



General Conditions for Construction Contracts

(Version GC-97-2)

CITY OF ASPEN, COLORADO

GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS

(Version GC-97-2)

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INTRODUCTION

The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all, unless certain services or equipment are specifically excluded. These General Conditions have been prepared to be incorporated by reference into the Contract entered into between the City and the Contractor. In the event of conflict or inconsistency among the Contract Documents, the order of precedence set forth in the Contract for Construction shall govern the interpretation of the Contract between the City of Aspen and the Contractor. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with their recognized meanings, provided however that those terms required to be defined in the Proposal by the Contractor shall have the meaning given to them in the Proposal to the extent that they are not in conflict with any other part or term of the Contract Documents.

ARTICLE 1 - DEFINITIONS

1.1. Whenever the words, forms, or phrases defined herein, or pronouns used in their place occur in the Contract Documents, the intent and meaning shall be interpreted as follows:

ASCE	American Society of Civil Engineers
NACE	National Society for Corrosion Engineers
SSPC	Special Society for Paint Council
AASHTO	American Association of State Highway and Transportation Officials
AIA	American Insurance Association
SICS	American Institute of Steel Construction
AIISI	American Iron and Steel Institute
ANSI	American National Standards Institute (formerly ASA and USASI)
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American Wire Gauge
AWS	American Welding Society
BAFO	Best and Final Offer
CDOT	Department of Transportation, State of Colorado
O&M	Operations and Maintenance
DHA	Detailed Hazards Analysis
EBD	Escrow Bid Documents
EIA	Electronic Industries Association
EPA	United States Environmental Protection Agency
FCC	Federal Communications Commission
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
HVAC	Heating, Ventilation, and Air Conditioning
NBS	National Bureau of Standards
NEC	National Electric Code
NTP	Notice to Proceed
NESC	National Electric Safety Code
NFPA	National Fire Protection Association
OSHA	Occupational Safety and Health Administration
PHA	Preliminary Hazards Analysis
SAE	Society of Automotive Engineers
UL	Underwriter's Laboratories, Inc.
UMTA	United States Department of Transportation, Urban Mass Transportation Authority
UD&FCD	Urban Drainage and Flood Control District
MUTCD	Manual on Uniform Traffic Control Devices

1.2. Wherever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

Addenda - Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the bidding documents, Contract Documents, drawings, details or specifications.

Bid - The offer or proposal of the bidder submitted on the prescribed form(s) setting forth the prices for the Work to be performed.

Bidder - Any qualified responsible and responsive firm or corporation submitting a Bid for the Work.

Bid Package - All information and standard Contract Documents prepared by the City to assist potential bidders to prepare their bids.

Bonds - Bid, performance, payment, maintenance bonds and other acceptable instruments of financial security, furnished by the Contractor and his/her surety in accordance with the Contract Documents.

Change Order - A written order to the Contractor authorizing an addition, deletion or revision in the Work within the general scope of the Contract Documents, or authorizing an adjustment in the Contract Price or Contract Time, issued on or after the Effective Date of the Contract for Construction.

City or Owner - The City of Aspen in Pitkin County, Colorado.

Contract - All contract documents attached to the Contract for Construction and made a part thereof as provided herein.

Contract Documents - The Contract including Invitation to Bid, Instructions to Bidders, Bid Proposal, Addenda, General Conditions, Special Conditions, Contract for Construction, Bid Bond, Notice of Award, Payment, Performance, and Maintenance Bonds, Drawings identified in the Contract Documents or attached as part of the Bid, and Specifications identified in the invitation to Bid or attached as part of the Bid, Affidavit of Compliance form, Liquidated Damages form, Contractor's License form, Daily Construction Log form, Progress Pay Estimate form, and Insurance Certificates.

Contract for Construction - The written agreement between City and Contractor covering the Work to be performed.

Contractor - The qualified responsible and responsive firm or corporation with whom the City has entered into the Contract for Construction.

Contract Price - The moneys payable by the City to the Contractor under the Contract Documents as stated in the Contract for Construction (subject to the provisions of paragraph 11.4.), except for the Minor Contract Revisions item(s) which are subject to the City's written authorization for expenditure.

Contract Time - The number of the consecutive calendar days or the working days and/or the deadline set in the Contract Documents for the completion of the Work.

Daily Construction Log - The form furnished by the City Engineering Department, used by the City Project Inspector to record the Contractor's daily work quantities and project events. Daily construction log is the only verified justification for payment to the Contractor.

Defective - An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to the Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by the City at Substantial Completion in accordance with paragraph 14.5 or 14.6).

Drawings - The part of the Contract Documents which show the character and scope of the Work to be performed and which have been prepared or approved by the Engineer.

Effective Date of the Contract for Construction - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

Engineer - The person, firm, corporation or the City Engineer, named as such in the Contract Documents.

Field Order - A written order affecting a change in the Work not involving an adjustment in the Contract Time, issued by the Engineer to the Contractor during construction.

Hazardous Materials - The term "Hazardous Materials" shall have the meaning set forth at 42 U.S.C. ' 9601(14) and regulations promulgated pursuant thereto.

Laws and Regulations; Laws or Regulations - Laws, rules regulations, ordinances, procurement code and/or orders.

Notice of Award - The written notice by the City to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, the City will sign and deliver the Contract.

Notice to Proceed - A written notice given by the City to the Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform Contractor's obligations under the Contract Documents.

Partial Utilization - Placing a portion of the Work in service for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion for all the Work.

Procurement Code - Title 4 of the City of Aspen Municipal Code.

Progress Pay Estimate - The form furnished by the City Engineering Department, which is to be used to record, approve, and process payment when the Contractor requests progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

Project - The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

Project Inspector - The authorized Civil Engineer or Civil Engineering Technician, designated by the City Engineer to observe construction, materials placement and testing and to prepare the Daily Construction Logs and field reports.

Punch List - A form or letter that lists all incomplete or deficient Bid items, and is prepared upon substantial completion of the Work by the City Project Inspector.

Shop Drawings - All drawings, diagrams, illustrations, brochures, schedules and other data which are specifically prepared by or for the Contractor and the sub-contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by the Contractor and the Sub-contractor to illustrate material or equipment for some portion of the Work.

Specifications - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Subcontractor - A firm or corporation having a direct contract with the Contractor or with any other Sub-contractor for the performance of a part of the Work at the site.

Substantial Completion - The Work (or a specified part thereof) has progressed to the point where, in the opinion of the Engineer as evidenced by the Engineer's acceptance, is sufficiently complete, in accordance with the Contract

Documents, so that the Work can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof. The term Substantial Completion shall mean one hundred percent (100%) completion of the Work.

Special Conditions or Special Provisions - The part of the Contract Documents which amends or supplements these General Conditions.

Supplier - A manufacturer, fabricator, supplier, distributor, material-man or vendor who supplies materials or equipment for the Work including that fabricated to a special design but who does not perform labor at the site.

Underground Facilities - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services for materials; electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater and surface runoff removal, traffic or other control systems.

Unit Price Work - Work to be paid for on the basis of unit prices.

Work - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents and those not specifically mentioned but necessary for successful completion of the Bid items.

Written Notice or Written Notice of Amendment - A written amendment of the Contract Documents, signed by the City and the Contractor on or after the Effective Date of the Contract for Construction and normally dealing with the non-engineering or non-technical rather than strictly Work-related aspects of the Contract Documents

ARTICLE 2 - PRELIMINARY MATTERS

2.1 Delivery of Bonds:

When Contractor delivers the executed Contracts to the Purchasing Department, the Contractor shall also deliver such Bonds as the Contractor is be required to furnish in accordance with paragraph 5.1.

2.2 Copies of Documents:

The City shall furnish to the Contractor up to three copies (unless otherwise specified in the Special Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

2.3 Commencement of Contract Time, Notice to Proceed:

Prior to the City issuing a Notice to Proceed, either the City Manager or the Mayor of the City of Aspen shall approve the Contract Documents and shall execute the same. Notwithstanding any representations to the contrary made by City's employees, either directly, indirectly, or by implication, no Contract shall be in effect nor shall be binding upon the City until such time as the Contract is executed by the City pursuant to authority granted in accordance with Section 4-08-040 of the Procurement Code. The City shall issue a Notice to Proceed after either (a) the City Manager has executed the Contract, or (b) The City Council has authorized the execution of the Contract, and the Contractor has executed the Contract and other Contract Documents, and has delivered the specified bonds, Certificates of Insurance, as are required, and any other documents required to be delivered by the Special Conditions and Addenda(s) if any issued. The Contract Time will commence to run on the day indicated in the Notice to Proceed.

2.4 Starting the Project:

The Contractor shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the site prior to the date on which the Contract Time commences to run and prior to a mandatory pre-construction conference conducted by the City.

2.5 Before Starting the Project:

Before undertaking each part of the Work, the Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The Contractor shall promptly report in writing to the Engineer any conflict, error or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from the Engineer before proceeding with any Work affected thereby.

2.5.1. Within Three Days after the Effective Date of the Contract (unless otherwise specified in the Special Conditions or General Requirements), the Contractor shall submit to the Project Manager for review:

2.5.1.1. An estimated progress schedule indicating the starting and completion dates of the various stages of the Work;

2.5.1.2. A preliminary schedule of Shop Drawing submissions; and

2.5.1.3. Quality Control and Quality Assurance (QA/QC) plan and policy to identify the specific steps the Contractor will take to ensure the highest quality in the constructed Bid items.

2.5.1.4. A Work Zone Safety Implementation & Enforcement Plan with specific action process.

2.5.2. Before any Work at the site is started, the Contractor shall deliver to the City and Purchasing Officer, copies of certificates (and other evidence of insurance requested by the City) which the Contractor is required to purchase and maintain.

2.6 Pre-construction Conference:

Within *Seven (7) Consecutive Calendar Days* after the Effective Date of the Bid Award, and before the Contractor starts the Work at the site, he/she and all of his/her sub-contractors and suppliers shall attend a mandatory pre-construction conference, conducted by the Engineer and others as appropriate to discuss coordination of construction activities, procedures for handling Shop Drawings and other issues, and to establish a working understanding among the parties as to the Work.

2.7 Project Progress Meetings

The City and the Contractor shall meet *once a week* to review the construction activities, rate of progress, and other project related issues to ensure efficient and smooth progress of work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 Intent:

The Contract Documents comprise the entire agreement between the City and the Contractor concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the State of Colorado.

3.1.1. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Contract if there were no Bids) except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of the City, the Contractor or the Engineer, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to the Engineer, or any of the Engineer's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 9. Clarifications and interpretations of the Contract Documents shall be issued by the Engineer as provided in section 9.4.

3.1.2. If, during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents, the Contractor shall so report to the engineer and the City in writing at once and before proceeding with the Work affected thereby and shall obtain a written interpretation or clarification from the Engineer.

3.2 Amending and Supplementing Contract Documents:

The contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

3.2.1. A formal Amendment of the Contract for Construction;

3.2.2. A Change Order pursuant to paragraph 10.3. As indicated in Article 11 Contract Price and Contract Time may only be changed by a Change Order or a Written Notice of Amendment.

3.2.3. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

3.2.3.1. A Field Order (pursuant to paragraph 9.5);

3.2.3.2. The Engineer's approval of a Shop Drawing or sample (pursuant to paragraphs 6.18.5 and 6.18.6); or,

3.2.3.3. The Engineer's written interpretation or clarification (pursuant to paragraph 9.4).

3.3 Reuse of Documents:

Neither the Contractor nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the City shall have or acquire any title to or ownership rights in any of the design details, drawings or specifications.

3.4 Precedence of Contract Documents:

The Contract governs over the Contract Documents. A Change Order governs over all other Contract Documents impacted by change. The Special Conditions govern over the General Conditions.

ARTICLE 4 - AVAILABILITY OF LANDS: PHYSICAL CONDITIONS: REFERENCE POINTS

4.1 Availability of Lands:

The City shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto. The Contractor shall have full responsibility with respect to any conditions or provisions contained in applicable easements relating to the lands upon which the Work is to be performed.

4.2 Physical Conditions:

4.2.1. **EXPLORATIONS AND REPORTS:** Reference is made to the Special Conditions for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by the Engineer in preparation of the Contract Documents. The Contractor may reasonably rely upon the accuracy of the technical data contained in such reports, but not upon non-technical data, interpretations or opinions contained therein or for the completeness thereof for the Contractor's purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6. the Contractor shall have full responsibility with respect to subsurface conditions at the site. Contractor shall not, by virtue of this paragraph, be relieved from exercising ordinary skill and competence with respect to reliance upon the accuracy of the technical data contained in such reports.

4.2.2. **EXISTING STRUCTURES:** Reference is made to the Special Conditions for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities referred to in paragraph 4.3) which are at or contiguous to the site that have been utilized by the Engineer in preparation of the Contract Documents. The Contractor may reasonably rely upon the accuracy of the technical data contained in such drawings, but not for the completeness thereof for the Contractor's purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6. the Contractor shall have full responsibility with respect to physical conditions in or relating to such structures. The Contractor shall not, by virtue of this paragraph, be relieved from exercising ordinary skill and competence with respect to reliance upon the accuracy of the technical data contained in such drawings.

4.2.3. **REPORT OF DIFFERING CONDITIONS:** If the Contractor believes that:

4.2.3.1. Any technical data on which the Contractor is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is inaccurate; or

4.2.3.2. Any physical condition uncovered or revealed at the site differs materially from that indicated, reflected or referred to in the Contract Documents,

Then, the Contractor shall promptly, after becoming aware thereof and before performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.22) notify the City and the Engineer in writing about the inaccuracy or difference.

4.2.4. **ENGINEER'S REVIEW:** The Engineer will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise the City in writing (with a copy to the Contractor) of the Engineer's findings and conclusions.

4.2.5. **POSSIBLE DOCUMENT CHANGE:** If the Engineer concludes that there is a material error in the Contract Documents or that because of newly discovered conditions a change in the Contract Documents is required, a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the inaccuracy or difference.

4.2.6. **POSSIBLE PRICE AND TIME ADJUSTMENTS:** In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that

they are attributable to any such inaccuracy or difference as described in Section 4.2.3. The Contractor shall meet and obtain approval from the City Engineer or his/her designee prior to implementing any such change in the Work.

4.3 Physical Conditions - Underground Facilities:

4.3.1. **SHOWN OR INDICATED:** The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to the City or the Engineer by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Special Conditions:

4.3.1.1. The City and the Engineer shall not be responsible for the accuracy or completeness of any such information or data; and,

4.3.1.2. The Contractor shall have full responsibility for determining the existence of all Underground Facilities, for reviewing and checking and potholing for all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 6.20 and for repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price or approved as a Change Order.

4.3.2. **NOT SHOWN OR INDICATED:** If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which Contractor could not reasonably have been expected to be aware of, Contractor shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted by paragraph 6.17.1), identify the owner of such Underground Facility and give written notice thereof to that owner and to the City and the Engineer. The Engineer will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.16.1. The Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and of which the Contractor could not reasonably have been expected to be aware of such Underground Facility and subject to acceptance and approval by the Engineer.

4.4 Reference Points:

4.4. The City shall provide engineering surveys to establish reference points for construction which in the Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work (unless otherwise specified in the General Requirements), shall protect and preserve the established reference points and shall make no changes or re-locations without the prior written approval of the City. The Contractor shall report to the Engineer whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by a Registered Professional Land Surveyor Licensed in the State of Colorado.

4.5 Protection and Restoration of Property and Landscape:

4.5.1. The Contractor shall be responsible for the preservation of all public and private property and shall protect carefully from disturbance or damage all land and property and shall protect carefully from disturbance or damage all land and monuments and property marks until the Engineer has witnessed or otherwise referenced their location and shall not remove them until directed.

4.5.2. The Contractor shall be responsible for all damage or injury to property of any character, during the prosecution of the Work, resulting from any act, omission, neglect, or misconduct in his manner or method of executing the Work, or at any time due to defective Work or materials, and said responsibility shall not be released until the project shall have been completed and accepted.

4.5.3. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct by the Contractor in the execution of the Work, or in consequence of the non-execution thereof by the Contractor, he shall restore, at his own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as may be directed, or he shall make good such damage or injury in an acceptable manner.

4.5.4. State Highway 82 and the streets within the corporate limits of the City of Aspen are viewed by the City as a community asset which enhances the tourism industry. The City, therefore, desires to save all vegetation and other environmental features except for those which have been specifically identified for removal in the Contract Documents.

4.5.5. Materials storage, equipment parking, vehicle parking and stockpiling excavated materials shall be allowed only in those areas designated by the Engineer.

4.5.6. Specific areas of vegetation and other environmental features to be protected shall be staked, fenced, or otherwise marked in the field by the Engineer. However, the fact that areas of vegetation and other environmental features are not marked shall not necessarily mean that those items are expendable. The Contractor shall perform all his activities in such a manner that the least environmental damage shall result. Any questionable areas or items shall be brought to the attention of the Engineer for approval prior to removal or any damage activity. Damage or destruction of unmarked trees or shrubs which could reasonably have been saved shall therefore be subject to the provisions these General Conditions.

4.5.7. If the fence, staking or marking is knocked down or destroyed by the Contractor, the Architect shall suspend the Work in whole or in part, until the fence or other protection is repaired to the Engineer's satisfaction at the Contractor's expense. Time lost due to such suspension shall not be considered a basis for adjustment of Contract Time or for compensation to the Contractor.

4.5.8. If the Contractor disturbs any of the landscape not called for removal, he/she shall restore those areas as directed at the Contractor's expense.

4.5.9. The City may require that the Contractor replant an area that is damaged. The Work shall be done as directed by the Engineer. If the Contractor is deemed to be responsible, then the replanting shall be done by the Contractor at his/her expense. If the City is responsible, the costs will be reimbursed on a minor contract revisions (MCR) basis unless existing cost proposal covers the Work.

4.5.10. With respect to replacement of trees and shrubs that have been damaged or destroyed, the following conditions shall apply:

4.5.10.1. Trees or shrubs of replaceable size shall be replaced by the Contractor at his/her expense. If he/she fails to do so within a reasonable length of time as determined by the Engineer and prior to the end of the contract time, the replacement value of the trees or shrubs will be deducted from any money due to the Contractor. These values shall be based upon averages derived from current prices of nurseries growing the plants, plus the cost for planting and a guarantee for the first growing season.

4.5.10.2. When trees or shrubs beyond replaceable size have been damaged or destroyed, the value of such trees or shrubs shall be calculated as per square yard of surface area measured at the ground level.

4.5.10.3. Any deduction assessed as liquidated damages under this section shall not relieve the Contractor from liability for any damages or costs resulting from delays to the City, traveling public or other contractors.

4.6 Hazardous Materials

4.6.1. Prior to commencement of any Work and as a condition precedent to payment by the City of any costs for it, the Contractor shall at no additional cost to the City conduct tests the Contractor deems necessary to determine the existence of Hazardous Materials by appropriately licensed Subcontractors or entities. The City shall reimburse the Contractor for the invoice costs of the tests, only in the event that the Contractor furnishes the City with certified test data and results which confirm the existence of Hazardous Materials.

4.6.2. If Hazardous Materials are discovered on or under real property which is owned by the City before the date of Substantial Completion and Acceptance in accordance with Article 14 herein, which property is within the Project right-of-way, the City shall, upon the request of the Contractor, and at the City's sole cost and expense, cause any such Hazardous Materials to be encapsulated, treated or removed from such real property and transported for final disposal in accordance with all Laws and Regulations, and shall cause such real property to be restored to its condition existing prior to such removal (except for the absence of Hazardous Materials), including, to the extent required, any grading and reinforcement necessary to restore the weight-bearing capacity of such real property prior to such event. The City shall remove the Hazardous Materials and restore the real property in such a manner as not to interfere with the Contractor's construction or operation of the Project.

4.6.3. If Hazardous Materials are present on or under the Project right-of-way as a result of any discharge, dumping or spilling on the Project right-of-way during the term of the Contract by any party, including the Contractor, other than an agency of the executive branch of State or Federal Government, the Contractor shall at the Contractor's sole cost and expense, cause any such Hazardous Materials to be encapsulated, treated or removed from the Project right-of-way and transported for final disposal in accordance with all applicable Laws and Regulations, and shall cause the Project right-of-way to be restored to its condition existing prior to such removal (except for the absence of the Hazardous Materials), including, to the extent required, any grading and reinforcement necessary to restore the weight-bearing capacity of the Project right-of-way prior to such event.

4.6.4. The City shall not be responsible for the cost of and the removal or clean-up of Hazardous Materials found in any materials brought to the Project Site, after the Project Site is turned over to the Contractor.

4.6.5. The Contractor shall provide the Engineer with a written certification each time materials or equipment is brought onto the Work site that such materials or equipment do not contain Hazardous Materials.

4.6.6. The Contractor and the City shall cooperate with each other in the prosecution of any claim against or defense of any claims made by third parties in connection with Hazardous Materials present on the Project right-of-way or contiguous properties owed or controlled by the City.

4.7 Contractor Representations

By executing the Contract, the Contractor represents that he/she has visited the site, familiarized him/herself with the local conditions under which the Work is to be performed (including weather conditions which can be expected), and correlated his observations with the requirements of the Contract Documents.

ARTICLE 5 - BONDS, INDEMNIFICATION AND INSURANCE

5.1 Performance, Payment, and Maintenance Bonds:

5.1.1. Contractor shall furnish performance, payment, and maintenance Bonds, each in an amount specified in the Special Conditions as security for the faithful performance and payment of all the Contractor's obligations under the Contract Documents. These Bonds shall remain in effect until the job is advertised and closed except for the Maintenance Bond which shall remain in full force and effect for *Two Years* from the date of project closure, except as otherwise provided by the Contract Documents. The Contractor shall also furnish such other Bonds as are required by the Special Conditions. All Bonds shall be in the forms prescribed by Law or Regulation or by the Contract Documents and be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

5.1.2. If the surety on any Bond furnished by Contractor is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state or it ceases to meet the requirements of paragraph 5.1, Contractor shall within five days thereafter substitute another Bond and Surety, both of which must be acceptable to the City.

5.2 Indemnification:

Professional agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this contract, to the extent and for an amount represented by the degree or percentage such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the wrongful act, omission, error, professional error, mistake, negligence, or other fault of the Professional, any subcontractor of the Professional, or any officer, employee, representative, or agent of the Professional or of any subcontractor of the Professional, or which arises out of any workmen's compensation claim of any employee of the Professional or of any employee of any subcontractor of the Professional. The Professional agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Professional, or at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with, any such liability, claims, or demands. If it is determined by the final judgment of a court of competent jurisdiction that such injury, loss, or damage was caused in whole or in part by the act, omission, or other fault of the City, its officers, or its employees, the City shall reimburse the Professional for the portion of the judgment attributable to such act, omission, or other fault of the City, its officers, or employees.

5.3 Contractor's Insurance:

5.3.1. The Contractor agrees to procure and maintain, at its own expense, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Contractor pursuant to Section 5.2 above. Such insurance shall be in addition to any other insurance requirements imposed by this contract or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section 5.2 above by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, duration, or types.

5.3.2. Contractor shall procure and maintain, and shall cause any subcontractor of the Contractor to procure and maintain, the minimum insurance coverages listed in the Supplemental Conditions. If the Supplemental Conditions do not set forth minimum insurance coverage, then the minimum coverage shall be as set forth below. Such coverage shall be procured and maintained with forms and insurance acceptable to City. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant to Section 5.2 above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

5.3.2.1. *Worker's Compensation* insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this contract, and *Employers' Liability* insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000.00) for each accident, ONE MILLION DOLLARS (\$1,000,000.00) disease - policy limit, and ONE MILLION DOLLARS (\$1,000,000.00) disease - each employee. Evidence of qualified self-insured status may be substituted for the Worker's Compensation requirements of this paragraph.

5.3.2.2. *Commercial General Liability* insurance with minimum combined single limits of TWO MILLION DOLLARS (\$2,000,000.00) each occurrence and THREE MILLION DOLLARS (\$3,000,000.00) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

5.3.2.3. *Comprehensive Automobile Liability* insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and ONE MILLION DOLLARS (\$1,000,000.00) aggregate with respect to each Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Contractor has no owned automobiles, the requirements of this Section 5.4.2.3 shall be met by each employee of the Contractor providing services to the City under this contract.

5.3.2.3 *Pollution Liability* insurance with a minimum combined single limit for bodily injury, property damage, defense, and cleanup as a result of pollution conditions (sudden/accidental and gradual) arising from contracting operations performed by on behalf of the contractor of not less than TWO MILLION DOLLARS (\$2,000,000.00) each occurrence and THREE MILLION DOLLARS (\$3,000,000.00) aggregate.

5.3.2.4 *Builder's Risk* insurance with a minimum combined single limit for all improvements above ground in the full contract value for those above ground improvements.

5.3.3. Except for any Professional Liability insurance that may be required, the policy or policies required above shall be endorsed to include the City of Aspen and the City of Aspen's officers and employees as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City of Aspen, its officers or employees, or carried by or provided through any insurance pool of the City of Aspen, shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement to the policy required above shall contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under any policy required above.

5.3.4. The certificate of insurance provided by the City of Aspen shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City of Aspen prior to commencement of the contract. No other form of certificate shall be used. The certificate shall identify this contract and shall provide that the coverage afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City of Aspen.

5.3.5 In addition, these Certificates of Insurance shall contain the following clauses:

Underwriters and issuers shall have no right of recovery or subrogation against the City of Aspen, it being the intention of the parties that the insurance policies so effected shall protect all parties and be primary coverage for any and all losses covered by the above-described insurance. To the extent that the City's insurer(s) may become liable for secondary or excess coverage, the City's underwriters and insurers shall have no right of recovery or subrogation against the Contractor and issuers shall have no right of recovery or subrogation against the City of Aspen, it being the intention of the parties that the insurance policies so effected shall protect all parties and be primary coverage for any and all losses covered by the above-described insurance. To the extent that the City's insurer(s) may become liable for secondary or excess coverage, the City's underwriters and insurers shall have no right of recovery or subrogation against the Contractor.

The insurance companies issuing the policy or policies shall have no recourse against the City of Aspen for payment of any premiums or for assessments under any form of policy insurance companies issuing the policy or policies shall have no recourse against the City of Aspen for payment of any premiums or for assessments under any form of policy.

Any and all deductibles in the above-described insurance policies shall be assumed by and be for the amount of, and at the sole risk of the Proposer and all deductibles in the above-described insurance policies shall be assumed by and be for the amount of, and at the sole risk of the Proposer.

Location of operations shall be: "All operations and locations at which work in connection with the referenced project is done "of operations shall be: "All operations and locations at which work in connection with the referenced project is done."

Certificates of Insurance for all renewal policies shall be delivered to the Architect at least fifteen (15) days prior to a policy's expiration date except for any policy expiring on the expiration date of this agreement or thereafter.

5.3.6. Failure on the part of the Contractor to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which City may immediately terminate this contract, or at its discretion City may procure or renew any such policy or any extended reporting period

thereto and may pay any and all premiums in connection therewith. All moneys so paid by City shall be repaid by Contractor to City upon demand, or City may offset the cost of the premiums against moneys due to Contractor from City.

5.3.7. City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

5.4 City's Liability Insurance:

5.4.1. The parties hereto understand that the City is a member of the Colorado Intergovernmental Risk Sharing Agency (CIRSA) and as such participates in the CIRSA Property/Casualty Pool. Copies of the CIRSA policies and manual are kept at the City of Aspen Finance Department and are available to Contractor for inspection during normal business hours. City makes no representations whatsoever with respect to specific coverage offered by CIRSA. City shall provide Contractor reasonable notice of any changes in its membership or participation in CIRSA.

5.4.2. The parties hereto further understand and agree that City is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., as from time to time amended, or otherwise available to City, its officers, or its employees. Further, nothing in the Contract Documents shall be construed or interpreted to require or provide for indemnification of the Contractor by the City for any injury to any person or any property damage whatsoever which is caused by the negligence or other misconduct of City or its agents or employees.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.1 General Responsibilities:

6.1.1. The Contractor shall perform all of the Work in conformance with the Contract Documents.

6.1.2. The Contractor covenants and warrants that it shall be responsible for performing the Work, and that it shall do or cause to be done the Work and services as required in the Contract Documents and any additional, collateral, and incidental Work and services as may be necessary in order to complete the Project in accordance with the requirements of the Contract Documents, shall be responsible for providing completed Work which meets the results required by the Contract Documents, and shall achieve Substantial Completion (100% of the Work) by the Contract Time.

6.1.3. Construction services shall be performed in accordance with those professional standards listed in the Special Conditions for quality and scope and shall be performed by the entities and persons, Subcontractors and specific personnel identified in the Contractor's Proposal in accordance with their respective degrees of participation provided and represented to City. Other construction services shall be performed by qualified construction Subcontractors and Suppliers, selected and paid by the Contractor. Nothing contained in the Contract Documents shall be construed to create any obligation or contractual liability running from the City to any of these persons or entities.

6.2 Supervision and Superintendence:

6.2.1. The Contractor shall supervise and direct the Work competently and efficiently devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

6.2.2. The Contractor shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to the City and the Engineer except under extraordinary circumstances. The superintendent will be the Contractor's representative at the site and shall have authority to act on behalf of the Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor.

6.3 Labor, Materials and Equipment:

6.3.1. The Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The Contractor shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and the Contractor will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without the City's written consent given after prior written notice to the Engineer.

6.3.2. Unless otherwise specified in the Specific Conditions or Specific Provisions, the Contractor shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

6.3.3. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by the Engineer, the Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to the Engineer, or any of the Engineer's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10.1. or 9.10.2.

6.4 - 6.6 Reserved**6.7. Work Schedule:**

6.7.1. The Contractor shall submit to the Engineer for acceptance such schedule of work progress reports, estimates, records, and other data as the City may require concerning work performed or to be performed.

6.7.2. Prior to beginning of Work and or before the Pre-construction Conference, the Contractor shall submit schedules showing the order in which he/she proposed to carry on the Work, including dates at which he/she will start the various parts of the Work, estimated date of completion of each part.

6.8 Substitutes of "or-equal" Items:

6.8.1. Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by the engineer if sufficient information is submitted by the Contractor to allow the Engineer to determine that the material or equipment proposed is equivalent or equal to that named. The Engineer will include the following as supplemented in the General Requirements. Requests for review of substitute items of material and equipment will not be accepted by the Engineer from anyone other than the Contractor. If the Contractor wishes to furnish or use a substitute item of material or equipment, the Contractor shall make written application to the Engineer for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice the Contractor's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the City for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Architect in evaluating the

proposed substitute. The Engineer may require the Contractor to furnish at Contractor's expense additional data about the proposed substitute.

6.8.2. If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, the Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the Engineer. The procedure for review by the Engineer shall be similar to that provided in paragraph 6.8.1.

6.8.3. The Engineer will be allowed a reasonable time within which to evaluate each proposed substitute. The Engineer will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without the Engineer's prior written acceptance which will be evidenced by an approved Shop Drawing. The City may require the Contractor to furnish at the Contractor's expense a special performance guarantee or other surety with respect to any substitute. The Engineer will record time required by the Engineer and the Engineer's consultants in evaluating substitutions proposed by the Contractor and in making changes in the Contract Documents occasioned thereby. Whether or not the Engineer accepts a proposed substitute, the Contractor shall reimburse the City for the charges of the Engineer and the Engineer's consultants for evaluating each proposed substitute.

6.9 Subcontractors, Suppliers and Others:

6.9.1. The Contractor shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to the City and the Engineer as indicated in paragraph 6.9.2), whether initially or as a substitute, against whom the City or the Engineer may have reasonable objection.

6.9.2. If the Special Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations including those who are to furnish the principal items of materials and equipment to be submitted to the City in advance of the specified date prior to the Effective Date of the Agreement for acceptance by the City and the Engineer and if the Contractor has submitted a list thereof in accordance with the Special Conditions, the City's or the Engineer's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case the Contractor shall submit an acceptable substitute, the Contract Price will be increased by the difference in the cost occasioned by such substitution and an appropriate Written Notice of Amendment signed. No acceptance by the City or the Engineer of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of the City or the Engineer to reject Defective Work.

6.9.3. The Contractor shall be fully responsible to the City and the Engineer for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between the City or the Engineer and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of the City or the Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

6.9.4. The divisions and sections of the Specifications and the identifications of any Drawings shall not control the Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

6.9.5. All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between the Contractor and the Subcontractor which specifically binds the Subcontractor to the Applicable terms and conditions of the Contract Documents for the benefit of the City and the Engineer and contain waiver provisions as required by Section 5.3. The Contractor shall pay each Subcontractor a just share of any insurance moneys received by the Contractor on account of losses.

6.10 Subcontracting and Percentage of Work Awarded to Subcontractor(s):

6.10.1. The Contractor may utilize the services of specialty Subcontractors on those parts of the Work, which under normal contracting practices, are performed by specialty Subcontractors.

6.10.2 The Contractor shall not award Work to Subcontractor(s) in excess of forty nine percent (48%) of the Contract Price. This condition shall be a minimum standard for a qualified Prime Contractor to perform within the City rights of way.

6.11 Patent Fees and Royalties:

The Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. Contractor shall indemnify and hold harmless the City and the Engineer and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorney's fees and court costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

6.12 Permits:

Unless otherwise provided in the Special Conditions, the Contractor shall obtain and pay for all construction permits and licenses. The City shall assist the Contractor, when necessary, in obtaining such permits and licenses. The Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids on the Effective Date of the Contract. The Contractor shall pay all charges of utility City's for connections to the Work, and the City shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

6.13 Laws and Regulations:

6.13.1. the Contractor shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither the City nor the Engineer shall be responsible for monitoring the Contractor's compliance with any Laws or Regulations.

6.13.2. If the Contractor observes that the Specifications or Drawings are at variance with any Laws or Regulations, the Contractor shall give the Engineer prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in paragraph 3.4. If the Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, and without such notice to the Engineer, the Contractor shall bear all costs arising therefrom.

6.14 Taxes:

The Contractor shall pay all existing and future applicable Federal, State and local sales, consumer, use and other similar taxes whether direct or indirect. Federal excise tax may not apply to materials purchased by the City. The Contract Price shall include all other Federal, State, and/or local direct or indirect taxes which do apply. The Contract Price shall include the cost of compliance with all other Federal Laws and Regulations at no additional cost to the City (except as provided in the Contract Documents). The Contractor shall not be reimbursed separately for any taxes which may apply except as provided in the Contract Documents and the Contractor shall be responsible for all taxes which may apply. The City is tax exempt from Federal Excise Tax under Chapter 32 of the Internal Revenue Code. The City is exempt from such taxes under registration numbers 98-02624. The Contractor and its Subcontractors shall apply to the Colorado Department of Revenue for a Certificate of Exemption indicating that the Contractor or Subcontractor's purchase of construction material or building materials is for use in a building, structure, or other public work owned and used by the City.

6.15 Use of Premises:

6.15.1. The Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in, and permitted by, the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. The Contractor shall assume full

responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against the City or the Engineer by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by agreement or otherwise resolve the claim by law. The Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold the City and the Engineer harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against the City or the Engineer to the extent based on a claim arising out of the Contractor's performance of the Work.

6.15.2. During the progress of the Work, the Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, the Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by the City. The Contractor shall restore to original condition all property not designated for alteration by the Contract Documents.

6.15.3. The Contractor shall not load or permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.16 Record Documents:

The Contractor shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to the Engineer for reference. Upon completion of the Work, these record documents, samples and Shop Drawings will be delivered to the Engineer for the City.

6.17 Safety and Protection:

6.17.1. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.17.1.1. All employees on the Work and other persons and organizations who may be affected thereby;

6.17.1.2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.17.1.3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

The Contractor shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.17.1.2 or 6.17.1.3 caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by the Contractor. The Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and the Engineer has issued a notice to the City and the Contractor in accordance with Section 14.5 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.17.2. The Contractor shall designate a person competent in OSHA safety related matters at the site at all times during construction whose duty shall be the prevention of accidents including confined space entry and work in the confined spaces.

6.18 Emergencies:

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Engineer or the City, is obligated to act to prevent threatened damage, injury or loss. The Contractor shall give the Engineer prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the Engineer determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a written order will be issued to document the consequences of the changes or variations.

6.19 Shop Drawings and Samples:

6.19.1. After checking and verifying all field measurements and after complying with applicable procedures specified in the Contract Documents, the Contractor shall submit to the Engineer for review and approval in accordance with the approved schedule of Shop Drawing submissions prior to Pre-construction Conference, or for other appropriate action if so indicated in the Special Conditions, *three (3) copies* (unless otherwise specified) of all Shop Drawings, which will bear a stamp or specific written indication that the Contractor has satisfied the Contractor's responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as the Engineer may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the Engineer to review the information as required.

6.19.2. The Contractor shall also submit to the Engineer for review and approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that the Contractor has satisfied the Contractor's responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

6.19.3. Before submission of each Shop Drawing or sample, the Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto; and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

6.19.4. At the time of each submission, the Contractor shall give the Engineer specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to the Engineer for review and approval of each such variation.

6.19.5. The Engineer will review and approve with reasonable promptness Shop Drawings and samples, but the Engineer's review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. The Contractor shall make corrections required by the Engineer, and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review and approval. The Contractor shall direct specific attention in writing to revisions other than the corrections called for by the Engineer on previous submittals.

6.19.6. The Engineer's review and approval of Shop Drawings or samples shall not relieve the Contractor from responsibility for any variation from the requirements of the Contract Documents unless the Contractor has in writing called the Engineer's attention to each such variation at the time of submission as required by paragraph 6.19.4 and the Engineer has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any approval by the Engineer relieve the Contractor from

responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.19.3.

6.19.7. Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to the Engineer's review and approval of the pertinent submission will be the sole expense and responsibility of the Contractor.

6.20 Mechanics' Liens:

6.20.1. The Contractor covenants and agrees that, to the extent permitted by law, no claims or mechanics' liens against public funds (mechanic's liens) or claims of any kind, will be permitted to arise, be filed or maintained against the Project or any part of it, any interest in it or any improvements on it, against any moneys due or to become due from the City to the Contractor, for or on account of any work, labor, services, materials, equipment or other items performed or furnished for or in connection with the Project, and the Contractor for itself, its Subcontractors, laborers and material suppliers and employees does waive, release and relinquish these claims or liens and all rights to file or maintain these liens and agrees further that this waiver of liens and waiver of the right to file or maintain liens shall be independent covenant and shall apply also to work, labor, services performed, materials, equipment and other items furnished under any Change Order or supplemental agreement for extra or additional work in connection with the Project. The Contractor agrees to defend, indemnify, protect and save harmless the City from and against any and all claims or liens and actions brought or judgments rendered, and from and against any and all loss, damages, liability, costs and expenses, including legal fees and disbursements, which the City may sustain or incur in connection with the Project.

6.20.2. The Contractor also agrees as above for all of its Subcontractors, including but not limited to suppliers and employees. If any of the Contractor's Subcontractors, suppliers, employees or any other person directly or indirectly acting for, through or under its authority or any of them files or maintains a lien or claim as described above, the Contractor agrees to cause claims or liens to be satisfied, removed or discharged at its own expense by bond, payment or otherwise within thirty (30) consecutive calendar days from the date of the filing, and upon the Contractor's failure to do so the City shall have the right, in addition to all other rights and remedies provided under this Contract or by law, to cause the liens or claims to be satisfied, removed or discharged by whatever means the City chooses, at the entire cost and expense of the Contractor, the expense to include legal fees and disbursements. The Contractor shall give a copy of Claim Release form to all Subcontractors and suppliers and shall include these provisions in all written contracts with Subcontractors, or give written notice to all Subcontractors, suppliers or other persons having oral agreements with the Contractor.

6.20.3. The Contractor agrees that moneys received for the performance of this Contract shall be used first for payment due for labor, material, and services for the Project and taxes, and the moneys shall not be diverted to satisfy obligations of the Contractor on other accounts or contracts. The Contractor shall pay Subcontractors within Ten (10) consecutive calendar days of receipt of a progress payment from the City. The Contractor shall furnish sworn affidavits in accordance with the form furnished by the City, which shall state that amounts due or to become due, amounts paid, and any other information necessary to indicate the financial condition of the Contractor, insofar as it relates to services, labor and material furnished, and to be furnished, under this Contract. The City may take steps it may deem necessary to protect itself against any claims.

6.21 Continuing the Work:

The Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted herein or as the Contractor and the City may otherwise agree in writing.

6.22 Contractor Facilities:

All temporary contractor facilities shall be in accordance with regulations and codes governing such construction. The types of temporary construction facilities required for the Project may include, but are not necessarily limited to, the following: (a) job site office space, (b) construction water distribution, (c) temporary closures, (d) temporary heat, (e) hoists and temporary cranes, (f) temporary roads and paving, (g) construction aids and miscellaneous facilities, (h) temporary power distribution, (i) temporary lighting, (j) temporary toilet facilities. All operations of the Contractor, including storage of materials, upon the City's premises shall be confined to areas authorized or approved by Owner in

writing. Temporary buildings, storage sheds, shops, offices, may be erected by the Contractor only with the written approval of the City and shall be built or provided with labor and materials furnished by the Contractor without expense to the City. Such temporary buildings and utilities shall remain the property of the Contractor and shall be removed by it at its expense upon completion of the Work.

ARTICLE 7 - OTHER WORK

7.1 Related Work at Site:

7.1.1. The City may perform other work related to the Project at the site by the City's own forces, have other work performed by utility owners or let other direct contracts therefor which shall contain General Conditions similar to these. The Contractor shall perform and coordinate his/her activities with other Contractors to avoid conflict and minimize disruptions.

7.1.2. The Contractor shall afford each utility owner and other contractor who is a party to such a direct contract (or the City if the City is performing the additional work with the City's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the Work with theirs. The Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. The Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Architect and the others whose work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of the Contractor in said direct contracts between the City and such utility owners and other contractors.

7.1.3. If any part of the Contractor's Work depends for proper execution or results upon the work of any such other contractor or utility owner (or the City), the Contractor shall inspect and promptly report to the Engineer in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. The Contractor's failure to report such conditions will constitute an acceptance of the other work as fit and proper for integration with the Contractor's Work except for latent or non-apparent defects and deficiencies in the other work.

7.2 Coordination:

If the City contracts with others for the performance of other work on the Project at the site, the person or organization of the activities among the various prime contractors may be identified in the Special Conditions, and the specific matters to be covered by such authority and responsibility may be itemized, and the extent of such authority and responsibilities may be provided, in the Special Conditions. Unless otherwise provided in the Special Conditions, neither the City nor the Engineer shall have any authority or responsibility in respect of such coordination.

ARTICLE 8 - CITY'S RESPONSIBILITIES

8.1. The City shall issue all communications to the Contractor through the Engineer or his/her designated person.

8.2. The City shall furnish the data required of the City under the Contract Documents promptly and shall make payments to the Contractor through processing of the monthly Progress Pay Estimate forms within 30 days from the cut-off date for a pay estimate form.

8.3. The City represents that an amount of money equal to the Contract Price has been duly appropriated in accordance with the Municipal Code of the City of Aspen, under a purchase order. The City shall not issue any Change Order or execute a Written Amendment requiring additional compensable work, which work causes the aggregate amount appropriated by the City, unless the Contractor is given a written assurance that a lawful appropriations to cover the costs of the additional work shall be made.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.1 City's Representative:

The Engineer shall be the City's representative during the construction period. The duties and responsibilities and the limitations of authority of the Engineer as the City's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of the City and the Engineer.

9.2 Visits to Site:

The Engineer shall make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Engineer shall make on-site inspections to observe the quality or quantity of the Work. The Engineer's efforts will be directed toward providing for the City a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations, the Engineer will keep the City informed of the progress of the Work and will endeavor to guard the City against defects and deficiencies in the Work.

9.3 Project Representation:

If the City and the Engineer agree, the Engineer will furnish a Resident Project Representative to assist the Engineer in observing the performance of the Work. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be to ensure conformance of work with specifications provided in the Special Conditions. If the City designates another agent to represent the City at the site who is not the Engineer's agent or employee, the duties, responsibilities and limitations of authority of such other person will be as provided in the Special Conditions.

9.4 Clarification and Interpretations:

The Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time, the Contractor shall meet with the Engineer and resolve the issue. All such requests or claims shall be submitted to the City Engineer.

9.5 Authorized Variations in Work and Minor Contract Revisions:

The City Engineer may request or authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a written request or a field order and will be binding on the City, and also on the Contractor who shall perform the Work involved promptly. If the Contractor believes that a field order justifies an extension of the Contract Time and the parties are unable to agree as to the extent thereof, the Contractor may make a claim therefor as provided herein.

9.6 Rejecting Defective Work:

The Engineer will have authority to disapprove or reject Work which the Engineer believes to be Defective, and will also have authority to require special inspection or testing of the Work as provided herein below, whether or not the Work is fabricated, installed or completed.

9.7. Shop Drawings, Change Orders and Payments:

9.7.1. In connection with the Engineer's responsibility for Shop Drawings and samples, see paragraphs 6.19.1. through 6.20.1. inclusive.

9.7.2. In connection with the Engineer's responsibilities as to Change Orders, see Article 10 and Article 11.

9.7.3. In connection with the Engineer's responsibilities in respect of request for Payment, etc., see Article 14.

9.8 Decisions on Disputes:

9.8.1. The Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters raised by Contractor relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims under Articles 11 and 12 in respect to changes in the Contract Price or Contract Time shall be referred initially to the Engineer in writing with a request for a formal decision in accordance with this paragraph, which the Engineer will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter by the Contractor will be delivered to the Engineer promptly (but in no event later than thirty days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to the Engineer and the City within sixty days after such occurrence unless the Engineer allows an additional period of time to ascertain more accurate data in support of the claim.

9.8.2. The rendering of a decision by the Engineer pursuant to paragraph 9.8.1. with respect to any such claim, dispute or other matter shall be a condition precedent to any exercise by the Contractor of such rights or remedies as the Contractor may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter. The City shall not be bound by any initial interpretation by the Engineer of the requirements of the Contract Documents, judgment on the acceptability of the Work thereunder, or formal decision made by the Engineer in accordance with paragraph 9.8.1. Any dispute not resolved by the initial decision of the Engineer shall be decided by the City, who shall reduce the decision in writing and furnish a copy thereof to the Contractor and the Engineer. The decision of the City shall be final subject to review by the Pitkin County District Court in Pitkin County, Colorado. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Work and in accordance with the Engineer's interpretation.

9.9 Reserved

9.10 Limitations on Engineer's Responsibilities:

9.10.1. Neither the Engineer's authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by the Engineer in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the Engineer to the Contractor, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

9.10.2. Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of the Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to the Engineer any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the Contract Documents.

ARTICLE 10 – CHANGES IN THE WORK

10.1 City Initiated Changes

10.1.1. The City may require, without notification to sureties, the Contractor to perform changes, additions or deletions to the Work at anytime after execution of the Contract without invalidating the Contract. Changes shall be accomplished as set forth in Section 3.2, above.

10.1.2. The Contractor shall promptly perform changes in the Work in accordance with applicable provisions of the Contract Documents, unless otherwise provided in a Change Order or Amendment to the Contract for Construction.

10.1.3. The following procedure shall be followed for the City notifying the Contractor of proposed City initiated changes. The Engineer shall issue a notice informing the Contractor of a planned change in the Work and its scope, and requesting the Contractor's detailed price proposal. The Contractor, at no expense to the City, shall submit a priced proposal for performing the proposed change in the Work. The Contractor, within Ten (10) consecutive calendar days after receiving the Notice of Change, or such longer time which the Engineer in his/her discretion has granted, shall provide the Engineer with a complete and itemized proposal which includes the estimated increase or decrease in the Contract Price and/or in the Contract Time attributable to the planned changes on the criteria and methods described in Article 11. The Contractor shall be responsible for delays to the Work and any additional costs incurred by the City caused by its failure to submit complete pricing information within the time provided above. The Contractor shall participate with the City in prompt joint analysis and negotiations to finalize a Change Order, if necessary.

10.2 Written Notice of Change

10.2.1. A Written Notice of Change may be used when:

- a) The City determines that the Contractor must proceed immediately to perform a change in the Work in order to avoid an adverse impact on the schedule or other unchanged Work, and sufficient time is not available to negotiate an adjustment to the Contract Price or Contract Time; or
- b) The City and Contractor have not completed their negotiation and reached agreement on all of the terms of a Change Order, but the City requires the Contractor to proceed without such agreement.

10.2.2. Upon receipt of a Written Notice of Change the Contractor shall promptly proceed with performing the change in the Work. Additionally, the Contractor shall comply with all the requirements of 10.3 of these General Conditions.

10.3 Change Order

When the Contractor and the City reach agreement on the adjustments to the Contract Price and/or Contract Time, such agreements shall be promptly recorded in an executed Change Order.

10.4 Contractor Change Request

10.4.1. If the Contractor: (i) receives any oral or written instructions, directives or interpretations of Contract Documents, or determinations from the Engineer or, (ii) identifies what it believes are design errors or omissions in the Contract Drawings or Specifications, or (iii) encounters a differing site condition; or, (iv) is delayed in the progress of the Work; or, (v) becomes aware of any other matter or circumstance which it believes would require a change in the Contract Price or Contract Time, the Contractor shall give the Engineer prompt written notice of such matters in a letter or notice denominated "Contractor Change Request".

10.4.2. All Contractor Change Requests shall be dated, numbered sequentially, and shall describe the action or event which the Contractor believes may require an extension in time or price. The Contractor shall also provide descriptions of possible Contractor actions or solutions to minimize the cost of the Contractor Change Request and, provide an estimate of the adjustment in the Contract Price and/or Contract Time which it believes is appropriate.

10.4.3. With respect to orders, instructions, directives, interpretations, determinations, or the discovery of any errors or omissions in the Contract Documents, a Contractor Change Request shall be submitted before the Contractor acts on them, but in no event more than Ten (10) consecutive calendar days after they were received or discovered.

10.4.4. With respect to any differing site conditions, a Contractor Change Request shall be submitted before the conditions are disturbed, but in no event more than Ten (10) consecutive calendar days after the conditions are first discovered.

10.4.5. With respect to delays, a Contractor Change Request shall be submitted as soon as the Contractor has knowledge of the delay, but in no event more than Ten (10) consecutive calendar days therefrom.

10.8.6. With respect to any matters or circumstance which the Contractor believes would require a change, including delays, a Contractor Change Request shall be submitted as soon as the Contractor has knowledge of the matter or circumstance, but in no event more than Ten (10) consecutive calendar days after the Contractor becomes aware of such circumstance or matter.

10.5 Down Time:

The Contractor may be granted time extension for down time. No other compensation of any kind shall be made to the Contractor for down time. Equipment failure, lack of adequate labor or tools or materials to perform the Work shall not constitute down time.

10.6 Submittal Requirements and Waiver of Claims

10.6.1. If the Contractor does not submit a Contractor Change Request within the time required above, any action by the Contractor related to such order, direction, instruction, interpretation, determination, design error or omission, or other matter, including delays or differing site conditions, will not be considered by the City as a change to the Work and the Contractor waives any claim for an adjustment on the Contract Price or the Contract Time.

10.6.2. The Contractor shall, within Ten (10) consecutive calendar days submit in detail, a Contractor Change Request, and provide the Engineer a complete and itemized proposal which contains the information described in Article 11. The proposal shall also contain a detailed explanation, citing all applicable provisions in the Contract Documents, which supports the Contractor Change Request. If the Contractor does not submit its itemized proposal within the time described above or within such extension which the Engineer, in his/her discretion may have granted in writing, it waives any claim for an adjustment in the Contract Price or Contract Time arising out of the act or event described in the Contractor Change Request.

10.6.3. If a Contractor Change Request is denied by the Engineer, in whole or in part, any claim for an increase in the Contract Price or Contract Time arising out of the act or event described in the Contractor Change Request is waived unless the Contractor timely complies with the provisions of paragraphs 10.4.1. through 10.4.6.

ARTICLE 11. CHANGE OF CONTRACT PRICE OR CONTRACT TIME

11.1 Contract Price Adjustments.

All adjustments to the Contract Price shall be determined by using one or more of the following methods:

11.1.1 A negotiated lump sum for work items that cannot be itemized. The Contractor shall promptly provide sufficient substantiating data, including calculations, measurements, cost records, production rates, equipment types and capacity, labor costs by craft and other information which the City may reasonably require the Contractor to produce in order to permit the City to evaluate the Contractor's lump sum change order proposals. In pricing this proposal, the Contractor shall include estimates of the type of costs described in Section 11.4 below.

11.1.2 Unit prices stated in the Contract Documents or subsequently agreed upon multiplied by final verified quantities of work performed;

11.1.3 Cost to be determined in a manner agreed upon by the parties which includes markups that do not exceed those set forth in Section 11.4 below.

11.1.4 Costs to be determined in the manner described in Section 11.3.1.

11.2 Contract Time Adjustments.

11.2.1. Any extension of the Contract Time must be requested in a Contractor Change Request which complies with all of the requirements of paragraphs 10.4.1 through 10.4.6. Failure to strictly comply with the timing and submittal requirements shall constitute a waiver of any request or claim.

11.2.2. If the Contractor is delayed at any time in the progress of the Work and such delay was caused, in whole or in part, by the act or omission of the City, or by changes ordered in the Work pursuant to strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or any other causes beyond the Contractor's control, then the Contract Time shall be extended by the City. Such extensions will be for a period of time as the City may in its discretion determine, provided however that such delay could not have been avoided by the exercise of due diligence by the Contractor and did not result from the acts or omissions of the Contractor and, provided further, that they Contractor has taken reasonable actions to mitigate or prevent further delays resulting from such causes.

11.2.3. If abnormal weather conditions are the basis for a claim for an extension of the Contract Time, such claim shall be documented on the City of Aspen Engineering Department's Daily Construction Log forms substantiating that weather conditions were unusually severe for the period of time, and could not have been reasonably anticipated. Regardless of actual weather conditions, any day in which the Contractor is able to work Sixty Percent (60%) or more of its scheduled work force shall not be counted as an abnormal weather day for purposes of calculating weather related time extensions.

11.2.4. The Contractor agrees that delays resulting from any causes other than acts or omissions of the City, its employees, agents or officials shall be considered fully compensated by a time extension only and agrees to make no claim for monetary damages for such delays. In no event shall the Contractor be entitled to recover any delay costs caused by the acts or omissions of the Contractor, its employees or agents.

11.2.5. If the Contractor believes that it has suffered delays in performing the Work that are caused by acts or omissions of the City, the Contractor may submit a Contractor Change Request with detailed justifications acceptable to the Engineer. Failure of the Contractor to comply with all requirements shall constitute a waiver of any claim for damages resulting from such delays.

11.3 Force Account Work.

11.3.1 In situations where the cost or time for performing a required change cannot be adequately defined or agreed upon but the changed Work must proceed, the City may direct the Contractor to perform the Work on a Force Account basis. Adjustment shall be determined on the basis of reasonable expenditures and savings of those performing the change in the Work including, in case of an increase in the Contract Amount, an allowance for overhead and profit which shall not exceed the allowance described in 11.4.7 below. In such case, the Contractor shall keep and present, in such form as the City may prescribe, an itemized detailed accounting together with appropriate supporting data of all of the costs described in Section 11.4.1 through Section 11.4.4 which clearly distinguishes the cost of changed Work from base contract Work. Information that shall be required on these forms includes an itemization of all costs for labor, materials and equipment rental and total costs to date for force account work. The Contractor shall include hours worked, rates of pay, names and job classifications for all workers and size, type, identification number, rental rate and hours of operation for equipment.

11.3.2 Unless otherwise provided in the Contract Documents, costs for the purposes of Force Account Work shall be itemized daily on Daily Force Account Forms provided by the Engineer which are signed by the Contractor and the Engineer. Such costs shall form the basis for determining the maximum amount to be paid the Contractor, but this amount may be reduced where necessary to take into account the cost of base contract Work, Work included in approved Change Orders, Work described in Work Directive Changes, idle time for workers and/or equipment when work could have been performed in other locations or the number of workers or amount of equipment provided exceeds the number or amount required to perform the Work, unsatisfactory Work or Work which may be performed concurrently with the changed Work and which cannot be easily segregated from the changed Work. The worker hours, equipment hours, and materials installed shall be logged on the City of Aspen Engineering Department's Daily Construction Log form for every day the work is performed.

11.4 Contract Sum Determination

11.4 In no event shall the charge or credit to the City associated with any change exceed the sum of the following:

11.4.1 Direct Labor. Actual net direct increase or decrease in the cost of the Contractor's labor for all work associated with the change. Contractor's labor shall be limited to Davis-Bacon Act work categories or other labor (including salaried field personnel) that perform the individual change in Work full-time. For shop work, the direct labor includes workers who work directly on the item being manufactured or operators of equipment being used to handle items being manufactured.

11.4.2 Labor Burden. Contractor's actual costs for workers compensation and liability insurance, payroll taxes, social security and employees fringe benefits (including employer paid health insurance) imposed on the basis of payrolls. This burden must reflect the variability of some burdens, i.e., social security. The burden shall include all small tools which cost less than \$200 apiece.

11.4.3 Direct Material, Supplies, Installed Equipment. Actual net direct cost of materials, supplies and equipment incorporated in or consumed by the Work. If actual costs are not available, the cost shall be the lowest commercially available price including all discounts and rebates and all applicable taxes. Cost shall be based on buying the material, supplies and equipment in the largest practical quantity to receive quantity discounts.

11.4.4 Equipment. Actual net cost to the Contractor of owned and/or rented equipment other than small tools, to be determined using the following method(s):

- (1) Owned equipment operating costs shall be determined using accepted industry standard forms and methods for "Owning and Operating Equipment" as described by the U.S. Army Corps of Engineers (COE) in its latest edition of the "Construction Equipment Ownership and Operating Expense Schedule, Region V" (Document No. EP 1110-1-8, Volume 5).
- (2) Rental equipment costs shall be determined using actual invoiced rates less all discounts for bare equipment rental. Operating costs will be determined based on rates in the above-cited C.O.E. manual.
- (3) Mobilization/demobilization costs will be paid if the equipment is mobilized exclusively for Work described in a change requested by the Engineer or a Change Order. If the equipment is used on base contract work, no mobilization or demobilization cost will be paid. Mobilization/demobilization cost will be based on using the least expensive means to mobilize or demobilize. Equipment shall be obtained from the nearest available source. When the least expensive methods are used, then costs shown in the actual invoice will be the basis for pricing.

11.4.5 Bonds, Insurance, Permits and Taxes. Actual increases or decreases in the cost of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work.

11.4.6 Subcontract Costs. Net cost of subcontractor work at any tier, provided that the cost of the subcontractor is determined in accordance with the above requirements. When possible, the Contractor shall obtain quotes from two or more subcontractors.

11.4.7 Overhead and Profit.

- (1) Ten percent (10%) of the sum of Section 11.4.1 through Section 11.4.5 above, to cover a profit for Work performed by that Contractor or subcontractor.
- (2) Two percent (2%) of Section 11.4.6 above to cover Contractor's and subcontractor's overhead and profit for work performed by the Contractor or subcontractor.

(3) Neither the Contractor nor any subcontractor, nor the City in the case of a credit, will attempt to apply these percentage adjustments in a way which would pyramid either the cost or credit because a subcontractor or subcontractors at any tier are involved.

11.4.8 Totals as Equitable Adjustment. The Contractor agrees that the total of the above constitutes an equitable adjustment for any and all damages resulting from a change or due to delay or disruption caused by the City. The Contractor's choice of idling and Down Time shall not constitute an City's cause for delay or disruption.

11.5 Cost and Pricing Data

11.5.1 Certificate of Current Cost or Pricing Data. The Contractor shall submit a Certificate of Current Cost or Pricing Data with any agreed upon Contract Price adjustment, but prior to the execution of a Change Order for the work, in the following format:

Certificate of Current Cost and Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost of pricing data submitted in writing to the City in support of _____* are accurate, complete, and current as of _____** and represent the best prices available from suppliers and subcontractors. This certification includes the cost of pricing data supporting any advance agreements and forward pricing rate agreements between the offer or and the City that are part of the proposal.

Firm _____
Name _____
Title _____
Date _____

* Identify the appropriate number of the Change Notice.

** Date when pricing negotiations were concluded and price agreement was reached.

*** Date of signing, which should be as close as practicable to the date when the price negotiations were concluded and price agreement reached.

11.5.2 Vendor Statements. The Contractor shall submit in support of all items which are not unit prices or lump sum prices established by the Contract, statements by the affected vendors that the prices are not in excess of those previously charged to the City or the supplier's regular commercial customers for the same items.

11.5.3 Price Reductions for Defective Costs or Pricing Data. If it is later determined that pricing adjustments to the Contract were not correct due to incomplete or inaccurate pricing data by the Contractor or any subcontractor or supplier or that lower prices were readily available, the price shall be reduced accordingly and the Contract modified by a Change Order.

11.6 Variation in Quantity of Unit Priced Items:

Where the quantity of a unit-priced item in this Contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 25 percent above or below the estimated quantity, an equitable adjustment in the Contract Price may be made by a written Change approved by the Contractor and the Engineer. The equitable adjustment shall be based upon any increase or decrease in cost due solely to the variation above 125 percent or below 75 percent of the estimated quantity. The City at any time after the award of the Contract, may delete Bid items, provided that the total of such deletions does not exceed twenty five percent (25%) of the total Contract Price, and such deletions will not justify an increase in other Bid prices. If the quantity variation is such as to cause an increase in the time necessary for completing the Work the Contractor may request in writing, an extension of time only.

ARTICLE 12 - Reserved**ARTICLE 13 - WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK****13.1 Warranty:**

13.1.1. The Contractor warrants and guarantees to City that all Work, whether supplied, furnished, installed, provided, or performed by Contractor, a Subcontractor, or Supplier, will be in accordance with the Contract Documents and will not be Defective. All Defective Work, whether or not in place, must be rejected, corrected or accepted as provided in this Article 13. Work shall be performed in a skillful and workmanlike manner. Except where longer periods of warranty are indicated for certain items, Contractor warrants Work, whether furnished, installed, provided, performed or supplied by Contractor, a Subcontractor or Supplier, to be free from faulty materials and workmanship for a period of not less than **One Year** from date of Substantial Completion, which **One Year** period shall be covered by the Maintenance Bond and Payment Bond as specified in the Contract Documents. Landscaping replacement shall be warranted for two growing seasons.

13.1.2. The Contractor, at no additional expense to the City, shall remedy damage to equipment, the site, or the buildings or the contents thereof that is the result of any failure or defect in the Work, and restore any work damaged in fulfilling the requirements of the Contract Documents.

13.1.3. With respect to all warranties, express or implied, from Subcontractors, manufacturers, or Suppliers for Work performed and materials furnished under the Agreement, the Contractor shall:

13.1.3.1. Obtain all warranties that would be given in normal commercial practice. To the extent that the Subcontractor's, manufacturer's, or Supplier's, standard warranty exceeds the minimum City requirements as set forth in this Article or elsewhere in the Contract Documents, the Subcontractor's, manufacturer's, or Supplier's standard warranty shall apply. Otherwise, the Contractor shall be responsible for a *Two Year* term under the Maintenance Bond.

13.1.3.2. Require all warranties to be executed, in writing, for the benefit of the City, if directed by the Engineer or.

13.1.3.3. Enforce all warranties for the benefit of the City, if directed by the Engineer.

13.1.3.4. Assign all warranties and guarantees in writing to the City upon the request of the City.

13.1.4. Notwithstanding anything to the contrary above, the Contractor shall warrant that all equipment which are incorporated into the Work or any subsystem shall be new, free from liens and defects in design, have clear title, be free from faulty materials and workmanship, and shall conform in all aspects to the terms of the Contract Documents, to the drawings issued for manufacture by the Contractor, and shall be in conformance with the Technical Specifications and Contractor's Proposal (except in those instances where the Contractor's Proposal has been amended by subsequent Technical Specifications). Unless the warranty period is otherwise extended or modified, the following warranty shall apply. If within *Five (5) Years* from the date each piece of equipment incorporated into the Work or any subsystem is accepted by the City, it appears that the equipment or any part thereof does not conform to the above warranty and guarantee provisions, and the City so notifies the Contractor within a reasonable time after its discovery, the Contractor shall thereupon promptly correct such nonconformity to the satisfaction of the City, at the Contractor's sole expense; failing which the City may reject the item and cover by purchasing substitute items or the City may proceed to make corrections or accomplish the Contractor's performance by the most expeditious means available, the cost of cover or correction shall be charged to the Contractor.

13.1.4.1. The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such equipment shall conform with the requirements of the Contract Documents.

13.1.4.2. When return, corrections, or replacement is required, transportation charges and responsibility for the supplies and equipment while in transit shall be borne by the Contractor.

13.1.5. In addition to the foregoing, in the event that any single component in the Work experiences failures during the warranty period such that the number of failures under normal service conditions exceeds ten percent (10%) of the Work population of that component, the Contractor shall perform a design defects analysis. If the analysis shows the component design to be defective, the component shall be redesigned, and the entire population of that component shall be replaced and/or retrofitted.

13.1.6. Whenever there is a conflict between the warranties required by the Contract Documents and the warranty provided by a Subcontractor, manufacturer or Supplier, the terms and conditions of the warranty that affords the City the greatest protection shall be binding upon the Contractor.

13.1.7. The above warranties or other warranties agreed to by Contractor shall not limit the City's rights under other provisions of this Article with respect to latent defects, gross mistakes, or fraud.

13.1.8. Neither the foregoing nor any provision in the Contract Documents, nor any special guarantee time limit, shall be held to limit the Contractor's liability for defects, to less than the legal limit of liability in accordance with the law of the place of building.

13.1.9. Any supplies or equipment, or parts thereof, corrected or furnished in replacement under this Article, shall also be subject to the terms of the warranty provisions herein to the same extent as supplies and equipment initially delivered. The warranty, with respect to supplies, equipment, or parts thereof, shall be equal in duration as if initially delivered and shall run from the date of delivery of the corrected or replaced supply, or upon the date it is placed in service, whichever is later.

13.2 Access to Work:

The Engineer and the Engineer's representatives, other representatives of the City, testing agencies and governmental agencies with jurisdictional interests shall have access to the Work, at any time for their observation, inspecting and testing. Contractor shall provide proper and safe conditions for such access.

13.3 Tests and Inspections:

13.3.1. The Contractor shall cooperate with material testing persons and firms, and for required inspections, and compliance and approval tests for the Work performed by the Contractor or his/her Subcontractor(s).

13.3.2. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, the Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish the Engineer the required certificates of inspection, testing or approval. The Contractor shall also be responsible for and shall pay all costs in connection with any inspection or Re-testing required in connection with the City's or the Engineer's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to The Contractor's purchase thereof for incorporation in the Work. The cost of all inspections, testing, re-testing and approvals in addition to the above that are required by the Contract Documents shall be paid by the Contractor (unless otherwise specified). The City will conduct and pay for the conformance tests on materials installed in-place, and the Contractor shall pay for re-testing of all failing and non-conforming materials thereafter.

13.3.3. All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by professional firms or certified materials laboratories acceptable to the Engineer.

13.3.4. If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of the Engineer, it must, be uncovered for observation. Such uncovering and testing when required by the Engineer shall be at the Contractor's expense.

13.3.5. Neither observations by the Engineer nor inspections, tests or approvals by others shall relieve the Contractor from the Contractor's obligations to perform the Work in accordance with the Contract Documents.

13.4 Uncovering Work:

13.4.1. If any Work is covered contrary to the written request of the Engineer it must, if requested by the Engineer, be uncovered for the Engineer's observation and replaced at the Contractor's expense.

13.4.2. If the Engineer considers it necessary or advisable that covered Work be observed by the Engineer or inspected or tested by others, the Contractor, at the Engineer's request, shall uncover, expose or otherwise make available for observation, inspection or testing as the Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is Defective, the Contractor shall bear all direct; indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and the City shall be entitled to an appropriate decrease in the Contract Price.

13.5 City May Stop The Work:

If the Work is defective, or the Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the City may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the City to stop the Work shall not give rise to any duty on the part of the City to exercise this right for the benefit of the Contractor or any other party.

13.6 Correction or Removal of Defective Work:

If required by the Engineer or the City, the Contractor shall promptly, as directed, either correct all Defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the Engineer or the City, remove it from the site and replace it with non-defective Work. The Contractor shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

13.7 Correction Period:

If within Two Years after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be Defective, the Contractor shall promptly without cost to City and in accordance with City's written instructions, either correct such Defective Work, or, if it has been rejected by City, remove it from the site and replace it with non-defective Work. If the Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the City may have the Defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by the Contractor. In special circumstances where a particular item of equipment or portion of Work is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment. Landscaping replacement shall be warranted for two growing season.

13.8 Acceptance of Defective Work:

If, instead of requiring correction or removal and replacement of Defective Work, the City prefers to accept it, the City may do so. The Contractor shall bear all direct, indirect and consequential costs attributable to the City's evaluation of and determination to accept such Defective Work. All accepted defective Work shall be subject to significant price reduction acceptable to the City and the City Engineer.

13.9 City May Correct Defective Work:

If the Contractor fails within Ten (10) consecutive calendar days after written notice of the Engineer or the City to proceed to correct and to correct Defective Work or to remove and replace rejected Work as required by the Engineer or the City in accordance with paragraph 13.6., or if the Contractor fails to perform the Work in accordance with the Contract Documents, or if the Contractor fails to comply with any other provision of the Contract Documents, the City may, after seven days' written notice to the Contractor, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph the City shall proceed expeditiously to the extent necessary to complete corrective and remedial action. The City may exclude the Contractor from all or part of the site, take possession of all or part of the Work, and suspend the Contractor's services related thereto, take possession of the Contractor's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which the City has paid the Contractor but which are stored elsewhere. The Contractor shall allow the City, the City's representatives, agents and employees such access to the site as may be necessary to enable the City to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of the City in exercising such rights and remedies will be charged against the Contractor, and a Change Order will be issued by the City incorporating the necessary revisions in the Contract Price. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of the Contractor's Defective Work. The Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by the City of the City's rights and remedies hereunder.

13.10 Unauthorized Work:

Work performed beyond the lines and grades on the Drawings or approved Design Documents, Construction Documents or Shop Drawings and extra work done without written authorization, will be considered as unauthorized work, and the Contractor will receive no compensation therefore. If required by the City, unauthorized work will be remedied, removed, or replaced by the Contractor at the Contractor's expense.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION**14.1 Determination of Work Value:**

The Work quantities recorded on the City of Aspen Engineering Department's Daily Construction Log forms shall serve as the basis for preparation and justification of the progress payments. Payments to the Contractor shall be prepared on the City of Aspen Engineering Department's Progress Pay Estimate Form on account of Unit Price Work based on the number of units actually installed complete in place and transferred from the Daily Construction Logs.

14.2 Application for Progress Payment:

14.2.1. Progress payments shall be made once each month as the Work progresses, when the Contractor is performing satisfactorily under the terms of the Contract Documents. Said payments shall be based upon progress estimates prepared by the Engineer, of the value of work performed and materials placed in accordance with the Contract Documents and the value of materials on hand in accordance with these General Conditions. The amount of the progress estimate to be paid to the Contractor shall be subject to the following:

14.2.1.1 STANDARD RETAINMENT. The City shall make a deduction from the progress estimate in the amount considered necessary to protect the interests of the City, pursuant to Section 24-91-103, CRS. That amount to be retained shall be as follows: for contract price over \$150,000.00 the retained amount shall be 5% of the value of the completed work. No further retainment shall be withheld if the Contractor makes satisfactory progress in the Contract Work. The amount retained shall be in effect until such time as final payment is made, with the following exceptions:

- a) When one hundred Percent (100%) of the Work has been complete, the Project Manager may, at his/her discretion, reduce the retained amount by fifty percent (50%) of the required retainage.

b) Upon one hundred percent (100%) completion and acceptance of the project, the Project Manager may reduce the retainment to fifty percent of the required retainage. In addition to standard retainment, the City shall withhold funds for claims against the Contractor filed by Subcontractors and Suppliers, pursuant to Section 38-26-107, CRS.

14.2.2. NO PAYMENT. A progress payment shall not be made when the total value of the work done since the last estimate amounts is less than \$500.00.

14.2.3. LUMP SUM ITEMS. All lump sum Bid items shall be paid on a pro-rata basis determined by the percentage of the total Work completed or if the Bid item is installed or completed One Hundred Percent (100%) in place and accepted by the Engineer.

14.2.4. SUBCONTRACTOR PAYMENTS. In addition to the other requirements regarding subcontracting the Work, the Contractor is responsible for prompt payments to all Subcontractors. As a minimum, the Contractor is responsible for prompt payments to all Subcontractors. As a minimum, the Contractor shall incorporate provisions in all subcontracts to satisfy the following requirements:

14.2.4.1. The Contractor shall make payments to all Subcontractors at least once each month as the Work progresses, when the Subcontractor is performing satisfactorily under the terms of the Contract Documents between the Contractor and Subcontractor;

14.2.4.2. Payments to Subcontractors shall be based on all moneys due the Subcontractor under the terms of the contract between the Contractor and Subcontractor;

The Contractor shall make payments to Subcontractors within 10 days of receipt of the City's payment to the Contractor;

Subcontractors and lower tier subcontractors shall make payments to their subcontractors, according to the requirements above and shall make payments within 10 days of receipt of payment from the next higher tier.

14.3 Contractor's Warranty of Title:

The Contractor warrants and guarantees that title to all Work, materials and equipment covered by any progress pay estimate approved for Payment, whether incorporated in the Project or not, will pass to the City no later than the time of payment free and clear of all Liens.

14.4 Engineer's Review of Progress Payments.

14.4.1. The Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by the Engineer to the City, based on the Engineer's on-site observations of the Work in progress and on the Engineer's review of the pay estimate form and the accompanying data and schedules that the Work has progressed to the point indicated; that to the best of the Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work in the Bid Proposal form, and to any other qualifications stated in the recommendation); and that the Contractor is entitled to payment of the amount recommended. However, by recommending any such payment the Engineer will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to the Engineer in the Contract Documents or that there may not be other matters or issues between the parties that might entitle the Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

14.4.2. The Engineer may refuse to recommend the whole or any part of any payment if, in the Engineer's opinion, it would be incorrect to make such representations to the City. The Engineer may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any

such payment previously recommended, to such extent as may be necessary in the Engineer's opinion to protect the City from loss because:

- 14.4.2.1. The Work is Defective, or completed Work has been damaged requiring correction or replacement;
- 14.4.2.2. The Contract Price has been reduced by Written Amendment or Change Order;
- 14.4.2.3. The City has been required to correct Defective Work or complete Work in accordance with paragraph 13.9.; or,
- 14.4.2.4. Of the Engineer's actual knowledge of the occurrence of any of the events enumerated in Article 15.

The City may refuse to make payment of the full amount recommended by the Engineer because claims have been made against the City on account of the Contractor's performance or furnishing of the Work or Liens have been filed in connection with the Work or there are other items entitling the City to a set-off against the amount recommended, but the City must give the Contractor immediate written notice (with a copy to the Engineer) stating the reasons for such action.

14.5 Substantial Completion:

14.5.1. The date accepted by the City when the construction of all Work items in the project or a specified part thereof is *One hundred percent (100%)* completed, in accordance with the Contract Documents, so that the project or specified part can be utilized for the purpose for which it is intended shall establish substantial completion for the project or for a specified part.

14.5.2. When the Contractor considers the entire Work ready for its intended use, the Contractor shall coordinate with the City an inspection of the Work and conduct such tests as required to ensure the Work meets or exceeds all Performance Standards to help determine the status of completion. If the City does not consider the Work satisfactorily complete, the Engineer shall notify the Contractor in writing giving the reasons therefore. There shall be a Punch List of the items to be completed before final inspection and final payment. At the time of delivery of the completed punch list items, the City must conduct a final inspection and upon acceptance by the City, the Contractor shall deliver a fully executed Claim Release form to facilitate the project closure.

14.6 Partial Utilization:

Use by the City of any finished part of the Work, which has specifically been identified in the Contract Documents, or which the City, the Engineer and the Contractor agree constitutes a separately functioning and useable part of the Work that can be used by the City without significant interference with the Contractor's performance of the remainder of the Work, may be accomplished prior to Final Completion of all the Work subject to the following:

14.6.1. The City at any time may request the Contractor in writing to permit the City to use any such part of the Work which the City believes to be ready for its intended use and substantially complete. If the Contractor agrees, the Contractor will certify to the City and the City Engineer that said part of the Work is substantially complete.

14.7 Final Inspections:

Upon written notice from the Contractor that the entire Work or an agreed portion thereof is complete, the City will make a final inspection with the Engineer and the Contractor and will notify the Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or Defective. The Contractor shall immediately take such measures as are necessary to remove and eliminate all such deficiencies. All deficiencies or incomplete Work items shall be recorded by the City Project Inspector on a Punch List Sheet(s) and distributed to the Contractor and the Engineer immediately.

14.8 Final Progress Payment:

14.8.1. After the Contractor has completed all such corrections to the satisfaction of the City and delivered all maintenance and operating instructions, schedules, guarantees, as-built documentation (as provided in paragraph 6.12) and other documents - all as required by the Contract Documents, and after the City has indicated that the Work is acceptable, the Contractor shall deliver to the Engineer a fully executed and notarized Claim Release Form and the City Engineering Department will advertise for project closure and release of the final retainment. The final pay estimate will consist of retainment amount only. Final payment will be released following a thirty (30) day waiting period from the date of the second publication of the advertisement for final settlement and closure if no verified claim has been filed with the City.

14.9 Settlement Date, Notice to Subcontractors, Acceptance and Final Payment:

If, on the basis of the Engineer's observation of the Work during construction and final inspection, and the Engineer's review of the final progress Payment and accompanying documentation - all as required by the Contract Documents, the Engineer represents to the City that the Work has been completed and the City is satisfied that the Work has been completed and the Contractor's other obligations under the Contract Documents have been fulfilled, the City shall cause to be published on two (2) consecutive weeks in the weekly editions of the *Aspen Times*, a public notice setting a final settlement date; which said settlement date shall be at least ten (10) days after the second publication. Said notice shall advise all persons, co-partnerships, associations of persons, companies, or corporations that have furnished labor, provisions, materials, team hire, sustenance, or other supplies used or consumed by Contractor or his subcontractor(s), that they may file a claim with the City, at any time up to and including the time of final settlement. Upon filing of any such claim, the City shall withhold from retainment withheld in accordance with the Contract Documents, to insure the payment of said claims until the same have been paid or such claims as filed have been withdrawn, such payment or withdrawal to be evidenced by filing with City a receipt in full or an order for withdrawal in writing and signed by the person filing such claim or his duly authorized agents or assigns. Such funds shall not be withheld longer than Ninety Days following the date fixed for final settlement as published unless an action is commenced within that time to enforce such unpaid claim and a notice of *Lis Pendens* is filed with the City. At the expiration of such ninety day period, the City shall pay to Contractor such moneys and funds as are not subject of suit and *Lis Pendens* notices and shall retain thereafter, subject to the final outcome thereof, only such balance of funds to insure the payment of judgments which may result from such suit.

14.8.2. If, the remaining balance to be held by the City for Work not fully completed or corrected is less than the retainage set forth at paragraph 14.2., and if Bonds have been furnished as required in Article 5, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Engineer. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

14.10 Contractor's Continuing Obligation:

The Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by the Engineer, nor the issuance of a certificate of Substantial Completion, nor any payment by the City to the Contractor under the Contract Documents, nor any act of acceptance by the City nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by the Engineer pursuant to paragraph 14.9, nor any correction of Defective Work by the City will constitute an acceptance of Work not in accordance with the Contract Documents or a release of the Contractor's obligation to perform the Work in accordance with the Contract Documents.

14.11 Liquidated Damages:

14.11.1. TIME FOR COMPLETION: It is hereby understood and mutually agreed, by and between the Contractor and the City, that the date of beginning Work and the time of completion as specified herein are essential conditions of the Agreement. The Contractor agrees that said Work shall be prosecuted regularly, diligently, and at such rate of progress as will ensure completion within the time(s) specified. It is expressly understood and agreed, by and between the Contractor and the City, that the time(s) for completion of the Work described herein are reasonable time(s) for the completion of the Work, taking into consideration the average climatic conditions prevailing in the locality of the Work.

14.11.2. **TIME IS OF THE ESSENCE TO THE AGREEMENT:** It is further agreed that time is of the essence in completing the Work, and that the Project Work Schedule referenced at paragraph 6.9. and the Submittal Schedule referenced at paragraph 6.3. and all dates set forth therein and where in the Contract Documents, an additional time is allowed for the completion of the Work, the new time limit fixed by such extension shall be of the essence of the Contract.

14.11.3. **LIQUIDATED DAMAGES:** Substantial Completion of the Construction Phase are of paramount importance to the City. If any portion of the Work is not completed in accordance with any time extensions granted by the City, the City will suffer damage, the extent of which will be impractical and extremely difficult to estimate accurately. Therefore, as part of the consideration for executing the Contract, it is hereby agreed that the Contractor shall pay to the City the amounts specified in the *Liquidated Damages Form* included in the Contract Documents. This particular provision shall not be construed as a penalty upon said Contractor for failing fully to complete said Work as agreed in the Proposal and Contract Documents nor is it intended, but as Liquidated Damages to compensate the City for all costs incurred as a result of such breach of Contract.

14.11.4. **DELAYS IN WORK COMPLETION OF CONSTRUCTION PHASE:** Subject to the terms of "Excusable Delays", as contained in Section 14.11.6. of the General Conditions, the Contractor expressly agrees to pay the City as a reasonable estimate of just compensation for damages contemplated with the clause, the amount set forth in the Liquidated Damages Form for each consecutive calendar day that Substantial Completion is delayed in the Construction of the project. In no event shall the total amount of liquidated damages exceed Twenty Percent (20%) of the total Contract Price for the Construction.

14.11.5. **DELAYS IN SUBMITTAL OF AS-BUILT DOCUMENTATION:** Should the Contractor fail to make delivery of the as-built documentation covered in the Contract Documents prior to release of the final payment, it shall pay liquidated damages to the City the amounts equal to preparation cost of the As-Built drawings by the City and its Engineers and Surveyors.

14.11.6. **EXCUSABLE DELAYS - FORCE MAJEURE:** If, by reason of Force Majeure, any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the liability then claimed, but for no longer period, and any such party shall remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Colorado or any political subdivision, except the City, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

14.11.7. **CUMULATIVE REMEDY:** The liquidated damages referred to herein are intended to be and are cumulative and shall be in addition to every other remedy now or hereafter enforceable at law, in equity, by statute, or under contract.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.1 City May Suspend Work:

The City may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to the Contractor and will fix the date on which work will be resumed. The Contractor shall resume the Work on the date so fixed. The Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both if the Consecutive Calendar Days are used to complete the Work, directly

attributable to any suspension if the Contractor makes an approved claim therefor as provided in Article 11. Other Work suspensions such as delayed start or phased construction shall not entitle the Contractor to any compensation of payment or time.

15.2 City May Terminate:

Upon the occurrence of any one or more of the following events:

15.2.1. If the Contractor commences a voluntary case under any chapter of the Bankruptcy Code (Title II, United States Code), as now or hereafter in effect, or if Contractor takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

15.2.2. If a petition is filed against Contractor under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against Contractor under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

15.2.3. If the Contractor makes a general assignment for the benefit of creditors;

15.2.4. If a trustee, receiver, custodian or agent of Contractor is appointed under applicable law or under contract, whose appointment or authority to take charge of property of Contractor is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of Contractor's creditors;

15.2.5. If the Contractor admits in writing an inability to pay its debts generally as they become due;

15.2.6. If the Contractor persistently fails to perform the Work in accordance with the Contract Documents (including but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as revised from time to time);

15.2.7. If the Contractor disregards Laws or Regulations of any public body having jurisdiction;

15.2.8. If the Contractor disregards the authority of Architect; or,

15.2.9. If the Contractor otherwise violates in any substantial way any provisions of the Contract Documents:

The City may, after giving the Contractor (and the surety, if there be one) seven days written notice and to the extent permitted by Laws and Regulations, terminate the services of Contractor, exclude the Contractor from the site and take possession of the Work and of all the Contractor's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by the Contractor (without liability to the Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which the City has paid the Contractor but which are stored elsewhere, and finish the Work as the City may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) such excess will be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor shall pay the difference to the City. Such costs incurred by the City will be approved as to reasonableness by the Engineer and incorporated in a Change Order, but when exercising any rights or remedies under this paragraph the City shall not be required to obtain the lowest price for the Work performed.

15.2.10. Where the Contractor's services have been so terminated by the City, the termination will not affect any rights or remedies of the City against the Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due the Contractor by the City will not release the Contractor from liability.

15.2.11. Upon seven days' written notice to the Contractor, the City may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Contract. In such case, the Contractor shall be paid for all Work executed and any expense sustained plus reasonable termination expenses.

15.3 Contractor May Stop Work or Terminate:

If, through no act or fault of the Contractor, the Work is suspended for a period of more than ninety days by the City or under an order of court or other public authority, then the Contractor may, upon seven days written notice to the City and the Engineer, terminate the Contract and recover from the City payment for all Work executed and installed in place and any expense sustained plus reasonable termination expenses. The provisions of this paragraph shall not relieve the Contractor of the obligations under Article 6 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with the City.

ARTICLE 16 - MISCELLANEOUS

16.1 Nondiscrimination

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

16.1.1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, sexual orientation, being handicapped, a disadvantaged person, or a disabled or Vietnam era veteran. The Contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, sex, age, sexual orientation, handicapped, a disadvantaged person, or a disabled or Vietnam era veteran. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

16.1.2. The Contractor, with regard to the Work performed by it during the Contract, shall not discriminate on the grounds of race, color, religion, sex, national origin, sexual orientation, age, marital status, being handicapped, a disadvantaged person, or a disabled or Vietnam era veteran in the selection and retention of Subcontractors, including procurements of materials and leases of equipment.

16.1.3. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, sexual orientation, age, marital status, being handicapped, a disadvantaged person, or a disabled or Vietnam era veteran.

16.1.4. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or Supplier shall be notified by the Contractor of the subcontractor's obligations under this Contract and the regulations relative to nondiscrimination on the grounds of race, color, religion, sex, national origin, sexual orientation, age, marital status, being handicapped, a disadvantaged person, or a disabled or Vietnam era veteran.

16.1.5. The Contractor will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

16.2 Giving Notice:

Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for

whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

16.3 Computation of Time:

16.3.1. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

16.3.2. A consecutive calendar day of twenty-four hours measured from midnight to the next midnight shall constitute a day. A working day is any day; Monday through Friday of each week, also called business day.

16.4 General:

Should the City or the Contractor suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage.

The provisions of this paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

16.4.1. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon the Contractor by the General Conditions, and all of the rights and remedies available to the City thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents will survive final payment and termination or completion of the Agreement.

16.5 Independent Contractor Status:

It is expressly acknowledged and understood by the parties that nothing in this agreement shall result in, or be construed as establishing an employment relationship. The Contractor shall be, and shall perform as, an independent the Contractor who agrees to use his best efforts to provide the Work on behalf of the City. No agent, employee, or servant of the Contractor shall be, or shall be deemed to be, the employee, agent or servant of the City. The City is interested only in the results obtained under the Contract Documents. The manner and means of conducting the Work are under the sole control of the Contractor. None of the benefits provided by the City to its employees including, but not limited to, worker's compensation insurance and unemployment insurance, are available from the City to the employees, agents or servants of the Contractor. The Contractor shall be solely and entirely responsible for its acts and for the acts of the Contractor's agents, employees, servants and subcontractors during the performance of the Contract.

THE CONTRACTOR, AS AN INDEPENDENT CONTRACTOR, SHALL NOT BE ENTITLED TO WORKERS' COMPENSATION BENEFITS AND SHALL BE OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED PURSUANT TO THE CONTRACT.

16.6 Prohibited Interest:

No member, officer, or employee of the City of Aspen, Pitkin County or the Town of Snowmass Village shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

16.7 Warranties Against Contingent Fees, Gratuities, Kickbacks and Conflict of Interest:

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingency fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

16.7.1. The Contractor agrees not to give any employee or former employee of the City a gratuity or any offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to this Contract or to any solicitation or proposal therefor.

16.7.2. It shall be a material breach of the Contract for any payment, gratuity, or offer of employment to be made by or on behalf of a Subcontractor under a contract to the prime Contractor or higher tier Subcontractor or any person associated therewith, as an inducement for the award of a Subcontract or order. The Contractor is prohibited from inducing, by any means, any person employed under this Contract to give up any part of the compensation to which he/she is otherwise entitled. The Contractor shall comply with all applicable local, state and federal "anti-kickback" statutes or regulations.

16.8 Payments Subject to Annual Appropriations:

If the contract awarded extends beyond the calendar year, nothing herein shall be construed as an obligation by the City beyond any amounts that may be, from time to time, appropriated by the City on an annual basis. It is understood that payment under any contract is conditional upon annual appropriation of funds by said governing body and that before providing services, the Contractor, if it so requests, will be advised as to the status of funds appropriated for services or materials and shall not be obligated to provide services or materials for which funds have not been appropriated.

16.9 Contractor Acceptance:

16.9.1. The acceptance by the Contractor of any payment made on the final completion of Work under these General Conditions, or of any final payment due on termination, shall constitute a full and complete release of the City from any and all claims, demands and causes of action whatsoever which the Contractor, has or may have against the City under the provisions of these Contract Documents.

16.9.2. No action shall be maintained by Contractor, its successors or assigns, against the City or the Engineer on any claims based upon or arising out of this Contract or out of anything done in connection with this Contract unless such action shall be commenced within 180 days after the date approval of the final progress payment hereunder, or within 180 days of the termination of this Agreement.

16.10 Successors and Assigns

This Contract and all of the covenants hereof shall inure to the benefit of and be binding upon the City and the Contractor respectively and their agents, representatives, employees, successors, assigns and legal representatives. Neither the City nor the Contractor shall have the right to assign, transfer or sublet his or her interest or obligations hereunder without the written consent of the other party.

16.11 Third Parties

This Contract does not and shall not be deemed or construed to confer upon or grant to any third party or parties, except to parties to whom the Contractor of the City may assign this Agreement in accordance with the specific written consent, any rights to claim damages or to bring suit, action or other proceeding against either the City or the Contractor because of any breach hereof or because of any of the terms, covenants, agreements or conditions herein contained.

16.12 Waiver

No waiver of default by either party of any terms, covenants or conditions hereof to be performed, kept and observed by the other party shall be construed, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other party.

16.13 Contract Made in Colorado

The Parties agree that this Contract was made in accordance with the laws of the State of Colorado and shall be so construed. Venue is agreed to be exclusively in the courts of Pitkin County, Colorado.

16.14 Attorney's Fees

In the event that legal action is necessary to enforce any of the provisions of this Contract, the prevailing party shall be entitled to its costs and reasonable attorney's fees.

16.15 Waiver of Presumption

This Contract was negotiated and reviewed through the mutual efforts of the parties hereto and the parties agree that no construction shall be made or presumption shall arise for or against either party based on any alleged unequal status of the parties in the negotiation, review or drafting of this Contract.

16.16 Severability Clause:

If any provision of the Contract is subsequently declared by legislative or judicial authority to be unlawful, unenforceable, or not in accordance with applicable laws, statutes, and regulations of the United States of America or the State of Colorado, all other provisions of the Contract shall remain in full force and effect.

16.17 Audit and Records

The Contractor shall maintain all data and records pertinent to the Work performed under this Contract, in accordance with generally accepted accounting principles, and shall preserve and make available all data and records until the expiration of three (3) years from the date of final payment under this Contract, or for such longer period, if any, as is required by applicable statute or by other articles of the Contract Documents. The authorized representatives of the U.S. Department of Transportation, Comptroller General of the United States, the State of Colorado and the City shall have access to all such data and records for such time period to inspect, audit and make copies thereof during normal business hours. The Contractor covenants and agrees that it shall require that any Subcontractor utilized in the performance of this Agreement shall permit the authorized representatives of the United States Department of Transportation, the State of Colorado, and the City, to similarly inspect and audit all data and records of said Subcontractors relating to the performance of said Subcontractors under this Agreement for the same time period.

16.18 Audit

16.18.1. **COST OR PRICING DATA:** If the Contractor has submitted cost or pricing data in connection with the pricing of any modification to the Contract, unless the pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Engineer or a representative of the City shall have the right to examine and audit all books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing or performing the modification, in order to evaluate the accuracy, completeness, and currency of the cost and pricing data. In the case of pricing any modification, the authorized representatives of the U.S. Department of Transportation, and the State of Colorado shall have the same rights.

16.18.2. **AVAILABILITY:** The Contractor shall make available at its offices at all reasonable times the materials described in the Contract Documents, for examination, audit, or reproduction, until three (3) years after final payment under the Contract, or for any period, if any, as is required by applicable statute or by other articles of this Contract.

16.18.3. If this Contract is completely or partially terminated, the records relating to the Work terminated shall be made available for three years after any resulting final termination payment.

16.18.4. Records pertaining to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this Contract shall be made available until disposition of such appeals, litigation, or claims.

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