Proceed, and any Change Orders and Amendments that are required to complete the construction of the work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

CONTRACT BOND: The approved form of security, executed by the Contractor and the Contractor Surety or Sureties, guaranteeing complete performance of the Contract and all Change Orders pertaining thereto and the payment of all legal obligations pertaining to the construction of the project.

CONTRACT ITEM (PAY ITEM): A specifically described unit of work for which a price is provided in the Contract.

CONTRACT TERM: The time from execution of the contract to the completion of the warranty period.

CONTRACTOR: The individual, firm, or corporation, or other legal entity contracting with the State of Colorado through the Colorado Parks and Wildlife for performance of prescribed work.

COUNTY: The county in which the work is to be done.

DEPARTMENT: State Department of Natural Resources, which is a department within the executive branch of the State of Colorado.

DIRECTOR: The Director of Colorado Parks and Wildlife.

DIVISION: Colorado Parks and Wildlife, which is a Division within the State Department of Natural Resources.

EQUIPMENT: All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and acceptable completion of the work.

EXECUTIVE DIRECTOR: The Executive Director of the Colorado Department of Natural Resources.

EXPRESSION BY OR TO THE PROJECT MANAGER: In order to avoid cumbersome and confusing repetition of expressions in these Specifications, it is provided that whenever anything is, or is to be done, if, as, of, when, or where "contemplated, required, determined, directed, specified, interpretation, interpreted, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected, or condemned" it shall be understood as if the expression were followed by the words "by the Project Manager" or "to the Project Manager."

EXTRA WORK: Work not provided for in the Contract as awarded but found by the Project Manager to be essential or appropriate to the satisfactory completion of the Contract within its intended scope.

HOLIDAYS: Holidays recognized by the State of Colorado are:

- New Year's Day
- Dr. Martin Luther King Jr.'s Birthday
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Veterans Day
- Thanksgiving Day
- Christmas Day

When New Year's Day, Independence Day, Veterans Day or Christmas Day fall on Saturday or Sunday, the following Monday or preceding Friday shall be considered a holiday.

Additional legal holidays, when designated by the Governor or the President of the United States, will also be recognized by the State.

INSPECTOR: The Project Manager's authorized representative assigned to make detailed inspections of contract performance.

LABORATORY: A testing laboratory certified or having expertise in the area of testing required and acceptable to the Project Manager.

MATERIALS: All components required for use in the construction of the project.

METHOD OF MEASUREMENT: The manner in which a "pay item" or "bid item" is measured to conform with the "Pay Unit."

NOTICE TO PROCEED: Written notice to the Contractor to proceed with the contract work including the date of beginning of contract time.

PERFORMANCE TIME: The number of calendar days allowed or specified date for completion of the Project as identified in the Bid Documents, including authorized time extensions. Where a calendar date of completion is specified, the Project shall be completed on or before that date.

PLANS: The drawings or reproductions provided by the Division which show the location, character, dimensions, and details of the work to be done.

PROJECT: The specific area of work together with all appurtenances and construction to be performed thereon under the Contract.

PROJECT MANAGER: The Director's duly authorized representative who is in direct charge of the work and is responsible for the administration and completion of the project under contract. The Project Manager is also responsible for acting on written appeals made by the Contractor relating to contract claims for additional compensation or extension of contract time.

PROPOSAL: The offer of a Bidder, on the prescribed form, to perform the work at the prices quoted. Also called Bid or Schedule.

PROPOSAL FORM: The documents furnished by the Division on which the offer of a Bidder is submitted. Also called Bid Proposal.

PROPOSAL GUARANTY (BID SURETY): The security furnished with a Proposal to guarantee that the Bidder will enter into the Contract if the Contractor's Proposal is accepted.

PURCHASE ORDER: A document, in a form prescribed by the Colorado State Controller, prepared and approved by an authorized employee of the State for the purpose of encumbering funds and securing construction services from the Contractor.

QUESTIONNAIRE: The specified forms on which the Contractor shall furnish required information as to the Contractor's ability to perform and finance the work.

SALVAGEABLE MATERIAL: Material that can be saved or salvaged. Unless designated or directed by the Project Manager or shown on the Plans, all salvageable materials shall remain the property of the Division.

SHUTDOWN: The authorized period of time when work is suspended.

SPECIAL CONDITIONS: Specifications covering conditions peculiar to an individual project.

SPECIFICATIONS: A general term applied to all directions, provisions and requirements pertaining to performance of the work.

SPECIFIED COMPLETION DATE: The date on which the contract work is specified to be completed.

STATE: The State of Colorado acting through its authorized representative.

STRUCTURES: Bridges, dams, culverts, catch basins, drop inlets, retaining walls, raceways, cribbing, manholes, buildings, sewers, service pipes, underdrains, foundation drains, and other features which may be encountered in the work.

SUBCONTRACTORS: An individual or entity to whom the Contractor sublets part of the Contract.

SUPERINTENDENT: The Contractor's authorized representative in responsible charge of the work.

SURETY: The corporation, partnership or individual, other than the Contractor, executing a Bond furnished by the Contractor.

TITLES OR HEADINGS: The titles or headings of the sections and subsections herein are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

WORK: The furnishing of all labor, materials, equipment, and incidentals necessary to successfully complete the project according to all duties and obligations imposed by the Contract.

WORKING DAY: Any day, exclusive of Saturdays, Sundays and holidays, on which weather and other conditions not under the control of the Contractor will permit construction operations to proceed with the normal working force engaged in performing those items controlling the completion of the work.

WORKING DRAWINGS: Stress sheets, shop drawings, erection plans, falsework plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data which the Contractor is required to submit to the Project Manager for review and approval.

End of
DEFINITIONS AND TERMS

SECTION 2 - BIDDING REQUIREMENTS AND CONDITIONS**2.1 QUALIFICATIONS OF BIDDERS**

Prior to Award to the low Bidder, when requested by the Division, the Bidder must file an experience questionnaire and a confidential financial statement. The statement shall include a complete report of the Bidder's financial resources and liabilities, equipment, past record and personnel.

2.2 PROPOSAL

- (a) Contents of Proposal shall include those documents defined in the Bidding Documents as required in order for the bid to be considered responsive.
- (b) The Plans, Specifications, GCs and other documents designated in the Proposal will be considered a part of the Proposal whether attached or not. None of these documents shall be modified by the Bidder.

2.3 DISQUALIFICATION OF PROPOSALS

The Division reserves the right to disqualify or refuse to accept a Proposal if in the opinion of the Division a Bidder is in default for any of the following reasons:

- (1) Lack of competency and/or adequate machinery, plant and/or other equipment.
- (2) Uncompleted work which, in the judgment of the Division, might hinder or prevent the prompt completion of additional work if awarded.
- (3) Failure to pay or satisfactorily settle all bills due for labor and material on former contracts.
- (4) Failure to comply with any qualification or regulation of the Division.
- (5) Default under previous contracts.
- (6) Unsatisfactory performance on previous work.
- (7) Failure to make timely submittal of required forms per contract provisions on previous contract(s).
- (8) More than one Proposal for the same work from an individual, firm or corporation under the same or different name.
- (9) Evidence of collusion among the Bidders. Participants in such collusion will not receive recognition as Bidders for any future work of the Division.

2.4 INTERPRETATION OF QUANTITIES IN BID PROPOSAL

- (a) Except as otherwise provided in this section and the method of measurement for individual items, the quantities appearing in the Bid proposal are estimates prepared for the comparison of Proposals. Payment to the Contractor will be made in accordance with the following procedures except as set out in [Section 4.2](#) for variances from such estimates.
- (b) Payment will be made for actual quantities measured and accepted.
- (c) The estimated quantities of work to be performed and materials to be furnished may be increased, decreased, or omitted at the sole discretion of the Division.

2.5 EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL CONDITIONS AND SITE OF WORK

- (a) The Bidder is expected to examine the site of the proposed work, the Proposal, Plans, Specifications, Special Conditions, and contract forms before submitting a Proposal. The submission of a Proposal will be considered conclusive evidence that the Bidder has made this examination and is aware of the conditions to be encountered in performing the work according to the Contract.
- (b) Boring logs and other records of subsurface investigations (when existing) are available for inspection by Bidders. These logs and records are made available so that all Bidders have access to identical subsurface information that is available to the Division and is not intended as a substitute for personal investigation, interpretation and judgment of the Bidders.
- (c) The Division does not warrant the adequacy of boring logs and other records of subsurface investigations, and such information is not considered to be a part of the Contract. When a log of testing borings is included in the subsurface investigation record, the data shown in the individual log of each test boring apply only to that particular boring and are not intended to be conclusive as to the character of any material between or around test borings. If Bidders use this information in preparing a Proposal it is used at their own risk, and Bidders are responsible for all conclusions, deductions, and inferences drawn from such information.
- (d) Bidders may conduct subsurface investigations at the project site at Bidder's expense. The Division will afford them this opportunity prior to public opening of Proposals. The Contractor shall notify the Division of the Contractor's intention to investigate the site. The Project Manager shall review and approve the Contractor's plan (including insurance) prior to commencement of the investigation. Bidder is responsible for restoration of the site at the direction of the Project Manager.
- (e) If a Bidder discovers an apparent error or omission in the Proposal form, estimated quantities, Plan, or Specifications, the Bidder shall immediately notify the Project Manager to enable the Division to make any necessary revisions.

2.6 PREPARATION OF PROPOSAL

- (a) The Bidder shall submit their Proposal upon the forms furnished by the Division and shall include all required documentation as identified in the Bidding Documents. The Bidder shall specify a unit price for each pay item for which a quantity is given and shall also show the products of the respective unit price and quantities in the column provided for that purpose. The total amount of the Proposal obtained by adding the amounts of the several items shall be specified in words and figures. All the words and figures shall be in ink or typed. In cases of a discrepancy between the unit price multiplied by the quantity and the total amount, the result of the unit price multiplied by the quantity shall govern.
- (b) When an item in the Proposal contains a choice to be made by the Bidder, the Bidder shall indicate the Contractor's choice in accordance with the Specifications for that particular item, and thereafter no further choice will be permitted.

The Bidder's Proposal must be signed by any agent of the Contractor legally qualified and acceptable to the State.

2.7 IRREGULAR PROPOSALS

Proposals (Bids) will be considered irregular and may be rejected for any of the following reasons:

- (1) If the Proposal is on a form other than that prescribed by the Division, or if the form is altered or any part thereof is detached, or if the form does not contain original signatures.
- (2) If there are unauthorized additions, conditional or alternate proposals, or irregularities of any kind that tend to make the Proposal incomplete, indefinite, or ambiguous.
- (3) If the Bidder fails to acknowledge in the Proposal receipt of all addendums current on the date of opening of Proposals.

- (4) If the Proposal does not contain a unit price for each pay item listed, except in the case of authorized alternative pay items, the mathematical products of the respective unit prices and the estimated quantities, and the total amount of the Bid obtained by adding such mathematical products.
- (5) If the Division determines that any of the unit bid prices are materially unbalanced to the potential detriment of the Division. There are two types of unbalanced Bids: (1) mathematically unbalanced and, (2) materially unbalanced. The mathematically unbalanced Bid is a Bid containing lump sum or unit pay items which do not reflect reasonable actual costs plus a reasonable proportionate share of the Bidder's anticipated profit, overhead costs, and other indirect costs, but not necessarily to the detriment of the Division. These costs should all relate to the performance of the items in question. The materially unbalanced Bid is a Bid which the Division determines leaves reasonable doubt that award will result in the lowest ultimate cost to the Division, or that award is in the public interest.
- (6) If the contractor submitting the Bid is affiliated with another contractor that has submitted a Bid on the same public project.
- (7) If the Bidder has been found in default or asked in writing to show why it should not be found in default on a State contract.
- (8) The Division reserves the right to reject any or all Bids, to waive technicalities or to advertise for new Bids, if in the judgment of the Division it is in the State's best interest.

2.8 PROPOSAL GUARANTY

A Proposal may be rejected if not accompanied by a guaranty (if applicable) and in an amount not less than the amount indicated in the Bidding Documents.

2.9 DELIVERY OF PROPOSALS

For projects identified as sealed bids, each Proposal not submitted through the State's electronic bid system shall be submitted in a sealed envelope. The envelope shall be marked to clearly indicate it is a "SEALED BID" and identified by the bid number. When sent by mail the sealed Proposal shall be addressed to the Division at the address and in care of the official in whose office the Bids are to be received and enclosed in a separate outside envelope clearly to indicate its contents. All Proposals shall be filed prior to the time and at the place specified in the Bidding Documents. Proposals received after the time for opening of Bids will be returned to the Bidder unopened.

2.10 WITHDRAWAL OR REVISION OF PROPOSALS

A Bidder may withdraw or revise a Proposal after it has been deposited with the Division, but prior to the time set for opening of Bids. Withdrawal of Bids may be made either in writing or in person; however, any Bid withdrawn for the purpose of revision must be redeposited before the time set for opening of Bids.

2.11 COMBINATION OR CONDITIONAL PROPOSALS

- (a) If Proposal forms are issued for projects in combination and separately, the Bidder may submit Proposals either on the combination or on separate units of the combination. The Division reserves the right to make awards on combination or separate Proposals to the advantage of the Division. Combination Proposals will be considered, only when specified.
- (b) The Division may choose to add, reduce, or eliminate any bid item or combination of bid items so the construction contract shall not exceed the budgeted funds allocated for this project. The contract shall be awarded to the low bidder of the bid items selected by the Division.

- (c) **DEDUCTIBLE ALTERNATES:** The lowest responsible Bid, taking into account the Colorado resident bidder preference provision of Colorado law, will be determined by and the contract will be awarded on the base bid combined with deductible alternates, deducted in numerical order in which they are listed in the alternates bid form provided by the Principal Representative. The subtraction of alternates shall result in a sum total within available funds. If this bid exceeds such amount, the right is reserved to reject all bids. An equal number of alternates shall be subtracted from the base bid of each bidder within funds available for purposes of determining the lowest responsible bidder.
- (d) **ADDITIVE ALTERNATES:** The lowest responsible Bid, taking into account the Colorado resident bidder preference provision of Colorado law, will be determined by and the contract will be awarded on the base bid plus all additive alternates added in the numerical order in which they are listed in the alternates bid form provided by the Principal Representative. The addition of alternates shall result in a sum total within available funds. If this bid exceeds such amount, the right is reserved to reject all bids. An equal number of alternates shall be added to the base bid of each bidder within funds available for purposes of determining the lowest responsible bidder.
- (e) **BEST VALUE ALTERNATES:** The State may, at its discretion award alternates in any order, if the award of the alternate items does not change the lowest successful base bidder.
- (f) **DEDUCTIBLE AND ADDITIVE ALTERNATES:** Additive alternates will not be used if deductible alternates are used and deductible alternates will not be used if additive alternates are used.

2.12 PUBLIC OPENING OF PROPOSALS

Proposals will be opened and read publicly at the time and place indicated in the Bidding Documents. Bidders, their authorized agents, and other interested parties are invited to attend the bid opening.

2.13 MATERIAL GUARANTY

The successful Bidder may be required to furnish a complete statement of the origin, composition, and manufacture of materials used in the construction of the work together with samples, which have been tested for conformance with contract provisions.

End of

BIDDING REQUIREMENTS AND CONDITIONS

SECTION 3 - AWARDS AND EXECUTION OF CONTRACT

3.1 CONSIDERATION OF PROPOSALS

- (a) After the Proposals are opened and read, they will be compared on the basis of the summation of the products of the quantities shown in the Bid proposal by the unit bid prices. The results of such comparison will be available to the public. In the event of a discrepancy between said unit prices and extensions, the unit bid price shall govern.
- (b) The right is reserved to reject any or all Proposals, to waive technicalities or to advertise for new Proposals, if in the judgment of the awarding authority, the best interests of the Division will be promoted.
- (c) The Division reserves the right to settle Bid discrepancies and irregularities as defined in this subsection and in [Section 2.7](#) that occur in the low Bidder's Proposal at the time the Contract is awarded. Bid discrepancies will be settled with the understanding that the low Bidder waives any claims against the Division because of the Bidder's mistakes in the Bid Proposal.

3.2 AWARD OF CONTRACT

If the Contract is awarded, the Award will be made with reasonable promptness after the opening of Proposals to the lowest Bidder whose Proposal complies with all the requirements prescribed. The successful Bidder will be notified in writing of the acceptance of the Proposal and the Award of the Contract.

3.3 CANCELLATION OF AWARD

The Division reserves the right to cancel the Award of any Contract at any time before the signing of said Contract by all parties without any liability against the Division.

3.4 RETURN OF PROPOSAL GUARANTY

- (a) All Proposal guaranties consisting of Bid Bonds will be retained by the Division.
- (b) All Proposal guaranties consisting of certified checks or cashier's checks will be treated as follows:
 - (1) For the two lowest Bidders, the Proposal guaranty will be held until the successful Bidder has provided satisfactory Performance Bond. Proposal guaranty will then be returned immediately to the second lowest Bidder. The Proposal guaranty will not be returned to the successful Bidder until the Performance Bond has been furnished and the Contract has been executed.
 - (2) For all other Bidders, the Proposal guaranty will be returned promptly after the opening of Bids and verification of the Proposals.

3.5 BOND AND INSURANCE REQUIREMENTS

- (a) If the Award is for more than one hundred and fifty thousand dollars (\$150,000), the Contractor shall, duly execute and deliver to and file with the Division a good and sufficient Bond or other acceptable Surety approved by the Division in a penal sum equal to one-hundred percent of the total amount payable by the terms of the Contract. Such Bond shall be duly executed by a qualified corporate surety, conditioned for the due and faithful performance of the Contract, and in addition shall provide that if the Contractor or the Contractor's subcontractors fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender or other supplies used or consumed by such Contractor or the Contractor's subcontractor in performance of the work contracted to be done, the Surety will pay the same in an amount not exceeding the sum specified in the Bond, together with interest at the rate of eight percent per annum. If the scope of work is changed resulting in an increase in the contract price, the amount of the Bond required shall be increased by a like amount. If

the change results in a decrease in the contract price, the amount of the Bond required may be decreased by a like amount.

- (b) The Contractor shall deliver to the Division a Certificate of Insurance in the amounts designated on the Bid Documents.

3.6 EXECUTION AND APPROVAL OF CONTRACT

The Contract shall be signed and returned by the successful Bidder together with the Contract Bonds and certificate(s) of insurance within 15 calendar days after the date of Award. If the signed Contract, Bonds, and insurance certificate(s) are returned by the successful Bidder within 15 calendar days after award, and are technically correct, and if the Contract is not executed by the Division within 60 calendar days from date of receipt of a complete and accurate Contract Documents accepted by the Division, the Bidder shall have the right to withdraw the Proposal without penalty. The Contract will not be considered effective until it has been fully executed by all of the parties to the Contract.

3.7 FAILURE TO EXECUTE CONTRACT

Failure to execute the Contract and file acceptable Bonds and/or provide requisite Certificates of Insurance within 15 calendar days after the date of Award shall be just cause for the cancellation of the Award and the forfeiture of the Proposal guaranty, which shall become the property of the Division, not as a penalty, but in liquidation of damages sustained. Award may then be made to the next lowest responsible Bidder, or the work may be re-advertised or otherwise as the Division may decide.

End of

AWARDS AND EXECUTION OF CONTRACT

SECTION 4 - SCOPE OF WORK

4.1 INTENT OF CONTRACT

The intent of the Contract is to provide for the construction and completion in every detail of the work described. The Contractor shall furnish all labor, materials, equipment, tools, transportation and supplies required to complete the work in accordance with the Special Conditions, Plans, Specifications and terms of the Contract.

4.2 ALTERATIONS OF PLANS OR CHARACTER OF WORK AND VARIATIONS IN PLAN QUANTITIES

- (a) Differing Site Conditions. During the progress of work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

Upon written notification, the Project Manager will investigate the conditions, and if the Project Manager determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment, excluding loss of anticipated profits, will be made and the Contract modified in writing accordingly. The Project Manager will notify the Contractor of the determination whether or not an adjustment of the Contract is warranted. No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

- (b) Suspensions of Work Ordered by the Project Manager. If the performance of all or any portion of the work is suspended or delayed by the Project Manager in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Project Manager in writing a request for adjustment within seven calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

- (1) Upon receipt, the Project Manager will evaluate the Contractor's request. If the Project Manager agrees that the cost and/or time required for the performance of the Contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors, and not caused by the weather, the Project Manager will make an adjustment (excluding profit) and modify the Contract in writing accordingly. Weather or climatic conditions are not justifiable reasons for contract price adjustments unless the Division has altered or increased the quantities as designated in [Section 4.2\(c\)](#) and [4.3](#) where the extension of time has delayed the Contractor in work completion. The Project Manager will notify the Contractor of the determination whether or not an adjustment of the Contract is warranted. No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within seven calendar days of receipt of the notice to resume work.

- (2) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this Contract.

- (3) No contract adjustment will be allowed if the suspension was caused or based in whole or in any part by the Contractor.

- (c) Significant Changes in the Character of Work. The Project Manager 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.

- (1) If the alterations or changes in quantities significantly change the character of the work under the Contract, whether such alterations 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. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Project Manager may determine to be fair and equitable.
- (2) 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. The term "significant change" shall be construed to apply only to the following circumstances:
 - I. When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction, or
 - II. When the alterations increase or decrease the scope of the total project by more than 25 percent unless agreed by the Contractor.

4.3 EXTRA WORK

The Contractor shall perform unforeseen work, for which there is no price included in the Contract, whenever it is deemed necessary or desirable in order to complete fully the work as contemplated when authorized in writing by the Project Manager. Such work shall be performed in accordance with the Contract and as directed, and will be paid for as provided under [Section 9.4](#) or at a price agreed upon in advance of the performance of the work.

4.4 RIGHTS IN AND USE OF MATERIALS FOUND ON THE WORK

The Project Manager may authorize the Contractor's use of materials found in the excavation for completing pay items other than excavation. Payment will be made for both the excavation of such materials at the corresponding contract unit price, and for the pay item for which the excavated material is used, unless otherwise negotiated and approved through a Change Order. The Division will not charge the Contractor royalty or additional cost of select material for the removed material. The Contractor shall not excavate or remove any material from within the construction area which is not within the grading limits, as indicated by the slope and grade lines, without written authorization from the Project Manager.

4.5 FINAL CLEANING UP

Before final acceptance, the work area and all ground occupied by the Contractor in connection with the work shall be cleaned of all rubbish, excess materials, temporary structures and equipment, and all parts of the work shall be left in an acceptable condition. The cost of final cleanup will not be paid for separately but shall be included in the work.

End of
SCOPE OF WORK

SECTION 5 - CONTROL OF WORK

5.1 AUTHORITY OF THE PROJECT MANAGER

- (a) The Project Manager will decide all questions regarding the quality and acceptability of materials furnished, work performed, and the rate of progress of the work; all interpretation of the Plans and Specifications; and the acceptable fulfillment of the Contract.
- (b) The Project Manager will, in writing, suspend the work, wholly or in part when the Contractor fails to correct conditions unsafe for the workers or the general public; for failure to carry out contract provisions; for failure to carry out orders; for periods of unsuitable weather; for conditions unsuitable for the prosecution of the work, or for any other condition or reason determined to be in the public interest.

5.2 PLANS AND SHOP DRAWINGS

- (a) Plans will show details of construction lines, grades, typical cross sections, location and design of all structures. Only general features will be shown for steel and prestressed concrete structures.
- (b) The Plans shall be supplemented by shop drawings as necessary to adequately control the work. Shop drawings may consist of drawings, diagrams, illustrations, schedules, calculations, and other data prepared by the Contractor, subcontractor, manufacturer, supplier, or distributor, which will illustrate how specific portions of the work shall be fabricated and/or installed in accordance with the Contract.
- (c) Shop drawings are not part of the Contract Documents.
- (d) The Contractor shall approve shop drawings prior to submission to the Project Manager for review. The Contractor's approval shall be recorded by an appropriate stamp with the date and signature on each drawing. Where design notes and catalog cuts are submitted, only the first sheet will require the approval stamp. Shop drawings received directly from fabricators or suppliers or from contractors without Contractor's approval will be returned without action for resubmittal in accordance with these Specifications.
- (e) Shop drawings shall be submitted to the state electronically. After checking and review by the - Project Manager, will be returned for use by the Contractor and the fabricator or supplier.
- (f) Shop drawings returned to the Contractor will be stamped and the stamp marked to indicate one of the following:
 - (1) NO EXCEPTION TAKEN - Signifies material or equipment represented by the Submittal conforms with the design concept and complies with the information given in the Contract Documents. Contractor is to proceed with fabrication or procurement of the items and with related work.
 - (2) MAKE CORRECTIONS NOTED - Signifies material or equipment represented by the submittal conforms with the design concept and complies with the information given in the Contract Documents and in accordance with Project Manager's notations. Contractor is to proceed with the Work in accordance with Project Manager's notations.
 - (3) REVISE AND RESUBMIT - Signifies material or equipment represented by the submittal conforms with the basic design concept, however, it does not comply with the information given in the Contract Documents. Contractor is to submit a revised submittal responsive to the notations marked on the returned submittal and to the information in the Contract Documents.
 - (4) REJECTED - Signifies material or equipment represented by the submittal does not conform with the design concept or comply with the information given in the Contract Documents and is not acceptable for use in the Work. Contractor is to submit material or equipment responsive to the

Contract Documents.

- (g) Checking is only for general conformance with the design concept of the project and general compliance with the information given in the contract documents. Any action shown is subject to the requirements of the plans and specifications. Contractor is responsible for: dimensions which shall be confirmed and correlated at the job site; fabrication processes and techniques of construction; coordination of the Contractor's work with that of all other trades and the satisfactory performance of the Contractor's work. Changes to the reviewed shop drawings required additional review by the Project Manager.
- (h) Review of the shop drawings shall not relieve the Contractor of the obligation to meet all requirements of the Contract and shall not relieve the Contractor of the responsibility for the correctness of the shop drawings. Changes to the approved shop drawings requires re-approval.
- (i) The time required for the Division's approval of each submittal will not exceed four weeks after shop drawings are received by the Project Manager.
- (j) If the Contractor's controlling operations are delayed or interfered with by reason of the Division's failure to return shop drawings within the specified four weeks' time, an extension of contract completion time commensurate with the delay in completion of the work thus caused will be granted.
- (k) All shop drawings shall be submitted electronically, the Contractor may be required to submit hard copies of submittals at the Project Manager's discretion.
- (l) Any work performed on the project, regarding work requiring shop drawings, will not be accepted until after the shop drawings have been reviewed by the Project Manager and the work is in conformance with the drawings and the provisions of the Contract.
- (m) The Contractor shall keep one set of Plans and shop drawings available on the project site at all times.
- (n) Payment for preparing and furnishing all shop drawings will not be paid for separately but shall be included in the work.

5.3 CONFORMITY WITH PLANS AND SPECIFICATIONS

- (a) All work performed and all materials furnished shall conform to the lines, grades, cross sections, dimensions, and material requirements, including tolerances, shown in the Contract.
- (b) For those items of work where working tolerances are not specified, the Contractor shall perform the work in a manner consistent with reasonable and customary manufacturing and construction practices.
- (c) When the Project Manager finds that the materials furnished, the work performed, or the finished product does not conform with the Contract but that reasonably acceptable work has been produced, the Project Manager will determine the extent the work will be accepted and remain in place. If accepted, the Project Manager will (1) document the basis for acceptance by Change Order which will provide for an appropriate adjustment in the contract price for such work or materials not otherwise provided for in this subsection or (2) notify the Contractor in writing that the Contract unit price will be adjusted; (3) in lieu of a price adjustment, permit correction or replacement of the finished product provided the correction or replacement does not adversely affect the work.
- (d) When the Project Manager finds the materials furnished, work performed, or the finished product are not in conformity with the Contract and has resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor. The Project Manager shall promptly notify the Contractor of such unacceptable materials, work or finished product.

5.4 COORDINATION OF PLANS, SPECIFICATIONS, AND SPECIAL CONDITIONS

- (a) The Specifications, the Plans, Special Conditions, these GC's, and all supplementary documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work.
- (b) In case of discrepancy the order of precedence is as follows:
 - (1) Contract or Purchase Order, Change Orders or Amendments
 - (2) Purchase Order
 - (3) Special Conditions
 - (4) Specifications
 - (5) Detailed Plans
 - (6) Standard Plans
 - (7) Calculated dimensions will govern over scaled dimensions
 - (8) GCs
- (c) If the manufacturer of an approved product's specifications is more stringent than those contained in the Contract, the manufacturer's specification shall govern.
- (d) The Contractor shall not take advantage of any apparent error or omission in the Contract. If the Contractor discovers an error or omission, the Project Manager shall immediately be notified. The Project Manager will make corrections and interpretations as necessary to fulfill the intent of the Contract.

5.5 COOPERATION BY CONTRACTOR

- (a) The Contractor shall give the work the constant attention necessary to facilitate the progress thereof, and shall cooperate with the Project Manager, the Division's inspectors, and other contractors in every way possible.
- (b) The Contractor shall have on the site at all times, as the Contractor's agent, a competent superintendent capable of reading and thoroughly understanding the Plans and Specifications and thoroughly experienced in the type of work being performed. The superintendent shall have full authority to execute orders or directions of the Project Manager without delay, and to promptly supply such materials, equipment, tools, labor and incidentals as may be required. Such superintendent shall be furnished regardless of the amount of work sublet.
- (c) When circumstances dictate that the Superintendent cannot physically be at the work site the Contractor shall provide the Project Manager with a minimum 2 days notice of the method, times and places where the Superintendent can be contacted or alternatively provide an individual who has the authority to act in the Superintendent's absence for the Project Manager's approval.

5.6 PROTECTION OF UTILITIES

- (a) The Contractor's attention is directed to the importance of protecting all utilities encountered on all projects. These may include, but are not limited to, communication and power lines, water lines, sewer lines, gas lines, railroad tracks and other overhead and underground utilities.
- (b) Before any excavation is begun in the vicinity of the water lines, railroad tracks, structures, sewer lines, gas lines, or other conduits, each utility company concerned must be notified in advance of such excavation, and such excavation shall not be made until an authorized representative or the owner of the utility is on the site and has designated the location of their facilities.
- (c) The Contractor shall be responsible for all damages to any and all public utilities encountered on a project, which damages are due to the Contractor's negligence. Such damages shall include all physical damages to utilities and also all damages due to interruption of service of such utilities, when such damages and interruptions are caused by Contractor's negligence.

- (d) Where alterations or moving of utilities is not required to permit construction of the project, the Contractor shall take such measures as necessary in properly protecting these utilities throughout the Contractor's construction operations, and shall cooperate at all times with the proper authorities and owners in maintaining service on railroads, conduits, pole lines, transmission lines, pipelines, sewers, etc., affected by the project.
- (e) The cost of damages due to Contractor's non-negligent operation, or cost of protecting utilities where alteration or moving is not required to permit construction of the project, shall be included in the original contract prices for the project.
- (f) Should pipe lines, water lines, or gas mains, electrical conduits, sewer pipes, overhead wiring, telephone lines, telegraph lines, power lines or any other such utilities not specifically mentioned and provided for elsewhere as a part of this Contract, have to be moved, repaired, reconditioned or revised due to the construction, or moved temporarily to permit construction of the project, the party or parties owning or operating such utilities shall perform the actual work of moving, repairing, reconditioning or revising such utilities. The cost of this work shall be borne by the Division or the utility companies involved unless the Contract provides otherwise. The Division will make the determination as to whether the Division or the utility company will be responsible.

5.7 COOPERATION BETWEEN CONTRACTORS

- (a) The Division reserves the right to contract for and perform other or additional work on or near the work covered by the Contract.
- (b) When separate contracts are let within the limits of any one project, each contractor shall conduct the work without interfering or hindering the progress or completion of the work being performed by other contractors. Contractors working on the same project shall cooperate with each other as directed.
- (c) Each contractor involved shall assume all liability, financial or otherwise, in connection with the Contract and shall protect and save harmless the Division from any and all damages or claims that may arise because of inconvenience, delay, or loss because of the presence and operations of contractors working within the limits of the same or adjacent project.

5.8 CONSTRUCTION STAKES, LINES AND GRADES

- (a) Construction work shall not be performed until adequate lines and grades have been established by the Division or by the Contractor.
- (b) Contractor Surveying: Unless otherwise state the Division will provide control points and bench marks as described in the Contract. The Contractor shall furnish and set construction stakes establishing lines and grades. The Project Manager may order extra surveying which will be paid for at an agreed upon rate.
- (c) Division Surveying: If identified in the contract documents that the Division will provide surveying, then the Division will furnish one set of construction stakes and marks establishing lines and grades for proper prosecution of the work.
- (d) The Contractor shall be responsible for the accuracy of all the vertical and horizontal control it transfers and establishes. The Contractor shall be held responsible for the preservation of all stakes and marks, and if any are destroyed, disturbed or removed by the Contractor, subcontractors, or suppliers, the cost of replacing them will be charged against the Contractor.
- (e) A minimum of five working days will be required as advance notice to the Project Manager to provide project control staking.

5.9 AUTHORITY AND DUTIES OF PROJECT MANAGER

- (a) As the direct representative of the Division, the Project Manager has immediate charge of the details of each construction project. The Project Manager is responsible for the administration and completion of the project. The Project Manager has the authority to reject defective material and to suspend any work that is being improperly performed, and to otherwise accept or reject work in accordance with [Sections 5.12](#) and [5.16](#).
- (b) The Project Manager is responsible for initial decisions relating to Contractor claims for additional compensation or extension of contract time.

5.10 AUTHORITY AND DUTIES OF THE INSPECTOR

- (a) Inspectors employed by the Division are authorized to inspect all work done and materials furnished. This inspection may extend to all or any part of the work and to the preparation, fabrication or manufacture of the materials to be used.
- (b) The inspector is not authorized to alter or waive the provisions of the Contract. The inspector is not authorized to issue instructions contrary to the provisions of the Contract or to act as foreman for the Contractor. The inspector is not authorized to accept or reject work.

5.11 INSPECTION OF WORK

- (a) All materials and each part of detail of the work shall be subject to inspection by the Project Manager or their delegate. The Project Manager shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.
- (b) If the Project Manager requests it, the Contractor at any time before acceptance of the work, shall remove or uncover portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the Specifications. Should the work thus exposed or examined prove acceptable, the uncovering, or removing and the replacing of the covering or making good of the parts removed, will be paid for as extra work; but should the work so exposed or examined prove unacceptable, the covering or removing and the replacing of the covering or making good of the parts removed will be at the Contractor's expense.
- (c) Any work done or materials used without supervision or inspection by an authorized Division representative may be ordered removed and replaced at the Contractor's expense unless the Division's representative failed to inspect after having been given reasonable notice in writing that the work was to be performed.
- (d) When any third party is to pay a portion of the cost of the work covered by the Contract, its representative shall have the right to inspect the work. Such inspection shall not make any unit of that third party a party to the Contract, and shall not interfere with the rights of either party to the Contract.
- (e) All inspections and all tests conducted by the Division are for the convenience and benefit of the Division. These inspections and tests do not constitute acceptance of the materials or work tested or inspected, and the Division may reject or accept any work or materials at any time prior to the inspection pursuant to [Section 5.16](#) whether or not previous inspections or tests were conducted by the Project Manager or authorized representative.

5.12 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK

- (a) Unacceptable work is work that does not conform to the requirements of the Contract.
- (b) Unacceptable work, resulting from any cause, found to exist prior to the final acceptance of the work, shall be removed and replaced in an acceptable manner at the Contractor's expense. The fact

that the Project Manager or an inspector may have overlooked the unacceptable work shall not constitute an acceptance of any part of the work.

- (c) Unauthorized work is work that was done without adequate lines and grades having been established by the Project Manager or by the Contractor, work done contrary to the instructions of the Project Manager, work done beyond the lines shown on the Plans, or extra work done without the Project Manager's written authorization. Unauthorized work will not be paid for under the provisions of the Contract, and may be ordered removed or replaced at the Contractor's expense.
- (d) If the Contractor fails to comply with any order of the Project Manager made under the provisions of this subsection, the Project Manager will have authority to cause unacceptable work to be remedied or removed and replaced, and unauthorized work to be removed. The Project Manager will deduct the costs from any monies due or to become due the Contractor.

5.13 LOAD RESTRICTIONS

- (a) The Contractor shall comply with all legal load restrictions in the hauling of equipment or materials on public roads beyond the limits of the project. A special permit will not relieve the Contractor of liability for damage resulting from the moving of equipment or material.
- (b) The operation of equipment or hauling loads which cause damage to structures, the roadway or any other construction will not be permitted. Hauling of materials over the base course or surface course under construction shall be limited by the Contractor to methods and equipment that will prevent damage to the pavement structure. Loads will not be permitted on a concrete pavement or structure before the expiration of the curing period. The Contractor shall be responsible for the repair of all damage and related expense resulting from hauling equipment and construction operations.
- (c) If a vehicle's gross weight exceeds the legal limit, and the material transported by the vehicle is delivered to the project, the material and the scale ticket (certificate of correct weight) will not be accepted, except a 500 lbs tolerance will be allowed for overweight loads.

5.14 MAINTENANCE DURING CONSTRUCTION

The Contractor shall maintain the site during construction (including daily clean-up) and until the project is accepted or the Division takes possession. This maintenance shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces to the end that the project or structure is kept in satisfactory condition at all times. All cost of maintenance work during construction and before the project is accepted shall be included in the unit prices bid on the various pay items and the Contractor will not be paid an additional amount for such work.

5.15 FAILURE TO MAINTAIN PROJECT OR STRUCTURE

If the Contractor, at any time, fails to comply with the provisions of [Section 5.14](#), the Project Manager will immediately notify the Contractor of such non-compliance. If the Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of such notice, the Project Manager may immediately proceed to maintain the project, and the entire cost of this maintenance will be deducted from monies due or to become due the Contractor on the contract.

5.16 ACCEPTANCE

- (a) Substantial Completion:

The terms "Substantial Completion" or "Substantially Complete" mean the stage in the progress of the work when the construction is sufficiently complete, in accordance with the Contract Documents as modified by any Change Orders, so that the Work, or at the discretion of the Project Manager, any designated portion thereof, is available for its intended use by the Division and a Notice of Substantial Completion can be issued. Portions of the Project may, at the discretion of the Project Manager, be designated as Substantially Complete.

- (b) Partial Acceptance: If at any time during prosecution of the project the Contractor completes a unit or portion of the project, such as a structure, or a section of road that can be used advantageously, s/he may request the Project Manager to make final inspection of that unit. If the Project Manager finds upon inspection that in the Project Manager's judgment the unit has been completed in compliance with the Contract, s/he may accept that unit as being completed and the Contractor may be relieved of further responsibility for that unit. Such partial acceptance shall in no way void or alter any of the terms of the Contract.
- (c) Final Acceptance:
- (1) Upon due notice from the Contractor of presumptive completion of the entire project, the Project Manager will make an inspection. If all construction provided for and contemplated by the Contract is found completed to the Contractor's satisfaction, that inspection shall constitute the final inspection and the Project Manager will make the final acceptance as of the date of the final inspection as specified in [Section 9.8](#).
 - (2) If any Change Orders are necessary, the Project Manager will prepare the final forms as specified in [Section 9.8](#).
 - (3) If, however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the Project Manager will give the Contractor the necessary instruction for correction of same, and the Contractor shall immediately comply with and execute such instructions. Upon correction of the work another inspection will be made which shall constitute the final inspection provided the work has been corrected as required and no Change Orders are necessary. In such event, the Project Manager will make the final acceptance.

5.17 CLAIMS FOR ADJUSTMENT AND DISPUTES

- (a) All claims filed by the Contractor based upon:
- (1) Work or materials not clearly defined in the Contract,
 - (2) Extra work not ordered by the Project Manager in accordance with [Section 4.3](#)
 - (3) Extensions of time made pursuant to [Section 8.5](#), or
 - (4) Any other cause, resulting in requests for additional compensation or time, or in the suspension or termination of the Contract, shall be governed by this subsection.
- (b) Upon discovery of any facts which formulate the basis of a potential claim, the Contractor shall give immediate oral and written notice to the Project Manager prior to commencing with work to enable the Division to obtain its independent evidence of these facts.
- (c) Within seven calendar days after the discovery of the facts giving rise to a claim, the Contractor shall formally notify the Project Manager in writing of the intent to file a claim as defined in [Section 5.17\(a\)](#). The Contractor's formal notification of intent to file a claim shall describe the contractual and legal basis of the claim and factual evidence supporting the claim.
- (d) If immediate and formal notifications are not properly given by the Contractor according to these GC's, the Contractor shall not be entitled to any additional compensation or extension of time for any cause related to the claim, including any act or failure to act by the state, and the Contractor shall not be entitled to any claim. Any claim based upon any cause, for which prior and formal notifications to file a claim are not properly given by the Contractor, will be considered invalid and will be denied by the Project Manager on the basis that proper notifications as required herein, were not given. The Contractor's prior and formal notifications of intent to file a claim and subsequent Division acknowledgement of those notifications shall not be construed as proving or substantiating the validity of the Contractor's claim as related to the contractual basis of the claim, factual information

related to the claim, or cost, or amount of time extension related to the claim.

- (e) When the Contractor provides immediate and formal notifications of intent to file a claim pursuant to [Section 5.17\(b\)](#), the claim will be reviewed by the Project Manager who will render a written decision to the Contractor to either affirm the claim as valid or deny the claim, in whole or in part, in accordance with all Contract Documents and the following procedure:
- (1) At any time prior to final acceptance of the project, made pursuant to [Section 5.16\(c\)](#), and regardless of what correspondence or documents have been previously transmitted, the Contractor shall formally submit to the Project Manager a complete claim package including a quantification of all alleged costs and time impacts, and all supporting documents which represent the final position the Contractor wishes to have considered by the Division. The time period within which the Contractor is to provide such written documentation may be extended by the Project Manager if requested by the Contractor and if the Project Manager determines an extension would enhance the claim record and improve the potential for resolution of the claim. If the Contractor fails to provide such written documentation prior to final acceptance of the project, or within an extended time period authorized by the Project Manager, the Project Manager will base the decision upon the information previously submitted in the Contractor's notification of intent to file a claim and pertinent Specification and Contract Documents.
 - (2) It will be the responsibility of the Contractor to keep full and complete records of the costs and additional time incurred for any claim. The Contractor shall permit the Project Manager to examine and copy those records and any other records as may be required by the Project Manager to determine the facts or contentions involved in the claim. The Contractor shall retain those records until there is a final resolution of the claim or for three years after final acceptance of the project, whichever is longer.
 - (3) The Project Manager:
 - I. Will review the information in the Contractor's written notification of intent to file a claim,
 - II. Will review all written documents as submitted by the Contractor in support of the claim, and may consider any other information available in rendering a decision.
 - III. Will assemble and maintain a claim record comprised of all written documents submitted by the Contractor in support of the claim and all other written documents considered by the Project Manager in reaching a decision. All documentation the Contractor wants considered shall be made available to the Project Manager and will be made a part of the claim record during the review of the claim. Once the claim record has been assembled by the Project Manager, the submission of additional information, other than clarification and data supporting previously submitted documentation, at any subsequent levels of review by anyone, will not be permitted.
 - IV. Will provide a copy of the complete claim record along with the written decision to the Contractor describing the contractual basis and factual information considered by the Project Manager in reaching a decision.
 - (4) The Project Manager will render a written decision to the Contractor within 60 days from the receipt of the Contractor's submission of all written documentation supporting the claim. If more than one claim has been filed by the Contractor on the project, the Project Manager will have the right to consolidate claims and issue one decision on all such claims provided that consolidation of claims does not extend the time period within which the Project Manager is to render a decision. If the Project Manager fails to render a written decision to the Contractor within the specified 60 day time period, or within any extended time period as agreed to by both parties, the Contractor must either (1) accept this as a denial of the claim, or file a contract dispute in accordance with C.R.S. 24-109-106.
- (f) If the Contractor disagrees with the written decision of the Project Manager, the Contractor must

either:

- (1) Accept the Project Manager's decision as final,
- (2) File a contract dispute in accordance with C.R.S. 24-109-106.

End of
CONTROL OF WORK

SECTION 6 - CONTROL OF MATERIAL

6.1 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS

- (a) The materials used on the work shall meet all quality requirements of the Contract. In order to expedite the inspection and testing of materials, the Contractor shall notify the Project Manager of the Contractor's proposed sources of materials prior to delivery. At the option of the Project Manager, materials may be approved at the source of supply before delivery is started. If it is found after trial that sources of supply for previously approved materials do not produce uniform and satisfactory products, or if the product from any source proves unacceptable at any time, the Contractor shall furnish materials from other sources.
- (b) When alternative materials are permitted for an item in the Contract, the Contractor will be required to state in writing the material s/he intends to furnish for that item.
- (c) Reference on the Plans and/or Specifications to a particular product, or to the product of a specific manufacturer, followed by the phrase "or approved equal" is intended only to establish a standard of quality, durability and design, and shall not be construed as limiting competition. Products of other manufacturers will be acceptable provided such products, in the Project Manager's judgment, are equal to that specified; the burden of proof shall be the Contractor's responsibility. Product availability and date of delivery will be a factor in determining the acceptance of an approved equal.
- (d) Product submittal shall require approval for specified manufacturers' products as well as approved "or equal" products.

6.2 SAMPLES, TESTS, CITED SPECIFICATIONS

- (a) It is the intent of the Division and these GC's that all materials or the finished product in which the materials are used will be inspected and tested. Any work in which untested and unacceptable materials are used without approval or written permission of the Project Manager, shall be performed at the Contractor's risk and may be considered as unacceptable and unauthorized and will not be paid for.
- (b) Unless otherwise designated, when ACI, ASTM or other specifications or other methods are cited, the reference shall be to latest edition as revised or updated by approved supplements or interim editions published and issued prior to the date of Bidding Documents.

6.3 PLANT INSPECTION

- (a) The Project Manager may inspect the materials at the source. In the event plant inspection is made, the following conditions shall be met:
 - (1) The Project Manager shall have the cooperation and assistance of the Contractor and the producer with whom s/he has contracted for materials.
 - (2) The Project Manager shall have full entry at all times to such parts of the plant as may concern the manufacture or reproduction of the materials being furnished.
 - (3) Adequate safety measures shall be provided and maintained.
- (b) It is understood that the Division reserves the right to retest all materials prior to incorporation into the work which have been tested and accepted as the source of supply after the same have been delivered and to reject all materials which, when retested, do not meet the requirements of these GC's or those established for the specific project.

6.4 STORAGE OF MATERIALS

Materials shall be stored to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the project may be used for storage purposes and for placing of the Contractor's plant and equipment, but any additional space required therefore must be provided by the Contractor at the Contractor's expense. Private property shall not be used for storage purposes without written permission of the owner or lessee, and if requested by the Project Manager, copies of such written permission shall be furnished him/her. All storage sites shall be restored to their original conditions by the Contractor at the Contractor's expense. This shall not apply to the stripping or storing of topsoil, or other materials salvaged from the work.

6.5 HANDLING MATERIALS

All materials shall be handled in such manner as to preserve their quality and fitness for the work. Aggregates shall be transported from the storage site to the work in vehicles so constructed as to prevent loss or segregation of materials.

6.6 UNACCEPTABLE MATERIALS

All materials not conforming to the requirements of the Specifications at the time they are used shall be considered as unacceptable and all such materials will be rejected and shall be removed immediately from the site of the work unless otherwise instructed by the Project Manager. Rejected material, the defects of which have been corrected, shall not be used until approval has been given.

6.7 DIVISION FURNISHED MATERIALS

- (a) Material furnished by the Division will be made available to the Contractor at the points specified in the Contract.
- (b) The cost of handling and placing materials after they are made available to the Contractor shall be included in the contract price for the item.
- (c) The Contractor will be held responsible for all material received until it is incorporated in the work and accepted.
- (d) Any charges resulting from the Contractor's failure to accept the material at the designated time and point of delivery will be deducted from monies due the Contractor.

End of

CONTROL OF MATERIAL

SECTION 7 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

7.1 LAWS TO BE OBSERVED

The Contractor shall keep fully informed of all federal and state laws, all local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction of authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by the Contractor or the Contractor's employees. Preferences for Colorado labor are applicable to the Contract if public works are undertaken thereunder and financed in whole or in part with State funds, in accordance with the provisions of 8-17-101 and 102, CRS.

7.2 PERMITS, LICENSES, AND TAXES

- (a) Licenses, Permits, and Other Authorizations Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of the Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under the Contract, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to the Contract.
- (b) Prior to beginning work on the project, the Contractor shall furnish the Project Manager a written list of all permits required for the proper completion of the project. The list shall clearly identify the type of permit or permits that must be obtained before work on any particular phase or phases of work can be started. Copies of the fully executed permits shall be furnished to the Project Manager.
- (c) The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from Colorado state and local government sales and use taxes under §§39-26-704(1), et seq. C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Contract.

7.3 PATENTED DEVICES, MATERIALS AND PROCESSES

If the Contractor employs any design, device, material or process covered by letters of patent or copyright and not specifically required by the Contract, s/he shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor and the Surety shall indemnify and save harmless the State, any affected third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or trademark or copyright, and shall indemnify the State for any costs, expenses and damages which it may be obligated to pay by reason of any infringement, at any time during the prosecution or after the completion of the work.

7.4 FEDERAL AID PROVISIONS

- (a) When the United States government participates in the cost of a project, the federal laws and the rules and regulations made pursuant to such laws must be observed by the Contractor, and the work shall be subject to the inspection of the appropriate federal agency.
- (b) Such inspection shall not make the United States government a party to the Contract and shall not interfere with the rights of the parties to the Contract.

7.5 SANITARY PROVISIONS

The Contractor shall observe all rules and regulations of federal, state and local health officials. The Contractor shall not require any worker to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to health or safety.

7.6 PUBLIC CONVENIENCE AND SAFETY

The Contractor shall at all times so conduct the work as to assure the least possible obstruction to traffic. The safety and convenience of the general public and the residents adjacent to the project and the protection of persons and property shall be provided for by the Contractor.

7.7 BARRICADES AND WARNING SIGNS

The Contractor shall provide, erect, and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other traffic control devices, and shall take all necessary precautions for the protection of the work and safety of the public in accordance with applicable regulations and guidelines. Access closed to traffic shall be protected by effective barricades, and obstructions shall be illuminated during hours of darkness. Suitable warning signs shall be provided to properly control and direct traffic.

7.8 USE OF EXPLOSIVES

- (a) When explosives are utilized in the prosecution of the work, the Contractor shall not endanger life, property, or new work. The Contractor shall be responsible for all damage resulting from the use of explosives.
- (b) The Contractor's explosives shall be stored in a secure manner in compliance with laws and ordinances, and storage places shall be clearly marked. When electric blasting caps are used, stored or moved in the vicinity of the work, warning signs prohibiting the use of radio transmitters and mobile telephones shall be posted on all roads within 350 feet of the blasting operation.
- (c) The Contractor shall notify property owners and public utility companies having structures in the proximity of the work of the intention to use explosives. Notice shall be given sufficiently in advance to enable them to protect their property.
- (d) In advance of doing any blasting work involving the use of electric blasting caps within 200 feet of any railroad's track or structures, the Contractor shall notify the proper authority of the company as to the location, date, time and approximate duration of such blasting operations.
- (e) At the conclusion of each day of blasting, all spent surface blasting components shall be removed. At the conclusion of blasting and excavation work, the Contractor shall properly dispose of all spent blasting components. At the completion of final grading, the Contractor shall inspect the project and remove all exposed blasting components.

7.9 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE

- (a) The Contractor shall preserve private and public property and protect it from damage. Land monuments and property marks shall not be disturbed or moved until their location has been witnessed or referenced and their removal approved.
- (b) The Contractor shall be responsible for the damage or injury to property resulting from (1) the Contractor's neglect, misconduct, or omission in the manner or method of execution or non-execution of the work, or (2) the Contractor's defective work or the use of unacceptable materials.
- (c) The Contractor's responsibility shall not be released until the work has been completed in compliance with the Contract. The Contractor shall restore damaged or injured property, at the Contractor's expense, to a condition similar or equal to that existing before the damage or injury occurred, by repairing, rebuilding, or restoring the property.

- (d) Existing trees, shrubs, bushes or grass outside the designated work areas but inside project limits that are damaged due to the Contractor's operations shall be replaced in kind at the Contractor's expense.

7.10 FOREST PROTECTION

- (a) The Contractor shall comply with all regulations of the State Department of Natural Resources, the National Forest Supervisor, or other authority having jurisdiction governing the protection of forests, and shall observe all sanitary laws and regulations with respect to the performance of work within or adjacent to State or National Forests. The Contractor shall keep the areas in an orderly condition, dispose of all refuse, obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks, and other structures in accordance with the regulations and instructions issued by the Forest Supervisor.
- (b) The Contractor shall take all reasonable precaution to prevent forest fires, and shall make every possible effort to notify a forest official at the earliest possible moment of the location and extent of any fire seen by the Contractor. The Contractor, subcontractors, and their employees shall prevent and suppress forest fires and provide assistance in this effort as directed by forest officials.

7.11 RESPONSIBILITY FOR DAMAGE CLAIMS

- (a) The Contractor shall indemnify and save harmless the Division, its officers, and employees from suits, actions, or claims of any type or character brought because of any and all injuries or damage received or sustained by any person, persons, or property on account of the operations of the Contractor; or failure to comply with the provisions of the Contract; or on account of or in consequence of neglect of the Contractor in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect, or misconduct of the Contractor; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright, unless the design, device, material or process involved is specifically required by the Contract; or from any claims or amounts arising or recovered under the Worker's Compensation Act, or other law, ordinance, order, or decree. The Division may retain as much of any monies due the Contractor under the Contract as may be determined by the Division to be in the public interest.
- (b) The Contractor shall procure and maintain, until final acceptance of the project, insurance as directed by the Division.

7.12 CONTRACTOR'S RESPONSIBILITY FOR WORK

Until final written acceptance of the project by the Project Manager, the Contractor shall be responsible and shall protect the work against injury or damage from all causes whether arising from the execution or the non-execution of the work, including but not limited to action of the elements, traffic, fire, theft, vandalism, or third party negligence. The Contractor shall rebuild, repair, restore or replace all work that is injured or damaged prior to final acceptance at no cost to the Division. Loss, injury, or damage to the Work due to unforeseeable causes beyond the control of and without fault or negligence of the Contractor, including but not restricted to acts of God, such as earthquakes, tornado, or other cataclysmic phenomenon of nature, or acts of the public enemy or of governmental authorities, shall be restored by the Contractor under the provision of [Section 4.2](#) or [4.3](#), as applicable. During periods that work is suspended, the Contractor shall be responsible for the work under the Contract and shall prevent damage to the project, provide for drainage, and shall erect necessary temporary structures, signs, or other facilities required to maintain the project. During the suspension period, the Contractor shall maintain in a growing condition all newly established plantings, seeding, and sodding furnished under the Contract, and shall protect new tree growth and other vegetative growth against injury.

7.13 CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES

- (a) At points where the Contractor's operations are adjacent to properties of railways, communication and power companies or are adjacent to other property, damage to which might result in considerable expense, loss or inconvenience, work shall not be commenced until all arrangements

necessary for the protection thereof have been made.

- (b) The Contractor shall cooperate with the owners of any underground or overhead utility lines in removal and rearrangement operations in order that these operations may progress in a reasonable manner that duplication of rearrangement work may be reduced to a minimum, and that services rendered by those parties will not be unnecessarily interrupted.
- (c) In the event of interruption to water or utility services as a result of accidental breakage or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the said authority in the restoration of service. If water service is interrupted, repair work shall be Continuous until the service is restored.

7.14 FURNISHING RIGHT OF WAY

The Division will be responsible for the securing of all necessary right-of-way in advance of construction. Any exceptions will be indicated in advance in the Contract.

7.15 PERSONAL LIABILITY OF PUBLIC OFFICIALS

The Project Manager or authorized representatives are acting solely as agents and representatives of the Division when carrying out and exercising the power or authority granted to them under the Contract. There shall not be any liability on them either personally or as employees of the Division.

7.16 NO WAIVER OF LEGAL RIGHTS

- (a) Upon completion of the Project, the Division will make final inspection and notify the Contractor of acceptance. Final acceptance shall not preclude the Division from correcting any measurement, estimate, or certificate made before or after completion of the Contract, nor from recovering from the Contractor or Surety or both, overpayment sustained because the Contractor failed to fulfill the obligations under the Contract. A waiver on the part of the Division of any breach of any part of the Contract shall not be held to be a waiver of any other or subsequent breach.
- (b) The Contractor, without prejudice to the terms of the Contract, shall be liable to the Division, for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Division's rights under any warranty or guaranty.

7.17 AFFIDAVIT RELATIVE TO COLLUSION

The Contractor may be required to file a sworn statement executed by, or on behalf of, the person, firm, association or corporation to whom such Contract is to be awarded, certifying that such person, firm, association or corporation has not, either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such Contract. This sworn statement shall be by the successful Bidder before such persons as are authorized by the laws of the State to administer oaths. The original of such sworn statement shall be filed with the Division prior to award of the Contract or at any time thereafter.

7.18 ARCHAEOLOGICAL AND PALEONTOLOGICAL DISCOVERIES

When the Contractor's operations encounter plant or animal fossils, remains of prehistoric or historic structures, prehistoric or historic artifacts (bottle dumps, charcoal from subsurface hearths, old pottery, potsherds, stone tools, arrowheads, etc.), the Contractor's affected operations shall immediately cease. The Contractor shall notify the Project Manager of the discovery of these materials. When ordered to proceed, the Contractor shall conduct operations in the vicinity of the discoveries as directed. The work will be paid for by the Division as provided in [Section 4.2](#) when contract unit prices exist, or as extra work as provided in [Section 4.3](#) when no unit prices exist. Delays to the Contractor because of the materials encountered may be cause for extension of contract time in accordance with [Section 8.5](#).

7.19 AIR AND WATER POLLUTION

In accordance with the requirements pertaining to "Legal Relations and Responsibility to the Public," the Contractor's attention is directed to the "Colorado Air Quality Control Act," Title 25, Article 7 CRS and regulations promulgated thereunder and to the "Colorado Water Quality Control Act," Title 25, Article 8 CRS and regulations promulgated thereunder. The Contractor will be required to comply with these acts and to the following additional requirements in connection therewith:

- (a) If the Contractor anticipates, or if construction activities result in any change from or noncompliance with permits or certifications, then the Contractor shall detail the anticipated changes or noncompliance in a written report to the Project Manager, and revise existing permits or certifications or obtain new permits or certifications as necessary. The report shall be submitted within two days from the time the Contractor becomes aware of the change or noncompliance. Within five days after receipt of the report, the Project Manager will approve or reject the request for change in writing, or detail a course of action.
- (b) Unless called for on the Plans, excavation from the roadway, channel changes, cofferdams, etc., shall not be deposited in or near to rivers, streams or impoundments, so that it will be washed away by high water runoff.
- (c) The Contractor shall comply with the "Protection of Fishing Streams," Title 33, Article 5 CRS; "Clean Water Act," 33 USC 1344 and regulations promulgated; certifications issued.
- (d) Frequent fording of live streams with construction equipment will not be permitted. Temporary bridges or other structures shall be used wherever stream crossings are deemed necessary. Unless otherwise approved in writing, mechanized equipment shall not be operated in live streams except as may be required to construct channel changes and structures.
- (e) Rivers, streams and impoundments shall be promptly cleared of all falsework, piling, debris, or other obstructions placed therein or caused by the construction operations.
- (f) The Contractor may be legally required to obtain permits associated with specific activities within, or off the project site, such as borrow pits, concrete or asphalt plant sites, waste disposal sites, or other facilities. It is the Contractor's responsibility to obtain these permits. The Contractor shall consult with the Project Manager, or contact the Colorado Department of Public Health and Environment or other appropriate federal, state, or local agency to determine the need for any permit, but it is the Contractor's sole responsibility to make the final determination as to the need for such permits.
- (g) The Contractor shall conduct the work in a manner that minimizes pollution of any waters, including wetlands.
- (h) Required dewatering of excavations shall be conducted in a manner that avoids pollution and erosion. Water from dewatering operations shall not be directly discharged into any state waters including wetlands, irrigation ditches, canals, or storm sewers, unless allowed by a permit. Discharge into sanitary sewers will not be allowed unless written permission is obtained from the owner or controlling authority and this disposal method is approved in writing by the Project Manager. Unless prohibited by law or otherwise specified in the Contract, the water from dewatering operations shall be contained in basins for dissipation by infiltration or evaporation, shall be hauled away from the project for disposal in accordance with applicable laws and regulations, or shall be land applied to approved non-wetland vegetated areas and allowed to soak into the soil. Depending upon the quality of the water, land application of water to vegetated areas may require a written concurrence or permit from CDPHE. Based on guidelines and criteria from CDPHE, the Contractor shall determine the quality of the water, obtain applicable concurrences or permits, and furnish copies of the concurrences or permits obtained to the Project Manager.
- (i) At least 15 days prior to commencing dredging or fill operations in a watercourse, the Contractor shall provide written notification to owners or operators of domestic or public water supply intakes or diversion facilities, if these facilities are within five miles downstream from the dredging or fill

operations.

- (j) Upon completion of wetland or in-stream construction activities, all temporary fills shall be removed in their entirety and disposed of in an upland location outside of flood plains unless otherwise specified in the Contract. Affected areas shall be returned to their pre-existing elevation unless otherwise specified in the Contract.
- (k) Construction operations in state waters, including wetlands, shall be restricted to:
 - (1) Channel change areas designated in the Contract.
 - (2) Areas designated in the Contract which must be entered to construct structures.
 - (3) Areas where water must be forded no more than four times per day to facilitate construction. Fording waters more than four times per day will not be permitted. Whenever fording waters more than four times per day is necessary, a temporary bridge or other structure shall be used.
 - (4) Areas authorized by the Corps of Engineers.
- (l) Work in, or near, wetlands shall be performed in a manner that will minimize harm to the wetlands. Wetland areas outside of the project site shall not be used for storage, parking, waste disposal, access, borrow material, or any other construction support activity.
- (m) Pollutant by-products of construction, plastic concrete, asphalt, solids, sludges, pollutants removed in the course of treatment of wastewater, excavation or excess fill material, and material from sediment traps shall be handled, stockpiled, and disposed of in a manner that prevents entry into state waters, including wetlands.
- (n) The use of chemicals such as soil stabilizers dust palliatives, herbicides, growth inhibitors, fertilizers, deicing salts, etc., during construction shall be in accordance with the manufacturer's recommended application rates, frequency, and instructions. These chemicals shall not be used, stored, or stockpiled within 50 horizontal feet (15 m) of the ordinary high water line of any state waters, including wetlands, except when otherwise specified in the Contract.
- (o) Construction waste or salvable material, excess excavated material, fill material, construction equipment, fuels, lubricants, and other petroleum distillates shall not be stored or stockpiled within 50 horizontal feet (15 m) of any wetland, state waters, or the ordinary high water line of any state waters. Equipment fueling and servicing shall occur only within accepted designated areas.
- (p) The quantity of materials stored on the project shall be limited, as much as practical, to that quantity required to perform the work in an orderly sequence. All materials stored on-site shall be stored in a neat, orderly manner, in their original containers, with the original manufacturer's label. Materials shall not be stored in a location where they may be carried into a state water at any time.
- (q) Spill prevention and containment measures shall be used at storage, and equipment fueling and servicing areas to prevent the pollution of any state waters, including wetlands. All spills shall be cleaned up immediately after discovery, or contained until appropriate cleanup methods can be employed. Manufacturer's recommended methods for spill cleanup shall be followed, along with proper disposal methods.
- (r) Use of heavy equipment in or around state waters, including wetlands, will not be allowed, except as specified in the Contract and permits, unless otherwise directed by the Project Manager. If any such work is allowed, the equipment shall be of such type that will produce minimal environmental damage. For allowed work in wetlands, the equipment shall be on fiber, wooden, earthen, or metallic mats to prevent undue disturbance and damage to the wetlands area. Where practical, equipment shall be operated from banks or shoulder above riparian and wetland areas.
- (s) The Contractor shall prevent grass or brush fires that will expose areas of soil to erosion.

- (t) The construction activity shall not block the movement of those species of aquatic life indigenous to the waterbody.
- (u) The construction activities shall not impair Indian tribal rights, including, but not limited to, water rights, and treaty fishing and hunting rights.
- (v) Discharges of pollutants into breeding areas of migratory waterfowl, or into fish spawning areas during spawning seasons shall not be permitted unless allowed by permits from appropriate regulatory agencies.
- (w) The Contractor shall be liable for any penalty (including monetary fines) charged to the Division caused by the Contractor's noncompliance with any water quality permit or certification. Monetary fines shall be deducted from any money due to the Contractor. If the monetary fine is in excess of all the money due to the Contractor, then the Contractor shall pay to the Division the amount of such excess.
- (x) The Contractor will not receive additional compensation, or time extensions, for any disruption of work or loss of time caused by any actions brought against the Contractor for failure to comply with water quality controls.
- (y) In the event that a spill occurs as a direct result of the Contractor's actions or negligence, the clean-up of such spill shall be performed by the Contractor at the Contractor's expense.
- (z) The Contractor shall be liable for any monitoring or testing as required in the permits.

7.20 ANTI DISCRIMINATION

The Contractor agrees to comply with the letter and spirit of the Colorado Anti-discrimination Act of 1957, as amended, and other applicable laws respecting discrimination and unfair employment practices (24-34-402, CRS, as amended), and as required by Executive Orders, Equal Opportunity and Affirmative Action, and other legislation.

7.21 GENERAL

- (a) The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Contract. Any provisions of this Contract whether or not incorporated herein by reference which provides for arbitration by an extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Contract to the extent that the Contract is capable of execution.
- (b) The signatories to the Contract Document aver that they are familiar with 18-8-301, et seq., (Bribery and Corrupt Influences) and 18-8-401, et seq., (Abuse of Public Office), CRS as amended, and that no violation of such provisions is present.
- (c) The signatories aver that to their knowledge, no State employee has any personal or beneficial interest whatsoever in the service or property described in the Contract Documents.
- (d) CORA Disclosure: To the extent not prohibited by federal law, the Contract and the performance measures and standards required under Section 24-103.5-101 CRS, if any, are subject to public release through the CORA.

End of

LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

SECTION 8 - PROSECUTION AND PROGRESS**8.1 SUBLETTING OF CONTRACT**

- (a) Contractor's rights and obligations under the Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of the Contract
- (b) The Contractor shall not subcontract any portion of the Contract without written notification to the Project Manager. No subcontract, shall release the Contractor of liability under the Contract and Bonds.

8.2 NOTICE TO PROCEED

- (a) The "Notice to Proceed" will stipulate the date on which it is expected the Contractor will begin the construction and from which date Performance Time will be charged. Commencement of work on the site by the Contractor will be deemed and taken as a waiver on the Contractor's part of this notice and contract time will commence.
- (b) The Contractor shall commence work under the Contract on or prior to the 10th day following the date of Notice to Proceed, or in accordance with the selected start date allowed in the Contract.

8.3 PROSECUTION AND PROGRESS

The Contractor shall furnish the Project Manager with a schedule for approval in accordance with the Bid Documents.

8.4 CHARACTER OF WORKERS, METHODS AND EQUIPMENT

- (a) The Contractor shall employ resources for completing work to full completion in the manner and time required by the Contract.
- (b) All workers shall have skill and experience to perform the work assigned to them.
- (c) Any person employed by the Contractor or by any subcontractor who does not perform the work in a proper and skillful manner shall, at the written request of the Project Manager, be removed by the Contractor or subcontractor and shall not be employed on the project without the approval of the Project Manager.
- (d) Should the Contractor fail to remove this person or persons or fail to furnish skilled and experienced personnel for the proper prosecution of the work, the Project Manager may suspend the work by written notice until compliance is achieved.
- (e) All equipment used on the project shall be of size and mechanical condition to meet requirements of the work and to produce a satisfactory quality of work. Equipment used shall not cause injury to roadways, adjacent property, or other structures.
- (f) When the methods and equipment to be used are not prescribed in the Contract, the Contractor shall use any methods or equipment that will accomplish the contract work in conformity with the Contract requirements.
- (g) When the methods and equipment to be used are specified in the Contract, other methods and equipment shall not be used in the performance of the work unless the Contractor receives written authorization from the Project Manager.
- (h) If the Contractor desires to use a method or equipment other than specified in the Contract, the Con-

tractor may request approval from the Project Manager. The request shall include a full description of the methods and equipment proposed to be used and the Contractor's explanation for the proposed change. The Contractor will be fully responsible for producing work in conformity with Contract requirements. If the substituted methods or equipment do not produce results conforming to Contract requirements, the Contractor shall complete the remaining construction with the originally specified methods and equipment. Deficient work shall be removed, repaired, or replaced to conform to the specified quality by and at the Contractor's expense. No increase will be made in the basis of payment for the construction items involved nor in contract time when a change in methods or equipment is authorized.

8.5 DETERMINATION AND EXTENSION OF PERFORMANCE TIME

- (a) The number of calendar days allowed or specified date for the completion of the work included in the Contract will be stated in the Bid Documents.
- (b) No extension of time will be granted for any adverse weather conditions unless in the sole discretion of the Project Manager the weather conditions in question prevented safe and workmanlike prosecution of work.
- (c) The Contractor shall not carry on construction operations on Saturdays, Sundays, or Holidays unless previously arranged with Project Manager, except for pre-wetting, making emergency repairs and providing proper protection of the work. Saturdays, Sundays and Holidays will be counted against the Performance Time.
- (d) The Performance Time in the Contract as awarded is based on the original quantities as defined in [Section 2.4](#). If satisfactory fulfillment of the Contract requires performance of work in greater quantities than those set forth in the Proposal, the Performance Time allowed for the Project may be increased on a basis commensurate with the amount and difficulty of the added work after written request by the Contractor.
- (e) If the Contractor finds it impossible for reasons beyond the Contractor's control to complete the work within the Performance Time as specified or as extended, the Contractor may at any time prior to the expiration of the Performance Time, make a written request to the Project Manager for an extension of time setting forth therein the Contractor's reasons which the Contractor believes will justify the granting of the Contractor's request.
- (f) The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the Project Manager finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, the Project Manager may extend the time for completion in such amount as the conditions justify and approved in accordance with these GC's. The extended time for completion shall then be in full force and affect the same as though it were the original time for completion.
- (g) Delays due to slow delivery of materials or of fabrication scheduling for reasons of late ordering, financial considerations or other causes which could have been foreseen and prevented, will be considered as within the Contractor's control, and each day of such delay will count against Performance Time. However, delay in the delivery of materials to the Contractor, due to some unusual market condition such as those caused by industry-wide strike, national disaster, area-wide shortage or other reason beyond the control of the Contractor, which affects the completion time shall be considered a basis for extension of contract time.
- (h) Certified copies of correspondence between the Contractor and the Contractor's supplier, pertinent to the delay claimed by the Contractor will be considered in determining extension of contract time. All such correspondence shall be submitted by the Contractor in sufficient time so that time adjustments can be made concurrently with the delay.
- (i) When Final Acceptance has been duly made by the Project Manager as prescribed in [Section 5.16\(c\)](#) the daily time charge will cease.

- (j) If flooding, unusual water conditions, or unanticipated construction problems beyond the Contractor's control alter the work schedule or work conditions in such a manner that prosecution of work would cause harm to the site or construction, the Contractor may request that work be temporarily Shutdown (the duration of an authorized shutdown is not assessed against the contract time) until the conditions which precluded prosecution of the work no longer exist.
- (k) The Contractor's request shall set forth the reasons s/he believes the work should be temporarily halted and the estimate of the time of work suspension.
- (l) The Contractor shall not suspend the work until s/he has received written approval from the Project Manager and shall resume with the work promptly when notified to resume operations.
- (m) The Division shall have the authority to suspend the work, either in whole or in part for such period or periods as may be deemed necessary due to unsuitable weather, faulty workmanship, improper superintendence, Contractor's failure to carry out orders or to perform provisions of the Bid Documents, or other legal items or circumstances as directed by the Project Manager.

8.6 FAILURE TO COMPLETE WORK ON TIME

- (a) The parties agree that time is of the essence of the Contract and of the Specifications wherever a definite and certain length of time is fixed for the performance of any act. A daily charge will be made against the Contractor for each working day, or calendar day, that any work remains uncompleted after the elapse of contract time. This daily charge will be deducted from any money due the Contractor. This deduction will not be considered a penalty but as liquidated damages.
- (b) The liquidated damages set forth below is an amount, agreed to by the Contractor and the Division, as reasonably representing additional construction engineering and administration costs incurred by the Division, if the Contractor fails to complete the Project within the Performance Time. The liquidated damages set forth do not include any additional actual loss or damage that the Division might incur as a result of the Contractor's delay, such as but not limited to increased costs to other contractors.
- (c) Refer to the Special Conditions for the amount of liquidated damages. If an amount of liquidated damages does not appear in the Special Conditions, liquidated damages shall be charged at \$150 per day, which is a reasonable estimate of the additional expense incurred by the Division. The Special Conditions may specify higher liquidated damages amounts due to the particular circumstances of the Project, such as but not limited to the potential loss of revenue to the Division.
- (d) Due account shall be taken of any adjustment of the Performance Time for completion of the work granted under the provisions of [Section 8.5](#).
- (e) Permitting the Contractor to continue and finish the work or any part thereof after elapse of Performance Time will not operate as a waiver on the part of the Division of any of its rights under the Contract.
- (f) Any deduction assessed as liquidated damages under this subsection shall not relieve the Contractor from additional liability for any actual damages or costs resulting from delays to other contractors on the project or other projects caused by a failure of the assessed Contractor to complete the work according to Performance Time.

8.7 DEFAULT OF CONTRACT

- (a) If the Contractor:
 - (1) Fails to begin the work under the Contract within the time specified in the Notice to Proceed, or
 - (2) Fails to perform the work with sufficient workers and equipment or with sufficient materials to

- assure the prompt completion of said work, or
- (3) Fails to perform the work in accordance with Contract requirements or refuses to remove and replace rejected materials or unacceptable work, or
 - (4) Discontinues the prosecution of the work, or
 - (5) Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
 - (6) Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
 - (7) Allows any final judgment to remain unsatisfied for a period of 10 days, or
 - (8) Makes an assignment for the benefit of creditors, or
 - (9) Fails to comply with Contract requirements regarding minimum wage payments or EEO requirements, or
 - (10) Is a party to fraud, or
 - (11) For any other cause whatsoever, fails to carry on the work in an acceptable manner;
- (b) The Project Manager will give notice in writing to the Contractor and the Surety of such delay, neglect or default.
 - (c) If the Contractor or Surety does not correct such default and proceed with the Contract within 10 days after the date of the Project Manager's notice, the Division will have full power and authority, without violating the Contract, to take the prosecution of the work from the Contractor. The Division may appropriate or use the Contractor's materials and equipment, and may enter into an agreement for the completion of the Contract according to the terms and provisions thereof, or use other methods as, in the opinion of the Project Manager, will be required for the completion of the Contract.
 - (d) All costs and charges incurred by the Division, together with the cost of completing the work under contract, will be deducted from any monies due or which may become due said Contractor. If such expense exceeds the sum which would have been payable under the Contract, then the Contractor and the Surety shall be liable and shall pay to the Division the amount of such excess.

8.8 TERMINATION OF CONTRACT

- (a) Termination Notice: The Division may terminate work under the Contract in whole or in part if the Project Manager determines that termination is in the Division's best interest. Contract termination will be initiated by the Project Manager's written Contract Termination Notice to the Contractor. The notice will specify the effective date.
- (b) Cancelled Commitments: The Contractor, after receiving the Contract Termination Notice, shall cancel any outstanding commitments for procurement of materials, supplies, equipment, and miscellaneous items. In addition, the Contractor shall use reasonable effort to cancel or divert any outstanding subcontract commitments to the extent they relate to any work terminated. With respect to such cancelled commitments the Contractor shall:
 - (1) Settle all outstanding liabilities and all claims arising out of these canceled commitments. Such settlements will be approved by the Project Manager and shall be final; and
 - (2) Assign to the Division all of the rights, title and interest of the Contractor under the terminated orders and subcontracts, as directed by the Project Manager. The Division will then have the right to settle or pay any or all claims arising out of the termination of these commitments.

- (c) Termination Claim: The Contractor shall submit the termination claim to the Project Manager within 90 days after the termination notice effective date. During the 90 day period, the Contractor may make a written request for a time extension in preparing the claim. Any time extension must be approved by the Project Manager. If the Contractor fails to submit the termination claim within the time allowed, the Project Manager may determine the amount due the Contractor by reason of the termination.
- (d) Payment:
- (1) Subject to paragraph (c) above, the Contractor and Project Manager may agree upon the whole or any part of the amount to be paid to the Contractor because of the termination. The amount may include reasonable cancellation charges incurred by the Contractor. The amount may also include any reasonable loss upon outstanding commitments for subcontracts which the Contractor is unable to cancel, provided the Contractor has made reasonable effort to divert the commitments to other activities. The amount agreed upon shall be embodied in a Contract Amendment and the Contractor shall be paid that amount.
 - (2) Payments claimed and agreed to pursuant to termination shall be based on the contract unit prices. Payment for partially completed lump sum items may be made in the proportion that the partially completed work is to the total lump sum item. Where work performed is of a nature that it is impossible to separate the costs of uncompleted work from completed units, the Contractor will be paid the actual cost incurred for the necessary preparatory work and other work accomplished.
 - (3) The Division may, from time to time, under terms and conditions it may prescribe, make partial payments against costs incurred by the Contractor in connection with the Contract termination. The total of such payments shall not exceed the amount, as determined by the Project Manager, the Contractor will be entitled to hereunder.
- (e) Disposition of Work and Inventory: The Contractor shall transfer title and deliver to the Division, as directed by the Project Manager, such items which, if the Contract had been completed, would have been furnished to the Division including:
- (1) Completed and partially completed work; and
 - (2) Materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.
- (f) Other than the above, any termination inventory resulting from the Contract termination may, with written approval of the Project Manager, be sold or acquired by the Contractor under the conditions prescribed by and at prices approved by the Project Manager. The proceeds of any such disposition shall be applied to reduce any payments to the Contractor under the Contract, or shall otherwise be credited to the cost of work covered by the Contract, or paid in a manner as directed by the Project Manager. Until final disposition, the Contractor shall protect and preserve all the material related to the Contract which is in the Contractor's possession and in which the Division has or may acquire an interest.
- (g) Cost Records: The Contractor agrees to make cost records available to the extent necessary to determine the validity and amount of each item claimed.
- (h) Contractual Responsibilities: Termination of a Contract or portion thereof shall not relieve the Contractor of contractual responsibilities for the work completed, nor shall it relieve the Surety of its obligation for and concerning any just claim arising out of the work performed.

End of

PROSECUTION AND PROGRESS

SECTION 9 - MEASUREMENT AND PAYMENT

9.1 MEASUREMENT OF QUANTITIES

- (a) All work completed under the Contract will be measured by the Project Manager according to United States standard measure.
- (b) A station when used as a definition or terms of measurement will be 100 linear feet.
- (c) A method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the Contract will be those methods generally recognized as conforming to good engineering practice.
- (d) Unless otherwise specified, longitudinal measurements for area computations will be made horizontally. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the Plans or as altered by the Project Manager to fit field conditions.
- (e) All items which are measured by the linear foot, such as pipe, culverts, guardrail, underdrains, etc., will be measured parallel to the base of foundation upon which such structures are placed unless otherwise shown on the Plans.
- (f) In computing volumes of excavation, the average end area method or other acceptable methods will be used.
- (g) The term "gage" when used in connection with the measurement of plates, will mean the U.S. Standard Gage.
- (h) When the term "gage" refers to the measurement of wire, it will mean the wire gage specified in AASHTO M 32.
- (i) The term "ton" will mean the short ton consisting of 2,000 lbs.
- (j) Trucks used to haul material being paid for by weight shall be weighed empty at such times as the Project Manager directs, and each truck shall bear a plainly legible identification mark.
- (k) Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type acceptable to the Project Manager, provided that the body is of such shape that the actual contents may be readily and accurately determined. All vehicles shall be loaded to at least their water level capacity and loads shall be leveled when the vehicle arrives at the point of delivery.
- (l) The weight of inherent moisture in the material will not be deducted. Water added for the Contractor's convenience will not be paid for.
- (m) Rental of equipment will be measured by time in hours of actual working time and necessary traveling time of the equipment within the limits of the project unless special equipment has been ordered by the Project Manager in connection with force account work, in which case travel time and transportation to the project will be measured. If equipment has been ordered held on the job on a standby basis by the Project Manager, standby rental rates will be paid for the equipment.
- (n) When requested by the Contractor and approved by the Project Manager in writing, material specified to be measured by the cubic yard may be weighed and such weights will be converted to cubic yards for payment purposes. Factors for conversion from weight measurement to volume measurement and vice versa will be determined by the Project Manager and shall be agreed to by the Contractor before such method of measurement of pay quantities is used.
- (o) The term "lump sum" when used as an item of payment will mean complete payment for the work de-

scribed in the Contract.

- (p) When a complete structure or structural unit (in effect, "lump sum" work) is specified as the unit of measurement, the unit will include all necessary fittings and accessories.
- (q) When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these are identified by gage, unit weight, section dimensions, etc., such identification shall be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited Specifications, manufacturing tolerances established by the industries involved will be accepted.

9.2 SCOPE OF PAYMENT

- (a) The Contractor shall receive and accept compensation provided for in the Contract as full payment for furnishing all materials and for performing all work under the Contract in a complete and acceptable manner and for all risk, loss, damage or expense of whatever character arising out of the nature of the work or the prosecution thereof, subject to the provisions of [Section 7.16](#).
- (b) Work or materials for which there are pay items and which are to be paid for separately will be included in the appropriate pay item. Work or materials that are essential to the project but for which there are no pay items will not be measured and paid for separately but shall be included in the appropriate pay item. Payment for any pay item listed in the Bid proposal of approximate quantities in the Contract Documents include all work necessary for their proper completion.
- (c) The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents work completed by the Contractor and previously accepted by the State during the term that the invoice covers. Receipt of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Contract.
- (d) Amounts not paid by the State within 45 days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by Section 24-30-202(24)(a), CRS, until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Contractor shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.
- (e) The State is prohibited by law from making commitments beyond the term of the current State fiscal year. Payment to Contractor beyond the current State fiscal year is contingent on the appropriation and continuing availability of contract funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the contract funds the State's obligation to pay Contractor shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from contract funds, and the State's liability for such payments shall be limited to the amount remaining of such contract funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may, upon written notice, terminate this Contract, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if the Contract were terminated in the public interest as described in [Section 8.8](#).
- (f) If the State determines that the amount of any invoice is not correct, then the invoice shall be corrected prior to payment. The State may recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor. The State may recover such payments by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

9.3 COMPENSATION FOR ALTERED QUANTITIES

- (a) When the accepted quantities of work vary from the quantities in the Bid Documents, the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the original contract prices for the accepted quantities of work done. Allowance, except as provided in [Section 4.2](#), will not be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor resulting either directly from such alterations or indirectly from unbalanced allocation among the contract items of overhead expense on the part of the Bidder and subsequent loss of expected reimbursements therefore or from any other cause.
- (b) Should any such alteration directly cause the loss of any work or materials already furnished by the Contractor under the terms of the original Contract, s/he will be reimbursed for the actual cost of such work or of salvaging such materials. Any such materials may, at the option of the Division, be purchased at the actual cost to the Contractor, as evidenced by certified invoices.

9.4 EXTRA AND FORCE ACCOUNT WORK

- (a) Extra work performed in accordance with the requirements and provisions of [Section 4.3](#) will be paid for at the unit prices or lump sum stipulated in the order authorizing the work, or the Division may require the Contractor to do such work on a force account basis to be compensated in the following manner:
 - (1) Labor: For all labor and foremen in direct charge of the specific operations, the Contractor shall receive the rate of wage (or scale) paid and agreed upon in writing before beginning work for each and every hour that said labor and foreman are actually engaged in the work.
 - (2) The Contractor shall receive the actual costs paid to, or in behalf of, workers by reason of subsistence and travel allowances as evidenced by receipts but not to exceed State of Colorado per diem rates or other employment contract generally applicable to the classes of labor employed on the work.
 - (3) An amount equal to 67 percent of the sum of the above items will also be paid the Contractor to cover overhead, general superintendence, additional bond, property damage and liability insurance, workmen's compensation insurance premiums, unemployment insurance contributions, and social security.
 - (4) Should the Contractor allow the Superintendent to engage in the physical performance of construction work the Superintendent shall be compensated at the rate at which s/he is performing (laborer, operator, etc.), however, the 67 percent multiplier rate as designated above will not be applied.
- (b) In addition to the 67 percent stated above, the actual amount of fringe benefits will be paid to the Contractor for those work classifications which may carry fringe benefits, as certified in writing by the Contractor. (Fringe benefits are those payments made by the Contractor to a third party or trustee to cover such things as, but not limited to, health and welfare, pensions, vacations and apprenticeship programs, etc.).
- (c) The Project Manager shall have the authority to approve the manpower as to type and numbers.
- (d) Materials: For materials accepted by the Project Manager and used, the Contractor or subcontractor shall receive the actual cost of such materials delivered on the work, including transportation charges paid by him/her, exclusive of machinery rentals as hereinafter set forth, to which cost 15 percent will be added.
- (e) Subcontractor: When extra work on a force account basis is performed by a subcontractor on the project, in accordance with the provisions of an extra work order, a percentage based on the

following table will be allowed as additional to the percentages in (a) and (b) above, to reimburse the prime Contractor for the administrative expenses incurred in connection with the work. Bid items in the original Contract are not to be considered.

(1)	To \$1,000	10 percent
(2)	Over \$1,000 to \$10,000	\$100 plus 5 percent of excess over \$1,000
(3)	Over \$10,000	\$550 plus 3 percent of excess over \$10,000

Approval of this additional percentage will be made after receipted invoices are furnished by the Contractor.

- (f) **Equipment:** For any machinery or special equipment (other than small tools) including fuel and lubricants, plus transportation costs, the use of which has been authorized by the Project Manager, the Contractor shall receive the rental rates agreed upon in writing before such work is begun for the actual time that such equipment is in operation on the work.
- (g) **Miscellaneous:** No additional allowance will be made for general superintendence, the use of small tools or other costs for which no specific allowance is herein provided.
- (h) **Compensation:** The Contractor's representative and the Project Manager shall compare records of the cost of work done as ordered on a force account basis.
- (i) **Statements:** No payment will be made for work performed on force account basis until the Contractor has furnished the Project Manager with itemized statements of cost of such force account work including certified payrolls.

Statements shall be accompanied and supported by certified invoices for all materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices, the Contractor shall furnish an affidavit certifying that such materials were taken from the Contractor's stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

9.5 ELIMINATED ITEMS

Should any items contained in the Contract be found unnecessary for the proper completion of the work, the Project Manager will notify the Contractor in writing to eliminate the item. Such action will not invalidate the Contract. The Contractor, by Change Order, will be reimbursed for actual work done and all costs incurred, including mobilization of materials and equipment prior to the elimination of the items.

9.6 PARTIAL PAYMENTS

- (a) **Standard Amount Retained:**
 - (1) Requests for partial payment will be accepted from the Contractor once each month as the work progresses. Said payments will be based upon estimates prepared by the Project Manager of the value of the work performed and materials placed in accordance with [Section 9.7](#). The Division will deduct money from the partial payments in amounts considered necessary to protect the interests of the State (pursuant to Section 24-91-103 CRS), and will retain this money until after completion of the entire Contract.
 - (2) If the total Contract Amount exceeds \$150,000.00 then the State will retain a portion of each payment to the Contractor. Unless it is determined that a larger amount is necessary to protect the interests of the State, the amount to be retained from partial payments will be five percent (5%) of the value of the work performed to date. If the State fails to retain 5% of any payment the State may withhold a higher amount of a subsequent payment in order to offset such omission.

- (3) The withheld percentage of the contract price of any such work, improvement, or construction shall be retained until the Contract is completed satisfactorily and finally accepted by the Project Manager.

(b) Subcontractor and Supplier Claims:

The Division may withhold, in addition to the standard amount, funds for all claims against the Contractor filed by subcontractors and suppliers, pursuant to Sections 38-26-107 and 24-91-103, CRS.

9.7 PAYMENT FOR MATERIAL ON HAND

- (a) Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the work as evidenced by certified invoices, when produced on the project, delivered on the project or stored in acceptable storage places in the State of Colorado in which case the Contractor must furnish evidence to the Project Manager that such materials are stored subject to or under the control of the Division. Payment for such materials will not relieve the Contractor of responsibility for loss or damage of the stored materials.
- (b) Partial payment will not be made on living or perishable plant materials until planted on the project.

9.8 ACCEPTANCE AND FINAL PAYMENT

- (a) When the project has been accepted as provided in [Section 5.16](#), the Project Manager will prepare the final estimate (pay application) of the quantities of the various classes of work performed. After acceptance of such final estimate by the Contractor and all appropriate State officials and receipt of proof of advertisement in accordance with notice provisions contained in 38-26-107, CRS, s/he will be paid the entire sum found to be due after deducting all previous payments and all amounts to be retained or deducted under the provisions of the Contract and the appropriate statutes.
- (b) All prior partial estimates and payments shall be subject to correction in the final estimate and payment.
- (c) Final payment, based on the final estimate and subject to all provisions of the Contract, shall be made after the Contractor has indicated, by signature or other written acknowledgement of the final estimate form. The Contractor's signature or other written acknowledgement indicates that the Project is full and complete, and the Contractor releases the Division and Department from all claims or damages arising from the prosecution of work under the Contract.

9.9 CORRECTION OF WORK AFTER FINAL PAYMENT (WARRANTY PERIOD)

Neither the final advertisement, nor payment nor any provisions in the Contract shall relieve the Contractor of responsibility for faulty materials or workmanship. Contractor shall be liable for defects in concrete work which appear within a period of two years from the date of final acceptance of the project and one year for all other construction work from the date of final acceptance (unless otherwise indicated in the Bid Documents) unless defects are discovered after the one or two year period which are the result of faulty materials or workmanship, in which case the provisions of the first sentence of this paragraph shall apply. The Project Manager will give notice to the Contractor of observed defects with reasonable promptness.

End of

MEASUREMENT AND PAYMENT