AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Contract Agreement; Shady Island

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Contract with Spallone Construction, Inc. for Shady Island River Park Project

Fiscal Impact:

Submitted by: Liz Mense for John Cattles **Submitter's Email Address:** EMense@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ◉ Required ○ Not Required

Comments:

Reveiwed by: GUNCOUNTY1\mhoyt Discharge Date: 9/11/2020 Certificate of Insurance Required Yes ◉ No ○

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\emense Discharge Date: 9/11/2020

○ Consent Agenda ◉ Regular Agenda ○ Worksession Time Allotted: 5

Agenda Date: 9/15/2020

Revised April 2015

CONTRACT AGREEMENT

1. PARTIES.

This agreement is made and entered into this 14th day of September, 2020, between THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO (hereinafter "Gunnison County"), and Spallone Construction Inc., (hereinafter "Contractor"). For the purposes of this agreement, the address of Gunnison County shall be:

200 E. Virginia Ave.
Gunnison, Colorado 81230

and the address of the Contractor shall be:

808 W. New York Ave., Unit B
Gunnison, CO 81230

2. CONTRACT DOCUMENTS.

The entire contract between the parties shall consist of and include the following Exhibits:

A. General Conditions
B. Scope of Bid items document
C. Contractor's Bid Proposal and Proposal Worksheet, including any amended portions thereof accepted and approved by Gunnison County;
D. Notice to Proceed;
E. Change Order Form;
F. Engineered Construction Drawings "Shady Island River Park- Roadway Improvements" By: SGM Dated: July 2020
G. Engineered Construction Drawings "Shady Island River Park – River Access Drawings" By: McLaughlin Whitewater Dated: June 2020
H. Technical Specifications "Shady Island Technical Specifications" By: McLaughlin Whitewater Dated: June 2020

2.2 The provisions of the Specifications and the Construction Plans shall take precedence over any conflicting provisions in the proposal documents or other Contract Documents.

2.3 In case of discrepancy in the figures in the Construction Plans, the matter shall be promptly submitted to the Owner who shall, in consultation with the engineer, promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense.

3. SCOPE OF WORK.

The Contractor shall furnish all of the necessary supervision, equipment, materials, tools and supplies and perform all of the labor and other services necessary for the SHADY ISLAND BOAT RAMP AND PARK, as referred to in the Invitation to Bid, as described and required by the Contract Documents and referred to herein as the "Project".

All workmen shall be competent and have sufficient skill, knowledge and experience in their class or work and operation of equipment, to perform all work properly and satisfactorily. The Contractor agrees to do the work in a first class, substantial and workmanlike manner to the satisfaction of Gunnison County in strict accordance with the provisions of the Contract Documents, including the Construction Plans and Specifications. Services must be provided according to all applicable federal, state and local laws and regulations.

There shall be bi-monthly on-site meetings with the Contractor and the Owner for inspection and Project updates.

4. TIME OF COMPLETION.

The Contractor shall commence the work required by the Contract Documents in accordance with the provisions of the Project Special Conditions and complete all work by no later than **April 30, 2021**. The Contractor agrees that the completion of the Project within the time as set forth herein is of the essence and agrees to proceed with due diligence, taking all precautions and making all necessary arrangements to insure the completion of the work within the prescribed time period.

If the Contractor refuses or fails to perform the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this agreement, or any extension thereof, or fails to complete said work within such time, Gunnison County may, in the sole discretion of Gunnison County, by written notice to the Contractor, terminate its right to proceed with the work or such part of the work as to which there has been a delay. In such event, Gunnison County may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and use any or all materials, appliance and plant as may be on the site of the work and necessary therefore. Whether or not the Contractor’s right to proceed with the work is terminated, it and its sureties shall be liable under the terms of the Payment Bond and Performance Bond for the Contractor’s refusal or failure to complete the work within the specified time.

The Contractor’s right to proceed shall not be so terminated or the Contractor charged with resulting damage if the Contractor be delayed at any time in the progress of the work by any negligent act of Gunnison County, Gunnison County employee or agent, or by changes ordered in the work, or by strikes, lock-outs, fire, unusual delay in transportation, unavoidable casualties or other causes beyond the Contractor’s control. Inability to purchase the required materials listed in the Contractor’s Proposal shall not be considered to be "beyond the Contractor’s control".

If delay is due to a cause beyond the Contractor’s control, the time of Completion of the work shall be extended for a period equal to such portion of the period of delay as the Contractor shall be able to show it could not have avoided by exercise of due diligence. The Contractor shall advise Gunnison County in writing within forty eight (48) hours

from the beginning of such delay and shall file a written claim for an extension of time within three (3) days after the period of delay has ceased.

5. COMPENSATION.

As consideration for the completion of the Project as required by the Contract Documents, Gunnison County shall pay to the Contractor as follows:

a. once a month, at a date mutually agreeable, the Contractor will compile the quantities of work completed and submit to the Owner for review and approval. An amount equal to ninety percent (90%) of such amount shall be paid. The remaining ten percent (10%) shall be paid upon the issuance of the Certificate of Completion.

b. Invoices for work shall contain a calculation used to determine value of work OR reference to the bid document containing the calculation used to determine the value of work.

c. If materials stored at the Project site are paid for by Gunnison County, title to such materials shall vest in Gunnison County. If such materials are stolen, lost or damaged before their incorporation into the Project, they shall be replaced at the Contractor's sole expense.

6. TAXES.

Construction and building materials sold to the Contractor and subcontractors for use on structures, roads, streets, highways, and other public works owned by Gunnison County are exempt from State sales and use taxes. However, such materials may be subject to any sales taxes imposed by local cities and counties and other local taxing authorities.

The Contractor and subcontractors shall apply to the Colorado Department of Revenue for certificates of exemption indicating that their purchase of construction or building materials is for a public project. Completed copies of the Application for Exemption Certificate with the approval of the Colorado Department of Revenue noted thereon should be delivered to Gunnison County prior to issuance of the Notice to Proceed. The Contractor agrees to secure from each subcontractor a copy of that subcontractor's approved Application and furnish a copy to Gunnison County. Bidders shall not include in proposals the exempt State sales and use taxes.

7. INDEMNIFICATION AND INSURANCE.

The Contractor shall indemnify and hold harmless Gunnison County, and its officers, agents and employees from and against any and all claims, damages, losses, injuries and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the work. Nothing in this Agreement is, or shall be construed to be, a waiver, in whole or part, by Gunnison County of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

The Contractor shall procure and maintain, at its own expense, until completion of all

work and acceptance thereof by Gunnison County, all of the insurance coverage's stipulated below. The Contractor shall furnish Gunnison County with a certificate of such insurance acceptable to Gunnison County. Such certificate shall be issued to Gunnison County, listing Gunnison County as an additional insured, and shall provide for thirty (30) days written notice of cancellation or material change in coverage. The certificate shall be filed prior to the start of any work on the Project.

a. Liability Insurance: The Contractor shall procure and maintain Comprehensive General Liability Insurance, at its own expense, during the life of this Contract, including completed operations, contractual liability and Automobile Liability Insurance affording coverage for all claims for bodily injury including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under this contract, whether such operations be by the Contractor or by subcontractors under it or anyone directly or indirectly employed by the Contractor or by a subcontractor under it. Such insurance shall provide limits of liability of not less than the following: Comprehensive General Liability Insurance or the equivalent for any injury to one person in any single occurrence, Three Hundred Eighty-Seven Thousand and No/100 U.S. Dollars ($387,000.00); and for an injury to two or more persons in any single occurrence, the sum of One Million Ninety-Three Thousand and No/100 U.S. Dollars ($1,093,000.00). The Contractor shall furnish current certificates of insurance which shall include a provision that the insurance will not be canceled without thirty (30) days prior notice to Gunnison County. All such insurance shall be written on a Comprehensive Form of Policy. All such shall name as insured Gunnison County and the Contractor and any and all of its subcontractors.

b. Workman's Compensation Insurance: The Contractor shall procure and maintain Workman's Compensation Insurance at its own expense during the life of this contract, including occupational disease provisions for all of its employees. The Contractor shall also require each subcontractor to furnish Workman's Compensation Insurance, including disease provisions for all of the Contractor's employees, otherwise it accepts full liability and responsibility for subcontractor's employees, and shall indemnify and hold harmless there from Gunnison County, Gunnison County Public Works Department, and its officers, agents and employees. In cases where any class of employees engaged in hazardous work under the agreement at the site of the Project is not protected under the Workman's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate and suitable insurance, deemed by Gunnison County to be suitable, for the protection of its employees not otherwise protected.

c. Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than Three Hundred Eighty-Seven Thousand and No/100 U.S. Dollars ($387,000.00) for any injury to one person in any single occurrence and in an amount no less than One Million Ninety-Three Thousand and No/100 U.S. Dollars ($1,093,000.00) for any injury to two or more persons in any single occurrence.

8. SUBLETTING OF CONTRACT.

The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of the Contract, or of its right, title or interest therein, without the written consent of Gunnison County.

The Contractor may utilize the services of specialty subcontractors on those parts of the Project which, under normal contracting practices, are performed by specialty subcontractors. The Contractor shall not award work to subcontractors in excess of fifty (50) percent of the contract price without prior written approval of Gunnison County.

The Contractor shall be fully responsible to Gunnison County for the acts and omissions of its subcontractors and of entities and persons directly employed by it, as it is for the acts and omissions of persons directly employed by it.

Nothing contained in this agreement shall create any contractual relationship between any subcontractor and Gunnison County.

9. RIGHT OF OWNERSHIP.

Gunnison County retains the right of ownership of all materials and improvements produced pursuant to this Project.

10. GUARANTEES.

The Contractor warrants and guarantees to Gunnison County that all equipment and materials to be furnished under this contract are free from all defects in workmanship and materials. The Contractor shall be responsible to obtain and ensure that all warranties and guarantees provided by manufacturers on equipment and materials furnished under this Contract denominate Gunnison County as an explicit recipient of such warranties and guarantees.

The Contractor shall remove from the Project area all work or materials rejected by Gunnison County or its inspector in Gunnison County's sole discretion for failure to comply with the Contract Documents, whether incorporated in the construction or not. The Contractor shall promptly replace the materials or re-execute the work in accordance with the Contract Documents and without expense to Gunnison County which are or become defective in the sole discretion of Gunnison County, due to such defects within one (1) year after date of receipt by Gunnison County. The Contractor shall also bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

Should the Contractor fail to proceed promptly in accordance with the guaranty, Gunnison County may have in its sole discretion such work performed at the expense of the Contractor.

11. PRE-CONTRACT EXAMINATION.

The Contractor hereby warrants that, before submitting its proposal, the Contractor examined all Construction Documents and became well and fully informed as to the materials and character of work required, the relationship of all the particular parts of the

work and it visited and inspected the site, observing and examining the conditions existing.

After execution of the agreement, no consideration will be granted for any misunderstanding of the materials to be furnished or the work to be done, it being mutually understood that the tender of the proposal carried with it an agreement to this end and all other conditions mentioned in the Contract, and implied a full and complete understanding of them and all Construction Documents, drawings, notes, indications, and requirements.

Should anything be omitted from the Construction Documents necessary to the proper completion of the work herein described, it shall be the duty of the Contractor to so notify Gunnison County before signing the agreement, and in the event of the failure of the Contractor to give such notice, it shall make good any damage or defect in its work caused thereby without extra charge. No allowance will be made for lack of full knowledge of all conditions, except such underground conditions as are determined after commencement of the work and were unknown to the Contractor.

12. ACCESS AND INSPECTION.

Gunnison County and its designated representative shall at all times have access to the work. The Contractor shall provide proper facilities for such access and for inspection of the work. The representative designated by Gunnison County is, in the first instance, the judge of the performance of the contract as it relates to compliance with the Construction Plans and Specifications, quality of workmanship and material. All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the Contract Documents.

Gunnison County's representative may order that portions of the work be uncovered, exposed or made available for observation, inspection or testing. The Contractor shall provide all necessary labor, materials, tools and equipment to comply with the inspectors' order. If such portion of the work is determined to be defective, the Contractor shall bear all costs involved, including the cost of reconstruction. If such portion of the work is determined to be in substantial compliance with the Contract Documents, the Contractor shall be compensated in accordance with Section 16 (Changes and Additional Work).

13. MEASUREMENTS.

The Contractor shall verify all measurements at the site. All dimensions shown of existing work and all dimensions required for work that is to connect with work now in place shall be verified by the Contractor by actual measurement of the existing work. Any discrepancies between the contract requirements and the existing conditions shall be referred to Gunnison County's representative before any work affected thereby has been performed. No compensation will be allowed for differences between actual dimensions and those indicated on the Construction Plans or related documents. Differences shall be submitted to Gunnison County's Representative for consideration before proceeding with work, and in the event of the failure of the Contractor to so notify Gunnison County's Representative, the Contractor shall make good any damage or defect in its work caused thereby, without extra charge to Gunnison County.

14. NON-DISCRIMINATION.

In connection with performance of work under this agreement, the Contractor agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, creed, sex, color, national origin or ancestry; and further agrees to insert the foregoing provision in all subcontracts hereunder.

15. PROTECTION OF WORK AND PROPERTY.

The Contractor shall continuously maintain adequate protection of its work and materials, secure the property from trespass and entry by the public, and protect the property from injury or loss arising in connection with the agreement and adequately protect adjacent property as provided by law and the Contract Documents.

The Contractor shall at all times conduct its work so as to assure the least possible obstruction to traffic, river users, and adjacent residents. The safety and the protection of persons and property of the general public and residents along the street, highway and areas adjacent to the work shall be provided for by the Contractor.

The Contractor shall make good any damage, injury or loss, except such as may be:

a. directly due to errors in the Contract Documents;

b. directly caused by agents or employees of Gunnison County; or

c. directly due to causes beyond the Contractor's reasonable control and not due to its fault or negligence.

The Contractor shall take all necessary precautions for the safety of employees, subcontractors and the public on the work and shall comply with all applicable provisions of federal, state, municipal, county or any other political subdivision's safety laws and building codes to prevent accident or injury to persons on, about or adjacent to the premises where the work is being performed. It shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workmen and the public and shall take all other action necessary to assure the safe passage of pedestrians and automobiles.

16. CHANGES AND ADDITIONAL WORK

Gunnison County may in its sole discretion order changes within the scope of the work without invalidating the contract. Such changes may be made without notice to the Surety and the Surety shall not be released there from. Such changes shall not require work beyond the geographical limits of the original project unless the contract is modified.

No deviations from the Construction Documents will be permitted except those specifically authorized by a written change order issued by the engineer. Any completely executed change order shall be considered authorization to proceed with the additional

work. If the Contractor proceeds without this authorization, it shall forfeit any claim for additional compensation for the work so performed.

Payment for work occasioned by these changes shall be made in accordance with the provisions set forth below. The completion time shall be adjusted accordingly.

If Gunnison County deems it expedient to correct damaged work or work not performed in accordance with the agreement, an equitable deduction from the contract price may be authorized by change order.

17. FINAL INSPECTION, ACCEPTANCE, AND SETTLEMENT.

When the work is complete and ready for final inspection, the Contractor shall file a written notice with Gunnison County's representative that the work, in the opinion of the Contractor, is complete under the terms of the agreement.

Within ten (10) days after the Contractor files written notice that the work is complete, the Owner and the Contractor shall make a "final inspection" of the project to determine whether the work has been completed in accordance with the Contract Documents. A final list shall be made by the Owner in sufficient detail to fully outline to the Contractor:

1. Work to be completed, if any.

2. Work not in compliance with the Construction Plans, if any.

3. Unsatisfactory work for any reason, if any.

Copies of the list will be counter-signed by the Owner and will then be transmitted to the Contractor.

Gunnison County will not authorize final payment until all items on the list have been completed, a certificate of completion issued, and the notice of contractor's settlement published.

Prior to receiving final payment for completion of the Project, the Contractor shall provide an affidavit stating and ensuring that all labor and materials related to this Project have been paid for in full.

The Contractor shall deliver to Gunnison County all guarantees and warranties, all statements to support State sales and use tax refunds, and one (1) set of as-built drawings showing all job changes.

If any unpaid claim for labor, materials, supplies, equipment or damages to third parties is filed before payment in full of all sums due the Contractor, Gunnison County shall withhold from the Contractor sufficient funds to insure the payment of such claim until the same shall have been paid or withdrawn, such payment or withdrawal evidenced by filing a receipt in full or an order for withdrawal signed by the claimant or its duly-authorized agent or assignee.

18. CANCELLATION OF CONTRACT.

Failure of the Contractor to comply with any of the requirements of the agreement and the Specifications may be considered as evidence of the inability on the part of the Contractor to maintain the quality and service standards deemed necessary and shall be sufficient cause for the cancellation of the agreement and the initiating of legal action against the Performance Bond of the Contractor.

29. VENUE.

Venue for any and all legal actions regarding the transaction covered herein shall lie in the District Court in and for the County of Gunnison and State of Colorado. This Contract Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

20. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, proposals, negotiations and representations pertaining to the obligations to be performed hereunder.

21. MISCELLANEOUS.

(a) SEVERABILITY. If any clause or provision of this Agreement shall be held to be invalid in whole or in part, then the remaining clauses and provisions, or portions thereof, shall nevertheless be and remain in full force and effect.

(b) AMENDMENT. No amendment, alteration, modification of or addition to this Agreement shall be valid or binding unless expressed in writing and signed by the parties to be bound thereby.

(c) NO WAIVER OF GOVERNMENTAL IMMUNITY. Nothing in this Agreement is, or shall be construed to be, a waiver, in whole or part, by Gunnison County of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

(d) IMMIGRATION COMPLIANCE CERTIFICATION. Contractor certifies that it does not and will not knowingly contract with or employ illegal aliens to work under this contract. Contractor further certifies that it has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this contract. Finally, Contractor certifies that it has attempted to verify the eligibility of its employees and subcontractors to work through the Basic Pilot Employment Verification Program (operated by the Department of Homeland Security).

22. SOLE SOURCE CONTRACTS.

If the Contractor has entered into a sole source contract or contracts with the State of Colorado or any of its political subdivisions as defined in Article XXVIII of the Colorado Constitution which including this contract in the aggregate on an annual basis are equal to or exceed the amount of $100,000, then the following provisions apply:

(a) Because of a presumption of impropriety between contributions to any campaign and sole source government contracts, Contractor, on behalf of itself , any person who controls ten percent or more of the shares of or interest in the Contractor's company, and the Company's officers, directors and trustees (collectively, the "Contract Holder") shall contractually agree, for the duration of the contract and for two years thereafter, to cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on behalf of the Contractor Holder or on behalf of his or her immediate family member and for the benefit of any political party or for the benefit of any candidate for any elected office of the state or any of its political subdivisions.

(b) The Contract Holder makes or causes to be made any contribution intended to promote or influence the result of an election on a ballot issue, the Contract Holder shall not be qualified to enter into a sole source government contract relating to that particular ballot issue.

(c.) The parties agree that if a Contract Holder intentionally violates sections 15 or 17(2) of Article XXVIII of the Colorado Constitution, as contractual damages that Contract Holder shall be ineligible to hold any sole source government contract, or public employment with the state or any of its political subdivisions, for three years.

(d) These provisions shall not apply to the extent they have been enjoined or invalidated by a court of competent jurisdiction.

23. INDEPENDENT CONTRACTOR.

(a) In carrying out its obligations and activities under this Agreement, Contractor is acting as an independent contractor and not as an agent, partner, joint venture or employee of Gunnison County. Contractor does not have any authority to bind Gunnison County in any manner whatsoever.

(b) Contractor acknowledges and agrees that Contractor is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County. Further, Contractor is obligated to pay federal and state income tax on any moneys paid it related to the services.

Witness our hands on the date first set forth above.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By_____

Name/ Title

CONTRACTOR

By_____

Name/ Title

EXHIBIT A

GENERAL CONDITIONS

1. SCOPE: The Contract conditions following are general in scope and may refer to conditions not pertinent to this Contract. Any provisions in these General Conditions which are in conflict with the Special Construction Provisions or which are not applicable to the Work performed under this Contract will have no meaning and may be disregarded.

2. DEFINITIONS:

A. The Contract Documents consist of the Instructions to Bidders, Proposal, Agreement, Performance and other Bonds, the General Conditions, Special Construction Provisions, the Drawings and Specifications, including all addenda and change orders thereof incorporated in the documents before their execution. These documents form the Contract.

B. When the words Owner or Contractor are used, these shall mean the corporations, persons, partnerships, or public entities indicated in the Agreement.

C. Wherever in this Contract the word Engineer is used it shall be understood as referring to SGM or Merrick & Company, as defined by the scopes described in the Construction Documents provided by each SGM and Merrick & Company; acting personally or through an assistant duly authorized in writing for such act by the Engineer.

D. When the word Bidder is used, it shall mean the person, partnership, or corporation submitting a proposal for the performance of the work in accordance with these Contract Documents.

E. When the word Surety is used, it shall mean the entity capable under the laws of the state where the project is located, and acceptable to the Owner, which is bound with and for the Contractor for the payment of money if the Contractor fails to meet its obligations with respect either to the performance of the work, or the payment to all those furnishing labor, materials, or equipment in connection with the performance of the work.

F. The term Work of the Contractor or Subcontractor includes all of the services, management, supervision, labor, materials, goods, administrative support, supplies, equipment, transportation, or other facilities necessary to complete the Contract.

G. When in the Specifications the words “as directed,” “as required,” “as permitted,” or words of like meaning are used, it shall be understood that the direction, requirement, or permission of the Engineer is intended. Similarly, the words “approved,” “acceptable,” “satisfactory,” shall refer to approval by the Engineer.

3. INTENT OF DRAWINGS AND SPECIFICATIONS: The Contract Documents are intended to be complementary. Work called for on any Drawing and not mentioned in the Specifications, or Work described in the Specifications and not shown on any Drawing, is to be regarded as included under this Contract, the same as if set forth in the Specifications and exhibited on the Drawings.

The prices shown in the Contract Documents shall include the costs of all labor and materials, equipment and services, and all other expenses necessary for the complete

execution of the Work contracted for, so that it will function as a working unit of the facility of which it will be a part.

In interpreting the Contract Documents, words describing materials or work having a well-known technical or trade meaning, unless otherwise specifically defined, shall be construed in accordance with such well-known meaning recognized by engineers, architects, and the trades.

4. AVAILABILITY OF DRAWINGS AND SPECIFICATIONS: Drawings and Specifications shall be included in the Contract Documents.

The Contractor shall keep at the job site one copy of all Drawings and Specifications for the work, in good order, available to the Engineer and to its representatives.

All drawings, specifications, and copies thereof furnished by the Engineer are its property. They are not to be used on other work and, with the exception of the signed Contract set, are to be returned to it on request, at the completion of the Work.

5. SUPPLEMENTAL DRAWINGS: When required by the Specifications or Drawings, and for all undetailed material to be fabricated, the Contractor shall make detailed shop drawings to amplify the Drawings referred to in the Contract before proceeding with the work. Sets of prints of such drawings shall be submitted to the Engineer as follows: electronic copy or three prints to be retained by the Engineer, plus one or more prints, as required by the Contractor (as established at the inception of the Contract) to be returned to the Contractor. If no exceptions are taken, such sets of prints will be marked "No Exceptions Taken." If changes or corrections are necessary, such changes or corrections will be noted, and the Contractor shall resubmit complete sets of prints of corrected drawings. The review by the Engineer of the Contractor's drawings relates only to their general conformity with the Drawings and Specifications and does not guarantee detail dimensions and quantities, nor does it relieve the Contractor from the basic requirements and intent of the Contract Documents. The Contractor is responsible for dimensions, which shall be confirmed and correlated at the job site.

6. MATERIALS, WORKMANSHIP, AND EMPLOYEES: Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation, and other facilities necessary for the execution and completion of the Work.

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality.

Prior to procurement, the Contractor shall furnish the Engineer, for its review, the name of the manufacturer of machinery, other equipment, and materials which it contemplates incorporating in the Work. The Contractor shall also furnish information on capacities, efficiencies, sizes, and other information as may be required by the Engineer. Samples shall be submitted for review when requested.

None but foremen and workmen skilled in the work assigned to them shall be employed on work requiring special qualifications. The Contractor shall discharge from its service, any disorderly, dangerous, insubordinate, or incompetent person employed on the Work.

7. CONSTRACTORS REPRESENTATIONS: In order to induce the Owner to enter into this Contract, the Contractor hereby makes the following representations and warranties to the Owner:

A. The Contractor has familiarized itself with the nature and extent of the Contract Documents, the proposed Work, and the locality. To the extent the Contractor deems necessary, the Contractor has inspected the sites and all surrounding locations whereupon it may be called to perform its obligations under this Contract and is familiar with the requirements of the Work as they relate to the locality and the physical and site conditions and accepts them for such performance.

B. The Contractor has familiarized itself with all federal, state, and local laws, ordinances, rules, and regulations that in any manner may affect cost, progress, or performance of the Work. The Contractor shall comply with all applicable federal, state, and local laws.

C. The Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work and the Contractor has provided the Owner with written notice of all conflicts, errors, or discrepancies that it has discovered in the Contract Documents.

D. The Contractor has made or caused to be made examinations, investigations, and tests and studies of such reports and related data as it deems necessary for the performance of Work for the compensation provided herein and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports, or similar data are or will be required by the Contractor for such purposes.

E. The Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the Contract Documents.

F. The Contractor has the required authority, ability, experience, licenses (if any), certifications (if any), approvals (if any), permits (if any), insurance, skills, and capacity to, and shall, perform the Work in a manner consistent with all provisions of this Contract. The Contractor shall perform the Work in accordance with the highest standards of care, skill, and diligence in Contractor's industry, trade, or profession and in the sequence and manner set forth in this Contract. Further, all employees of the Contractor employed in performing any portion of the Work have the ability, experience, licenses (if any), certifications (if any), approvals (if any), permits (if any), insurance, skills, and capacity required to perform the Work assigned to them.

G. The Contractor shall perform and complete the Work for the compensation as provided in this Contract.

H. The execution, delivery, and performance of this Contract and the consummation of the transactions contemplated hereby have been duly authorized by appropriate representatives of the Contractor.

I. This Contract constitutes the legal, valid, and binding obligation of the Contractor and is enforceable in accordance with its terms.

J. The Contractor has all requisite power to own its properties and assets and to carry on its business as now conducted or proposed to be conducted and it is duly qualified, registered to do business, and in good standing in the State of Colorado.

8. <u>ROYALTIES AND PATENTS</u>: If the Contractor uses any design, device, material, or process covered by letters of patent or copyright in the construction of the

Work under this Contract, the use of which has not been specified or required by the Drawings and Specifications, then the right for such use shall be provided for by a suitable legal agreement with the patentee or owner. A copy of this agreement shall be filed with the Owner. The Contractor and the Surety shall indemnify and save harmless the Owner from any and all claims for infringement on any such patented design, device, material, process or any trademark or copyright during the prosecution or after the completion of the Work.

If any design, device, material, process, or product of a particular manufacturer covered by letters of patent or copyright is specified for use by the Drawings and Specifications, the Owner shall be responsible for any claims for infringement by reason of the use of any such design, device, material, process, or product of a particular manufacturer, but the Contractor shall pay any royalties or license fees thereof.

9. OTHER CONTRACTS: The Owner reserves the right to let other Contracts in connection with the Work. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall coordinate its work with theirs.

10. LICENSES, PERMITS, REGULATIONS: Building permits and licenses of a temporary nature necessary for the prosecution of the Work shall be secured and paid for by the Contractor. Zoning, land use permits, licenses, and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified. The Owner shall furnish all legal descriptions of land boundary surveys unless otherwise specified.

The Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the Work as drawn and specified. If the Contractor observes that the Drawings and Specifications are at variance therewith, it shall promptly notify the Engineer in writing and any necessary changes shall be adjusted as provided in the Contract for changes in the Work. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules, and regulations without such notice to the Engineer, it shall bear all costs arising therefrom.

11. PROTECTION OF WORK AND PROPERTY, ACCIDENT PREVENTION, DEFENSE AND INDEMNITY:

A. Protection of Work and Property: The Contractor shall continuously maintain adequate protection of all its Work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. It shall make good any such damage, injury, or loss except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner. It shall adequately protect adjacent property as herein provided. It shall provide and maintain all passageways, guard fences, lights and other facilities for protection as required by public authority or local conditions.

The Contractor shall be responsible for protection of all public and private property on and adjacent to the site of the Work. It shall use every precaution necessary to prevent damage to pipes, conduits, and other underground structures and to overhead wires. It shall protect carefully from disturbance or damage all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed. When 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 in the execution of the Work, or in consequence of the non-execution thereof of its part, such damaged property shall be restored by the Contractor at its own expense to a condition similar or equal to that existing before such damage or injury.

B. Ownership of Materials and Risk of Loss: The Owner shall be deemed the owner of all materials brought onto the site of the Work and/or otherwise incorporated into the Work at such time as the Owner has paid for those materials, and shall be deemed the owner of all materials paid for by the Owner regardless of whether those materials were brought onto the site of the Work and/or otherwise incorporated into the Work, unless the Owner rejects such materials in writing. Until final acceptance, the risk of loss or damage to the Work and all materials regardless of whether those materials were brought onto the site of the Work and/or otherwise incorporated into the Work shall reside with the Contractor.

C. Safety: In accordance with generally accepted construction practices and the requirements of Local, State, and Federal safety regulations, the Contractor will be solely and completely responsible for conditions of the job site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours. The duty of the Engineer to conduct construction observation of the Contractor's performance is not intended to include review of the adequacy of the Contractor's and Subcontractor's safety measures, in, on, or near the construction site.

The Contractor shall at all times, whether or not specifically directed by the Engineer, take necessary precautions to ensure the protection of the public. The Contractor shall furnish, erect, and maintain, at its own expense, all necessary barricades; suitable and sufficient red lightsand construction signs; provide a sufficient number of watchmen; and take all necessary precautions for the protection of the Work and safety of the public through or around its construction operations.

D. Defense and Indemnity: Subject to the provisions of Section 13-50.5-102(8), Colorado Revised Statutes, to the extent applicable to this Contract, the Contractor shall indemnify, defend, and hold harmless the Owner and each of its directors, employees, agents, and consultants, including, but not limited to, the Engineer, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys' fees), and liabilities, of, by, or with respect to third parties ("Any Claims") to the extent they arise from or may be alleged to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Contractor or any of its subcontractors, material suppliers, agents, representatives, or employees, or the agents, representatives, or employees of any subcontractors or material suppliers (collectively the "Contractor/Related Parties"), in connection with this Contract and/or the Contractor's Work hereunder, including, without limitation, Any Claims which cause or allow to continue a condition or event which deprives the Owner or any of its directors or employees of its sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., Colorado Revised Statutes. Provided, however, that the Contractor shall not be liable for any claim, loss, damage, injury, or liability arising out of the negligence of the Owner, its directors, employees, agents, and consultants.

The obligations of the indemnifications extended by the Contractor to the Owner under this Section shall survive termination or expiration of this Contract.

The Contractor's defense, indemnification, and insurance obligations shall be to the fullest extent permitted by law and nothing in this Contract shall be construed as

requiring the Contractor to defend in litigation, indemnify, or insure the Owner against liability for damage arising out of the death or bodily injury to persons or damage to property caused by the negligence or fault of the Owner or any third party under the control or supervision of the Owner.

To the extent the terms of Section 13-50.5-102(8), Colorado Revised Statutes, are applicable to this Contract, the Contractor and the Owner hereby agree for the purposes of this Section that: (i) "the degree or percentage of negligence or fault attributable" to the Contractor/Related Parties as used in Section 13-50.5-102(8)(a), Colorado Revised Statutes, shall be conclusively determined by a trial court at the state or federal level and (ii) the term "adjudication" used in Section 13-50.5-102(8)(c), Colorado Revised Statutes, shall mean a trial court order at the state or a federal level.

Insurance coverage requirements specified in this Contract in no way lessen or limit the obligations of the Contractor under the terms of this Section. The Contractor shall obtain, at the Contractor's own expense, additional insurance, if any, required to satisfy the terms of this Section.

12. SURVEYS, LINES AND GRADES: Building base lines, pipeline location points of intersection, and permanent or temporary bench marks shall be established by the Engineer. For this work, the Contractor shall furnish, without charge, competent men from its force and such tools, stakes, and other materials as the Engineer may require for the proper staking out of the Work, for making measurements and surveys, and for establishing temporary or permanent reference marks. All other survey, layout, or measurement work shall be the responsibility of the Contractor. This shall include, but not be limited to, batter boards, grade stakes, offset stakes, structure layout, elevation transfer stakes, and any other surveys required to accomplish the work.

All Work done under this Contract shall be done to the lines, grades, and elevations shown on the Drawings. The Contractor shall keep the Engineer informed, a reasonable time in advance, of the times and places at which it wishes to do Work, in order that lines and grades may be furnished and necessary measurements for record and payment may be made with the minimum of inconvenience to the Engineer and of delay to the Contractor.

Any Work done without being properly located and established by base lines, offset stakes, benchmarks, or other basic reference points located, established, or checked by the Engineer, may be ordered removed and replaced at the Contractor's cost and expense.

All stakes, benchmarks, and other survey points shall be preserved by the Contractor. In case of their destruction by it or its employees, they will be replaced at the Contractor's expense.

13. CHANGES IN THE WORK: The Owner may, at any time during the progress of the Work, make alterations of, additions or deletions to, or deviations from the Work provided for in the Agreement. The Work, as changed, shall be performed as if originally specified and shall in no way invalidate the Contract or any bond provided by the Contractor. Any difference in cost shall be added to or deducted from the amount of the Contract, as the case may be.

The Owner shall not authorize the issuance of any change order or other form of order or directive requiring additional compensable Work to be performed which Work causes the aggregate amount payable under the Contract to exceed the amount

appropriated for the original Contract, unless the Contractor is given written assurance by the Owner that lawful appropriations to cover the costs of the additional Work have been made or unless such Work is covered under a remedy-granting provision in the Contract.

Adjustments in the amounts to be paid to the Contractor on account of changed Work shall be determined by one of the following methods in the order listed, the earlier listed being used unless impractical:

A. Unit prices submitted in the Contractor's Proposal;

B. Unit prices agreed upon;

C. Acceptable lump sum;

D. Actual cost as defined below:

When, in the judgment of the Owner, it is impracticable because of the nature of the changed Work, or when the Contractor and Owner cannot agree to fix the amount to be paid for it by any of the above methods (a), (b), or (c), the amount payable shall be adjusted based on the following methodology. This methodology shall apply to all effort whether it be by the prime Contractor or by any Subcontractor. Apportionment of overhead and profit between or among the Contractor and any Subcontractor shall be determined and agreed upon by those parties. The methodology involves determination of (1) direct charges, (2) overhead, (3) equipment, (4) actual cost, and (5) profit.

(1) Direct Charges. Direct charges shall include all materials and equipment incorporated into the project, all expenditures for materials furnished and used by the Contractor, and labor costs (salary paid to workers plus direct benefits), including the working foreman in direct charge of the specific operations.

(2) Equipment. Costs for use or rental of equipment (other than small tools) which may be required shall be based on rental rates for equipment as previously disclosed and agreed upon by the Owner. Rates shall not exceed market rates for the area and equipment type.

(3) Actual Cost. Actual cost shall be the computed total of the direct charges, overhead, and equipment costs, as defined above.

(4) Profit. The allowable profit shall be equal to ten (10) percent of the actual cost, as defined above. If the work is subcontracted, the total profit shall be ten(10) percent. When the changed Work results in a net decrease of the Work, the amount payable shall be adjusted according to the same methodology described above, except that the allowable profit shall not be included. The Contractor must notify the Engineer in writing before doing any work which it considers additional and which would require additional compensation.

Payroll records, receipts, and other pertinent records which, in the judgment of the Owner, are required for the establishment of “actual cost,” shall be provided to the Owner by the Contractor. Items 1 through 5 shall be the exclusive items to be paid for by the Owner for any change or claim asserted by the Contractor for any reason where methods a, b or c above are not used. The Contractor waives the right to claim any additional items such as home office overhead, not listed expressly in items 1 through 5.

In case any orders or instructions, either oral or written, appear to the Contractor to involve extra Work for which, in its opinion, it should receive extra compensation, it shall immediately make a written request to the Owner for a written order authorizing such extra Work. Should a difference of opinion arise as to what does or does not constitute extra Work or concerning the payment thereof, and the Owner insists on its performance, the Contractor shall proceed with the work after making a written request for a written change order and shall keep an accurate account of the direct charges as provided for in Method "d" in the foregoing paragraph. The matter will be submitted to the Owner for final determination as to whether or not the work at issue constitutes work in addition to that already set forth in the Contract for which a change order should be issued.

The Owner shall have authority to make minor changes in the work, not involving extra cost. No claim for additional payment shall be valid unless authorized in writing as above provided.

14. INSURANCE: The Contractor shall acquire and maintain in full force and effect, during the entire term of the Contract, inclusive of the Warranty Period, if any, and extensions of the Contract term, if any, the minimum insurance coverages and limits set forth in this Section in order to protect the Owner including its directors, officers, employees, agents, and the Contractor from claims that arise out of or result from the operations under this Contract by the Contractor or by a subcontractor of the Contractor or anyone acting on their behalf or for which they may be liable. Failure to maintain the insurance policies, or to provide evidence of renewal of the required policies, is a material breach of this Contract. All insurance shall be primary insurance and non-contributory with respect to all other available insurance sources and shall be placed with insurance carriers licensed in the State of Colorado with an A.M. Best and Company rating of no less than A-(X) or as otherwise accepted in writing by the Owner. The Owner and its respective directors, officers, employees, and agents shall be named as additional insureds as provided in this Section. The Contractor shall request its insurer to amend or endorse its insurance policy to provide that the insurer will give the Owner sixty (60) days' written notice prior to the cancellation, non-renewal, or material modification of any policy of insurance obtained to comply with this Section. In addition, the Contractor shall immediately upon receipt provide the Owner a copy of any notice of cancellation, non-renewal, or material modification of any policy of insurance obtained to comply with this Section.

A. Minimum Insurance Coverages: The Contractor shall procure and maintain, at its own expense, during the Contract time, insurance as hereinafter specified:

(1) Workers' Compensation Insurance. Workers' compensation insurance with coverage in accordance with applicable law, including employers' liability with minimum limits of One Million Dollars ($1,000,000.00) each accident, One Million Dollars ($1,000,000.00) Disease-Policy Limit, and One Million Dollars ($1,000,000.00) Disease each employee.

(2) Commercial General Liability Insurance. Commercial general liability insurance with coverage in the amount of One Million Dollars ($1,000,000.00) per occurrence; Two Million Dollars ($2,000,000.00) annual aggregate; and One Million Dollars ($1,000,000.00) products and completed operations aggregate. Coverage shall be on an ISO Form GL-001 (4/2013 edition or equivalent), shall include all major divisions of coverage, and shall be on a comprehensive basis, including:

a. Premises and operations;
b. Personal injury liability;
c. Contractual liability;
d. Property damage; and
e. Independent contractors' coverage.

In addition, the Contractor shall provide commercial liability insurance endorsements as follows:
a. Endorsement CG 20 37 (4/2013 edition, or equivalent) - products and ongoing and completed operations; (construction, installation, repair – operational equipment/property only)
b. Explosion, collapse, and underground (construction only);
c. Contractors' limited pollution coverage (construction only);
d. Endorsement CG 25 03 (dated as of 5/2009) or equivalent; gen

(3) Commercial Automobile Liability Insurance. Commercial automobile liability insurance with coverage in the amount of One Million Dollars ($1,000,000.00) combined single limit bodily injury and property damage, each accident covering owned, leased, hired, and non-owned vehicles, including employee vehicles.

(4) Builder's Risk Insurance. A blanket builder's risk insurance policy with coverage on an "all risk" basis for the project including but not limited to: (1) coverage for any ensuing loss from faulty workmanship or defective materials; (2) coverage against damage or loss caused by earth movement, flood, fire, and extended coverage perils, theft, vandalism, and malicious mischief, collapse and false work, including increased cost of construction, architects fees and expenses, soft costs, and operational testing; (3) coverage for removal of debris and demolition; (4) transit coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; (5) policy is to include as insured the Owner, the Contractor, and all subcontractors; and (6) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the site of the Work. Such insurance shall be on a "completed value" form insuring probable maximum loss, all on a replacement cost basis.

(5) Contractor's Pollution (Environmental) Liability. Contractor's pollution (environmental) liability insurance with coverage written on an occurrence or claims-made policy form, with a minimum One Million Dollars ($1,000,000.00) per occurrence limit of liability. Policy shall insure for bodily injury, property damage, defense, and environmental cleanup as a result of pollution conditions.

(6) Excess Liability Coverage. Excess liability insurance with coverage, beyond that of the general liability, automobile liability and employers' liability coverages required herein, in the amount of at least Two Million Dollars ($2,000,000.00) combined single limit bodily injury and property damage, per occurrence, and Two Million Dollars ($2,000,000.00) annual aggregate. Separate aggregates need to be structured as found in the underlying coverages.

B. Waiver of Subrogation: The Contractor hereby waives all rights against (1) the Owner and any of its subcontractors, sub-subcontractors, agents, and employees, and (2) the Architect, if any, and the Engineer for damages covered by fire or other causes of loss to the extent covered by property insurance. The Contractor shall require of its subcontractors, sub-subcontractors, agents, and employees of any of them, by appropriate agreements similar waivers in favor of the Owner. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would

otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurance interest in the property damaged.

C. Additional Insured Parties: The Owner and its directors, officers, employees, and agents, and the Engineer shall be named as additional insureds by Endorsement ISO CG 20 10 (4/2013 edition or equivalent) on all policies (with the exception of workers' compensation insurance and, if required under this Contract, professional liability coverage). If professional liability coverage is required under this Contract, it shall be endorsed to include contractual liability coverage, insured contract coverage, or similar coverage for the professional services performed under this Contract.

D. Certificates of Insurance: Prior to commencing any Work under the Contract, the Contractor shall provide the Owner with a certificate or certificates evidencing the coverages identified on the face of the certificate with the contract number for this Contract, the name of the project, and copies of the additional insured endorsement and all other required endorsements If the coverage required expires during the term of this Contract, the Contractor shall provide replacement certificate(s) evidencing the continuation of the required policies at least fifteen (15) days prior to expiration.

E. Additional Provisions: Each liability policy including, where required, umbrella/excess liability policy is to contain, or be endorsed to contain, the following:

a. The Contractor's insurance coverage shall be primary insurance with respect to the Owner and its directors, officers, employees, and agents. Any insurance maintained by the Owner or its directors, officers, employees, and agents shall be in excess of the Contractor's insurance and shall not contribute to it.

b.

The Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to limits of liability.

c. No special exclusions that specifically name certain work activities, products, or services the Contractor is responsible for performing under the Contract may be included as not being insured under the policy.

F. Compliance with Reporting Provisions: The Contractor shall comply with reporting provisions or other conditions of the policies required herein, and a failure to do so constitutes a breach of this Contract. Any failure on the part of the Contractor to comply with reporting provisions or other conditions of the policies shall not affect the obligation of the Contractor to provide the required coverage to the Owner and its directors, officers, employees, and agents.

G. Claims-Made Policies: If any policy is a claims-made policy, the policy shall provide the Contractor the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than two (2) years. The Contractor agrees to purchase such an extended reporting period if needed to ensure continuity of coverage. The Contractor's failure to purchase such an extended reporting period as required by this Section shall not relieve it of any liability under this Contract. If the policy is a claims-made policy, the retroactive date of any such policy shall be not later than the date this Contract is executed by the parties hereto. If the Contractor purchases a subsequent claims-made policy in place of any prior claims-made policy, the retroactive date of such subsequent policy shall be no later than the date this Contract is executed by the parties hereto.

H. No Limitation on Other Obligations: NO LIMITATION ON OTHER OBLIGATIONS. The procuring of required policies of insurance shall not be construed to limit the Contractor's liability hereunder or to fulfill the indemnification provisions and requirements of this Contract. The insurance obligations set forth in this Section are minimum coverage and limit requirements only. To the extent the Contractor maintains coverage and/or limits greater than these minimum requirements; such greater insurance coverage shall be applicable to the Work and to any applicable liabilities and obligations of the Contractor under this Contract. By specifying minimum insurance requirements, the Owner does not assert or recommend such insurance as being adequate for the Work performed under this Contract. The Contractor shall be solely responsible for any deductible losses under the policy.

15. WARRANTIES FOR THE WORK:

A. The Contractor's warranties in respect of the Work are as follows: the Contractor warrants to the Owner that the Work shall be fit for its intended purposes; that materials and equipment furnished under this Contract shall be of good quality and new and that all Work shall be free from defects; and that all Work shall meet all of the requirements of this Contract (the "Warranties"). The Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

B. The Warranties shall commence on the date all punch list items have been corrected and the Owner has acknowledged final acceptance. Notwithstanding the foregoing provisions of this section, if this Contract is terminated prior to completion of the Work, the Warranties in respect of all Work performed under this Contract by the Contractor prior to such termination shall be deemed to commence on the date immediately preceding the effective date of such termination.

(4)

C. If at any time within one (1) year after the date on which the Warranties commenced (the "Warranty Period"), any portion of the Work is found to be not in accordance with the Warranties, the Contractor shall correct it, or direct its subcontractor to correct it, in the manner and time-frame provided in the written notice from the Owner to do so.

(5)

D. Any Work not conforming to the Warranties, including substitutions not properly approved and authorized, shall be considered defective and may be rejected by the Owner.

(6)

E. The Contractor shall promptly correct any Work rejected by the Owner for failing to conform to the Warranties. The Contractor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for the Owner's expenses made necessary thereby. If the Contractor fails to take action to correct rejected Work, fails to use diligence in completing such corrections, or if the Contractor has attempted to correct the rejected Work but been unable to do so, the Owner may, in addition to any other rights and remedies available at law or in equity, elect to retain a third party to remedy the nonconformance at the Contractor's expense or remedy the nonconformance with the Owner's personnel at Contractor's expense.

(7)

F. The Contractor shall obtain from all subcontractors or vendors and cause to be extended to the Owner prudent representations, warranties, guarantees, and obligations with respect to design, materials, workmanship, equipment, tools, and supplies furnished by such subcontractors or vendors. All representations, warranties, guarantees, and obligations of subcontractors or vendors shall be written so as to: (i) survive all the Owner and the Contractor inspections, tests, and approvals; and (ii) run directly to and be enforceable by the Owner, its successors, and assigns. The Contractor shall deliver to the Owner duly executed copies of all agreements containing such representations, warranties, guarantees, and obligations immediately upon their execution. The Contractor shall assign to the Owner, at no additional cost, all of the Contractor's rights and interest in all extended warranties which were received by the Contractor which exceed the applicable Warranties. Such subcontractor/vendor warranties shall not in any way derogate the Contractor's own representations and warranties (including the Warranties) or the Contractor's other obligations with respect to all of the Work.

G. Upon receipt from the Owner of a notice of failure of any of the Work to satisfy any subcontractor or vendor warranty during the Warranty Period, the Contractor shall be responsible for enforcing or performing any such subcontractor or vendor warranty. During the Warranty Period, the cost of any equipment, material, labor, or shipping shall be for the account of the Contractor if such cost is covered by such a Warranty and the Contractor shall be required to replace or repair nonconforming Work, equipment, material, or workmanship furnished by subcontractors or vendors.

(8)

H. Commencing on the expiration of the Warranty Period, the Owner may enforce subcontractor or vendor warranties, but the Contractor shall

provide reasonable assistance to the Owner in enforcing such representations, warranties, and guarantees, when and as reasonably requested by the Owner.

16. PAYMENT, PERFORMANCE, AND WARRANTY BOND:
(9)

A. The Contractor shall be required by the Owner to furnish a Payment, Performance, and Warranty Bond on the forms furnished by the Owner in an amount not less than the full amount of the Contract price. These Bonds shall be security for the faithful performance of the Contract, for the payment of all persons performing labor and furnishing material, and for all other obligations incurred in connection with the Work. If, during the continuance of the Contract, the Surety on the Contractor's Performance Bond or Payment Bond becomes irresponsible in the Owner's judgment, the Owner shall have the right to require additional and sufficient sureties at the Contractor's expense which the Contractor shall furnish within ten (10) consecutive calendar days after written notice to do so.

B. Every bond shall have a term that ends six (6) months after expiration of the Warranty Period.

17. RIGHTS AND RESPONSIBILITIES OF THE CONTRACTOR:

A. General: It is hereby agreed by the Contractor that it has satisfied itself as to the nature and location of the Work, the character, quality and quantity of the materials to be encountered, including subsurface conditions, the equipment and facilities needed to prosecute the Work, the local conditions, and all other matters which can affect the Work under this Contract.

If the Contractor in the course of its work finds a discrepancy between the Drawings and the physical conditions or any errors or omissions on the Drawings, it shall be its duty to inform the Engineer in writing immediately. The Engineer shall promptly investigate and make any determination required by the circumstances. Any Work done after such discovery, until authorized, will be done at the Contractor's risk. In all cases the Engineer shall decide the intent of the Drawings and Specifications and its decision shall be final and binding, except as hereinafter provided.

B. Address: The address given in the Contractor's Proposal is hereby designated as the place to which all communications to the Contractor shall be delivered or mailed. The delivery or attempted delivery by the U. S. Postal Service or anyone of such a communication at such address, as certified by such person or by an employee of the U. S. Postal Service, will constitute the giving of notice in accordance with the Contract Documents. The date of said service shall be the date of such delivery if hand delivered or the third day after mailing if sent by certified mail. The Contractor's address may be changed at any time by written notice signed by the Contractor is delivered to the Engineer three (3) days prior to such change.

C. Payment for Labor and Materials: The Contractor agrees to pay promptly for work, services, and labor of every kind, including payments due Subcontractors, for rental equipment used on the Work, for materials that are used in the Work, and for labor and material incidental to the completion of the Work. If the Contractor has at any time failed to pay for work or services of any kind, including amounts due to Subcontractors or for rental equipment employed on the Work; has failed to pay for the materials

chargeable to the Work; or if the Owner reasonably suspects that such payments have not been made, the Owner may withhold a sufficient amount to cover any unpaid item until lien waivers or other satisfactory evidence of payment shall have been exhibited to the Engineer.

D. Protests: If the Contractor considers any work demanded of it to be outside the Contract requirements, or if it considers any ruling of the Engineer to be unfair, it shall immediately ask for a written instruction or decision and shall proceed to perform the work to conform with the Engineer's ruling. If the Contractor considers such instructions unsatisfactory, it shall, within ten (10) days after its receipt, file a written protest with the Engineer stating its objections and the reason therefor. Unless protests or objections are made in the manner specified and within the time limit stated herein, the Contractor hereby waives all grounds for protests.

E. Claims for Extra Cost: If the Contractor claims that any instructions by the Drawings or otherwise issued after the award of the Contract or any other event that has occurred or condition which has been encountered will involve extra cost under this Contract, it shall give the Engineer written notice thereof within a reasonable time after the receipt of such instructions, the occurrence of such event, or the encountering of such condition, and in any event before proceeding to execute the Work, except in an emergency endangering life or property, and the procedure shall then be as is provided for under changes in the Work. No such claim shall be valid unless so made.

F. Superintendence: The Contractor shall keep on the job site during progress of the Work a competent superintendent and any necessary assistants, all satisfactory to the Engineer. The superintendent shall not be changed except with the consent of the Engineer, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in its employ. The superintendent shall represent the Contractor in its absence and all directions given to the superintendent shall be as binding as if given to the Contractor. Other directions shall be so confirmed on written request in each case. The Contractor shall give efficient supervision to the work, using its best skill and attention.

G. Contractor's Right to Terminate Contract: If the Work should be stopped under an order of any court or other public authority for a period of three (3) months, through no act or fault of the Contractor, or of anyone employed by it; or if the Owner should fail to make payments at the times provided in the Contract, the Contractor shall, seven (7) days after having given notice to the Owner, have the right to suspend Work, or at its option, after thirty (30) days have elapsed from date of said notice in writing, should the Owner continue to be in default, it may terminate the Contract and recover the price of all Work done and materials provided

H. Independence of Contractor: The rights of inspection and control of the progress of the Work reserved by the Owner are for the protection of the Owner to ensure that the Work will be done satisfactorily and do not relieve the Contractor in any way from responsibility for selecting appropriate means and methods of fulfilling its obligations hereunder; nor shall the Contractor at any time be constituted the agent of the Owner for completion of the Work or any part of it.

I. Records: The Contractor (and any subcontractor) shall make, keep, maintain, and permit the Owner and its designated representatives, during normal business hours, to access a complete file of all books, records, documents, communications, notes accounts, and other material pertaining to the Work for the purpose of investigation, audit, and copying

to ascertain compliance with, or to detect violation of, any applicable federal, state, or local law or regulation or with the terms of the Contract, or to evaluate performance under the Contract. All records or information obtained in this manner shall be used only for the purpose described herein, except as otherwise authorized by law. If requested by the Owner, the Contractor shall provide, at no additional cost to the Owner, a complete statement of the origin, composition, and manufacture of materials used in the completion of the Work, together with samples for testing for conformance with the Contract Documents.

18. PROGRESS AND CONTROL OF THE WORK:

A. Prosecution of the Work: Before Work is started and materials ordered, the Contractor shall meet and consult with the Engineer relative to materials, equipment, and all arrangements for prosecuting the Work.

The Work shall be prosecuted at such time and in or on such part or parts of the project and with such forces of workmen, materials, and equipment as may be required to complete the Work provided for in the Contract in a manner acceptable to the Owner, in its sole discretion, within the time limits specified or agreed upon.

The Contractor, if so directed, shall furnish a schedule of expected progress of the Work under the Contract on a critical path method showing the approximate dates on which each part or division of the Work is expected to begin and be finished in a form acceptable to the Owner. The Contractor shall also, if so directed, forward to the Engineer as soon as practicable after the first day of each month, a summary report of the progress of the various parts of the Work under Contract in the mills, shops, and field giving the existing status, rate of progress, estimated time of completion, revisions to the work schedule, and cause of delay, if any. The Contractor shall not be entitled to rely on any early completion date shown in any schedule provided and shall have no claim against the Owner if such early completion is not achieved. Any “float” between any early date and any guaranteed date shall remain as float to be used by either party and not for the exclusive benefit of the Contractor.

B. Subcontracts: The Contractor shall not sublet or Subcontract any portion of the Work to be done under this Contract until approval of such action has been obtained from the Owner. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the Owner. To the extent that the Contractor engages subcontractors to perform, or otherwise provide support to assist the Contractor to perform, any portion of the Work performed under this Contract then: (a) the Contractor shall remain responsible for the services, tasks, functions, and responsibilities performed by such subcontractors to the same extent as if such services, tasks, functions, and responsibilities were performed directly by the Contractor and, for purposes of this Contract, such Work shall be deemed Work performed by the Contractor; (b) the Contractor shall maintain a current and accurate list of all subcontractors and shall provide such list to the Owner upon the Owner’s request; (c) the Contractor shall cause such subcontractors to comply with the obligations and restrictions associated with the services, tasks, functions, and responsibilities performed by such subcontractors that are applicable to the Contractor under this Contract; and (d) the Contractor shall obtain from each subcontractor such evidence, information, and documentation as is reasonably necessary to demonstrate and confirm the subcontractor’s compliance with this Contract, and shall provide such evidence, information, and documentation to the Owner upon request.

C. Assignments: Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to it hereunder without the previous written consent of the Owner.

19. PAYMENTS TO THE CONTRACTOR:

A. Quantities: The quantities shown in the Proposal (if the Proposal is of unit price form) and the Invitation For Bids are approximations only and are for the purpose of comparing Proposals. Claims shall not be made against the Owner for excesses or deficiencies, actual or relative, in the final quantities. The Owner reserves the right to eliminate a part of any item in the Proposal and under no circumstances will the Contractor be paid a unit price different from the unit price in the Proposal because the quantities are different from the quantities in the Proposal.

B. Partial Payments: Unless otherwise stipulated in the Special Construction Provisions, partial payments will be made to the Contractor at monthly intervals when the Contractor is performing satisfactorily under the Contract. Application for partial payments shall be submitted by the Contractor for the Owner's review and recommendation for approval by the Owner. Owner approval of the applications for partial payment shall be a condition precedent to partial payments. Should the Owner not concur with the Contractor's proposed value of Work completed, the Contractor shall modify its request for partial payment accordingly and re-submit for the Owner's review and approval. The amount of the progress estimate paid to the Contractor will be subject to the following:

(1) Standard Amount Retained. In accordance with Sections 24-91-101 et seq., C.R.S., the Owner shall pay at least ninety-five percent (95%) of the calculated value of satisfactorily complete Work. Amounts withheld pursuant to this subsection shall be held by Owner until after the Final Acceptance date except for amounts withheld pursuant to a verified statement of claim filed in accordance with Section 38-26-107, C.R.S. for which a release was not provided to the Owner prior to the Final Acceptance date, and shall be distributed thereafter as provided in Sections 24-91-101 et seq. and 38-26-107 et seq., C.R.S.

(2) Subcontractor and Supplier Claims. In addition to a standard amount retained, the Owner may withhold funds for all claims against the Contractor filed by Subcontractors and suppliers, pursuant to Section 38-26-107, C.R.S.

(3) No Payment. A partial payment will not be made when the total value of the Work done since the last estimate amounts to less than $500.

(4) Prompt Payment. The Contractor shall pay subcontractors and suppliers for all Work which has been satisfactorily completed within seven Calendar Days after receiving payment for that Work from the Owner. For the purpose of this section only, Work shall be considered satisfactorily complete when the Owner has made payment for the Work.

The Contractor shall include in all subcontracts a provision that this requirement for prompt payment to subcontractors and suppliers must be included in all subcontracts at every tier.

The Contractor is responsible to ensure that all Subcontractors and suppliers at every tier are promptly paid.

If the Contractor fails to comply with this provision the Owner will not authorize further progress estimates until the required payments have been made and the Contractor agrees to make payments as specified.

C. Application for Payment - Requirements: The Contractor shall submit monthly invoices to the Owner for progress payments for portions of the Work satisfactorily performed during each preceding month during the term of the Contract, unless another interval is stipulated in the Special Construction Provisions. The Contractor's invoices shall be in a format acceptable to the Owner, shall be supported by cost information in such detail as may be required by the Engineer, and shall be sufficient to substantiate all items for a proper audit and post audit thereof. If and to the extent requested by the Owner, the Contractor shall submit with each invoice a progress report describing the Work performed, results achieved, and the status of deliverables and a certification that the Contractor is current in payment of all employees, subcontractors, and vendors and, if not current, a description of the non-current items and reasons for such. The Owner may return to the Contractor for revision unsatisfactory invoices and may withhold payment thereof. The Owner may withhold payment for Work which is not completed as scheduled, or which is completed unsatisfactorily, until completed satisfactorily and may deny payment for such Work upon termination of the Contract.

D. Appropriation Compliance Statement: In compliance with Section 24-91-103.6, Colorado Revised Statutes, the following statements are included in this Contract:

(1) The Owner has appropriated an amount of money equal to or in excess of the contract price, for the Work to be performed under this Contract.

(2) The Owner is prohibited from issuing any change order or other form of order or directive requiring additional compensable work to be performed by the Contractor, if such directive causes the aggregate amount under the Contract to exceed the amount appropriated for the original Contract, unless the Contractor is given written assurance by the Owner that lawful appropriations to cover the costs of the additional work have been made and the appropriations are available prior to performance of the additional work or unless such work is covered under a remedy-granting provision in the Contract. "Remedy-granting provision" means any Contract clause which permits additional compensation in the event that a specific contingency or event occurs. Such term shall include, but not be limited to, change clauses, differing site conditions clauses, variation in quantities clauses, and termination not-for-cause clauses.

(10)

(3) Any form of order or directive issued by the Owner requiring additional compensable work to be performed by the Contractor shall be deemed to include a clause that requires the Owner to reimburse the Contractor for the Contractor's costs on a periodic basis for all additional directed work performed until such time as a change order is finalized. Provided, however, that in no instance shall the periodic reimbursement be required before the Contractor has submitted an estimate of cost to the Owner for the additional compensable work to be performed.

E. Final Payment: Within a reasonable time after the acceptance of the Work, the Engineer shall certify a final estimate showing the total Work done and the amount due the Contractor therefor. After deducting therefrom all previous payments and any other amounts to be kept and retained under the provisions of this Contract or as required by law, payment in full shall be made to the Contractor, provided that payment of the final estimate under this Contract, including the amount of the retained percentage under the partial estimates, shall not be due or payable until the Contractor has furnished adequate proof that all claims, liens, or other obligations incurred in connection with the performance of the Work have been properly paid and settled by it and all of its Subcontractors.

F. Payments Withheld: The Owner has the right to withhold payment or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate to such extent as may be necessary to protect itself from loss on account of:

(1) Defective work not remedied;

(2) Claims filed or reasonable evidence indicating probable filing of claims;

(3) Failure of the Contractor to make payments properly to Subcontractors or for material or labor;

(4) A reasonable doubt that the Contract can be completed for the balance then unpaid;

(5) Damage to another Contractor;

(6) Failure of the Contractor to make satisfactory progress toward completion of the Work;

(7) The likelihood that liquidated damages have or are likely to become due.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

21. RIGHTS OF THE OWNER:

A. Right to Terminate Contract:

(1) Types of Termination.

i. Events of Default and Termination For Cause. The Contractor shall be immediately in default hereunder (an "Event of Default") upon the occurrence of any of the events described below:

- Any breach of the terms and conditions of this Contract.
- Failure to perform the Work under this Contract, or significant delay or discontinuance of performance of the Work.
- Lack of financial responsibility (including failure to obtain and maintain insurance) for loss or damage to the Owner or its property.

- Dishonesty, embezzlement, or false reporting of any material financial information, including, but not limited to, invoices.
- Insolvency, bankruptcy, or commission of any act of bankruptcy or insolvency; or assignment for the benefit of creditors.
- Any attempt by the Contractor to assign its performance of this Contract without the consent of the Owner.
- Termination of any subcontract for any substantial Work without the prior written consent of the Owner.

In addition to any other rights provided herein, upon an Event of Default, the Owner shall have the right in its sole discretion to immediately terminate this Contract and further performance of the Work, in whole or in part, by delivery to the Contractor of written notice of termination specifying the extent of termination and the effective date of termination. The notice of termination shall inform the Surety that the Surety then has the opportunity to take over and perform the Work called for in the Contract Documents, provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of said notice, the Owner may take over the Work and, without prejudice, prosecute the Work to completion and the Contractor and its Surety shall be liable to the Owner for any excess cost in completing the Work and for damages caused by or arising out of the Contractor's default.

ii. Termination Not For Cause. In addition to any other rights provided herein, the Owner shall have the right in its sole discretion to terminate, upon thirty (30) days' advance notice, not for cause, this Contract and further performance of the Work, in whole or in part, by delivery to the Contractor of written notice of termination specifying the extent of termination and the effective date of termination.

(2) Any Other Remedies Allowed by Law. The Owner shall be entitled to any other remedies allowed by law in addition to the remedies provided in this Section.

(3) Payment and Liabilities Upon Termination.

i. Termination for Cause. If an Event of Default has occurred, the Contractor shall be liable to the Owner for any actual damages for losses, including, but not limited to, any and all costs and expenses reasonably incurred by the Owner or any party acting on the Owner's behalf in completing the Work or having the Work completed (excluding changes in the Work by the Owner following such Event of Default). The Owner shall determine the total cost of the Work satisfactorily performed by the Contractor prior to the effective date of termination for cause. All reasonable damages, losses, costs, and charges incurred by the Owner, including attorney's fees and costs, relating to obtaining and mobilizing another contractor, of completing the Work, and of retaining another contractor's acceptance of full responsibility for all obligations of the Contractor under this Contract shall be

deducted from any monies due or which may become due to the Contractor. The Owner shall determine the total amount due and shall notify the Contractor in writing of the amount the Contractor owes the Owner or the amount the Owner owes the Contractor.

ii. Termination Not For Cause. After termination not for cause, the Contractor shall submit a final termination settlement invoice to the Owner in a form and with a certification prescribed by the Owner. The Contractor shall submit the invoice promptly, but no later than thirty (30) days from the effective date of termination, unless extended in writing by the Owner upon written request of the Contractor within such thirty-day period. If the Contractor fails to submit the invoice within the time allowed, the Owner's payment obligations under this Contract shall be deemed satisfied and no further payment by the Owner to the Contractor shall be made.

(11) Contractor's Obligations Upon Termination. After receipt of notice of termination, for cause or not for cause, and unless otherwise directed by the Owner, the Contractor shall immediately proceed as follows:

i. Stop work on the Work as specified in the notice of termination.

ii. Take any action that may be necessary, or that the Owner may direct, for the protection and preservation of the Work and property related to this Contract that is in the possession of the Contractor and in which the Owner has or may acquire an interest.

iii. Transfer title and deliver to the Owner, as specified in the termination notice, such items which, if the Work had been completed, would have been furnished to the Owner.

iv. Settle all outstanding liabilities and all claims arising out of commitments for procurement of materials, supplies, equipment, and the like for the Work and commitments to subcontractors and vendors.

v. Make any and all cost records available to the Owner at its request.

Termination of the Contract or any potion thereof shall not relieve the Contractor of its responsibilities under the Contract for the portion of the Work completed, nor shall it relieve the surety on the Payment, Performance, and Warranty Bond(s), if any, of its obligation for and concerning any claims arising out of the Work performed.

B. Right to Do Work: If the Contractor should neglect to prosecute the Work properly or fail to perform any provision of this Contract, the Owner, after seven (7) days written notice to the Contractor, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor. However, no prior notice will be necessary if the subject deficiency involves potential loss of life or property, in which case notice shall be given as soon as practicable.

C. Right to Accept Portion of the Work: The Owner shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding that the time for completing the entire Work or such portions may not have expired. However, such taking possession and use shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the Work, the Contractor shall be entitled to such extra compensation or extension of time or both, as the Engineer may determine.

22. COMPLETENESS OF WORK: The facility(ies) to be installed hereunder is to comprise an integral part of the system and/or plant controlled by the Owner and, unless the contrary clearly appears in the Contract Documents, it is understood and agreed that the Contractor shall be obliged to complete the facility(ies) and to place it in good working order as an integral part of said system and plant, and its work shall not be complete until it shall have done so. Before final acceptance, all parts of the Work shall be examined and tested if necessary, and each part shall be in good condition and working order, or shall be placed in such condition and order at the expense of the Contractor. All tests of completed Work and equipment required under this Contract shall be made under the direction of the Engineer at the expense of the Contractor, who shall repair at its own expense any damage resulting therefrom. Unless otherwise expressly provided in the Contract Documents, the amount to be paid for Work hereunder shall include all labor, materials, forms, tools, scaffolding, plant, equipment, services, utilities, royalties, fees, and everything, whether temporary or permanent, necessary to completion of the work specified herein.

23. LIQUIDATED DAMAGES: It is mutually agreed by the parties of this Contract that time is of the essence of this Contract and that if the Contractor does not complete the Work in the specified or agreed upon time period (after allowance for any extensions granted by the Owner as described following), the Owner will suffer damages in an amount that will be difficult to ascertain. Such losses will include damage to the Owner's good will, increased administrative and other time of the Owner's staff, increased costs of the Owner's consultants, increased operational and maintenance costs of the Owner's facilities, increased utility costs, increased costs of funds, price escalations, and similar matters. The Owner and the Contractor agree that such damages will be difficult to ascertain and intend to liquidate such damages and agree in advance that the amount set forth in the Special Construction Provisions shall be an appropriate amount to compensate the Owner for such damages for each calendar day that the Contractor is in default.

The Owner shall have the right to deduct any liquidated damages from any monies due the Contractor or to sue the Contractor to obtain the compensation for damages stipulated hereunder.

Extensions of time will be granted to the Contractor by the Owner when, in the opinion of the Engineer, such time delays are beyond the control of the Contractor being due to circumstances which could not reasonably be foreseen or avoided and not due to negligence or other act or omission on the part of the Contractor. Examples of delays for which time extensions will be given are: fire, strikes, and delays or changes ordered by the Owner. Extensions may not be granted on account of unfavorable weather or job conditions, unless such are of an extraordinary nature for the time and location of the Work and only as specifically approved by the Engineer.

24. SANITARY REGULATIONS: The Contractor shall be responsible for providing proper health and sanitation facilities for its employees. Rules and regulations of the

State Board of Health, County Public Health, or other bodies having jurisdiction, shall be fully complied with.

25. SAMPLES AND TESTS: In the absence of direct references, the sampling and testing of materials shall be done in accordance with the current accepted methods approved by the American Society for Testing and Materials or the American Water Works Association. Tests that are specified or required for approval of source of materials shall be made at the expense of the Contractor by an independent laboratory whose work and facilities are approved by the Engineer. Certified copies of reports of such tests shall be furnished in the required number to the Engineer for its review. Any change in materials or their origin, method of preparation or manufacture will require new tests and review. Except as provided in the specifications, tests of completed work required under this Contract shall be made under the direction of the Owner by and at the expense of the Contractor who shall repair at its own expense all damage resulting therefrom.

Before final acceptance, all parts of the Work shall be tested and shall be in good condition and working order, or shall be placed in such condition and order at the Contractor's expense.

26. CLEANING UP: Upon completion of the Work, the Contractor shall remove from the site and any occupied adjoining property, all plants, buildings, rubbish, unused materials, form lumber, and other like material belonging to it or its Subcontractors. All privy holes shall be satisfactorily backfilled. Failure of the Contractor to clean up satisfactorily will result in the Owner doing the same, and the cost therefor, will be charged to the account of the Contractor or its Surety.

- END OF SECTION –

EXHIBIT B

Scope of Bid Items

PART 1 --SCOPE

This section covers methods of measurement and payment for items of WORK under this contract.

1.01 REQUIREMENTS: The total bid price shall cover all WORK required by the CONTRACT DOCUMENTS. All costs in connection with the proper and successful completion of the WORK, including furnishing all materials, equipment, supplies, and appurtenances; providing all construction plant, equipment, tools; and performing all necessary labor and supervision to fully complete the WORK, shall be included in the unit and lump sum prices bid. All WORK not specifically set forth as a pay item in the PROPOSAL shall be considered a subsidiary obligation of the CONTRACTOR and all costs in connection therewith shall be included in the prices bid.

1.02 ESTIMATED QUANTITIES FOR UNIT PRICE BID ITEMS: All estimated quantities stipulated in the PROPOSAL for unit price bid items are approximate and are to be used only (a) as a basis for estimating the probable cost of the WORK and (b) for the purpose of comparing the bids submitted for the WORK. The actual amounts of work performed and materials furnished for unit price bid items may differ from the estimated quantities. The basis of payment for work and materials bid as a unit price will be the actual amount of work done and materials furnished. The CONTRACTOR agrees that THEY will make no claim for damages, anticipated profits, or otherwise on account of any difference between the amounts of work actually performed and materials actually furnished and the estimated amounts for unit price bid items.

1.03 DESCRIPTION OF LUMP SUM BID ITEMS: The following lump sum bid items are made up of components described in several individual sections. Payment for these items is described below. The CONTRACTOR is referred to the specific technical sections that apply to the individual components. All other bid items are described in the individual sections. Note that the descriptions below are not intended to be comprehensive listings of each and every work item included in each lump sum bid item. The descriptions are intended to supplement the DRAWINGS and in no way relieve the CONTRACTOR from completing the work of each bid item according to the DRAWINGS and SPECIFICATIONS.

1.04 DESCRIPTION OF BID ITEMS

The following is a general listing of contract bid items along with the work and materials included, but not limited to, in the lump sum or unit price for each bid item:

Bid Item #G1 – Mobilization

No separate measurement for payment will be made for any labor, equipment, and materials required for this item. The lump sum price will include all the CONTRACTOR's costs. This BID item includes, but is not limited to:

1) Mobilization of equipment, personnel, and construction material on-site
2) Furnishing, installing, and removing temporary fencing and construction markers around PROJECT work areas and any other

fencing/security items as deemed necessary by the CONTRACTOR

3) Establishing and removing the CONTRACTOR's offices, buildings, and other necessary facilities
4) Obtaining, complying with, and transferring permits
5) Providing environmental controls for the life of the PROJECT
6) Providing required bonds and insurance
7) Preparing and maintaining the PROJECT schedule
8) Delivering and removing the CONTRACTOR's equipment, supplies, and excess materials, and cleaning up the site
9) Restoring the PROJECT site to pre-project or final grades and conditions
10) Preparing and securing approvals of submittals
11) Preparing record drawings
12) Preparing and providing copies of stormwater and other required reports
13) Dust and mud abatement
14) Providing all other related and necessary labor, equipment, and materials to complete the WORK

Fifty (50) percent of the lump sum price will be paid at the time of the first monthly progress payment; an additional thirty (30) percent will be paid when one-half the original CONTRACT amount is earned. The remaining twenty (20) percent will be paid upon final acceptance of the PROJECT.

Bid Item	**Pay Unit**
Mobilization	LS

Bid Item #G2 – Clearing and Grubbing, Traffic Control, Surveying, Construction Access, Water Control, Erosion and Sediment Control

No separate measurement for payment will be made for any labor, equipment, and materials required for this item. The lump sum price will include all the CONTRACTOR's costs. This BID item includes, but is not limited to:

Clearing, Grubbing and Demolition:

1) Completing the clearing and grubbing including tree and shrub removal as needed.
2) Disposing of materials off site in accordance with the DRAWINGS and SPECIFICATIONS
3) Providing all other related and necessary labor, equipment, and materials to complete the WORK
4) Preparing, implementing, maintaining, and adjusting, as necessary, pedestrian controls
5) Providing all other related and necessary labor, equipment, pavement markings, and materials to complete the WORK
6) Demolish and remove abandoned utilities, trash, foundations, bridge, and all other remnants of past development on site

Traffic Control:

7) Staking horizontal and vertical alignments
8) Providing replacement stakes
9) Locating existing utilities
10) Staking overlot grading
11) Setting subgrade elevations and offsets
12) Setting temporary control points
13) Re-establishing land monuments
14) Finishing grades and structure elevations by a Professional Licensed Surveyor, as required, for record or as-built DRAWINGS
15) Finishing grades and elevations by a Professional Licensed Surveyor, as required, for Pond Volume Certification
16) Providing all other related and necessary labor, equipment, and materials to complete the WORK

Surveying:

17) Layout of access
18) Earthwork, cut, fill, stockpile, haul offsite and disposal
19) Moisture conditioning and compaction of subgrade
20) Surfacing materials for accesses
21) Temporary utilities and stormwater facilities
22) Restoring area, as required
23) Providing all other related and necessary labor, equipment, and materials to complete the WORK

Construction Access

24) Preparing and submitting a storm water control plan including vehicle tracking mitigation
25) Implementing measures to control surface water and groundwater and comply with storm water control plan
26) Providing temporary power and sound proofing, as required

Water Control and Dewatering (all work to comply with CDPHE requirements)

27) Evaluating, designing, constructing, maintaining, replacing, and monitoring dewatering measures
28) Modifying the approved and implemented water control plan as necessary
29) Furnishing and installing all materials, sediment basins, diversion measures, slope drains, check dams, pumps, dewater bags, earth embankments, sheet pile, wells, stream crossings or any other material necessary for water control
30) Obtaining all required permits
31) Monitoring, sampling, and analysis, and preparing water quality reports, if required
32) Protecting WORK from groundwater, base flows, and storm events
33) Providing all other related and necessary labor, equipment, and materials to complete the WORK

Erosion and Sediment Control

34) Developing Erosions and Sediment Control Plan
35) Obtain related permits
36) Furnishing and installing all materials required to maintain BMPs
37) Furnishing all labor and equipment required to maintain BMPs
38) Implementing and adjusting as necessary the approved Erosion and Sediment Control Plan in accordance with the DRAWINGS and SPECIFICATIONS and Permits
39) Performing sediment removal
40) Sweeping public right-of-way along the project limits and haul routes as necessary
41) Replacing BMPs if necessary
42) Inspecting and maintaining all erosion and sediment control measures and replacing as necessary
43) Providing all other related and necessary labor, equipment, and materials to complete the WORK

Payment will be based on the percentage of completed and accepted WORK.

Bid Item	Pay Unit
G2	LS

Bid Item #G3 – Installation of underground utilities including water, sewer, and electrical.

No separate measurement for payment will be made for any labor, equipment, and materials required for this item. The lump sum price will include all the CONTRACTOR's costs. This BID item includes, but is not limited to:

Sewer line installation

1) Install sewer line serving future restroom facilities as described in Construction Documents and per all County requirements.
2) Stub and cap sewer service lines at future locations of restroom facilities

Water line installation

3) Install underground water lines as described in Construction Documents and per all County requirements
4) Stub and cap underground water lines at future restroom locations and at future well site to be marked by Owner

Underground electric service

5) Install underground electrical service lines as described in construction documents

6) Installation of all underground utilities shall comply with applicable utility, County, and State requirements.
7) Bed, backfill, and compact all utility installations per Construction Documents.

8) Utility locations shall be located and surveyed including depth and included in as-built final documentation of project improvements.

Payment will be based on the percentage of completed and accepted WORK.

Bid Item	Pay Unit
G3	LS

Bid Item #G4 – Construction of access roads and parking lots.

No separate measurement for payment will be made for any labor, equipment, and materials required for this item. The lump sum price will include all the CONTRACTOR's costs. This BID item includes, but is not limited to:

1) Strip topsoil and re-compact subgrade per Construction Documents
2) Rough slope and grade including highway access and channel crossing
3) Install culvert at Hwy access per Construction Documents and manufacturer's recommendations
4) Install culvert at channel crossing per Construction Documents and manufacturer's recommendations. Dewater and divert ground water as necessary and per discharge permit requirements
5) Install Class 4 road base, compact and grade per Construction Documents
6) Install Class 6 road, compact and grade per Construction Documents

Payment will be based on the percentage of completed and accepted WORK.

Bid Item	Pay Unit
G4	LS

Bid Item #G5 – Drainage swale construction.

No separate measurement for payment will be made for any labor, equipment, and materials required for this item. The lump sum price will include all the CONTRACTOR's costs. This BID item includes, but is not limited to:

1) Excavate drainage and retention swales as described in Construction Documents
2) Fill and finish

Payment will be based on the percentage of completed and accepted WORK.

Bid Item	Pay Unit
G5	LS

Bid Item #G6 – Fence Construction along North property boundary (per LUC drawings)

No separate measurement for payment will be made for any labor, equipment, and materials required for this item. The lump sum price will include all the CONTRACTOR's costs. This BID item includes, but is not limited to:

1) Clear trees and shrubs to allow access for fence installation

2) Construct 6' tall wood privacy fence. Cedar boards or equiv.

Payment will be based on the percentage of completed and accepted WORK.

Bid Item	Pay Unit
G6	LF

River Access Improvements Bid Items:

Bid Item #R1 – Reinforced Concrete, Boat and Kayak Ramps and Paths

a. The measurement for payment for this item will be the number of cubic yards of reinforced concrete placed and measured in accordance with the DRAWINGS and SPECIFICATIONS or as otherwise directed by the ENGINEER. The unit price shall include all the CONTRACTOR's costs, including labor, equipment, tools, and materials. This BID item includes, but is not limited to:

1) Furnishing and installing the cast-in-place concrete structure and related components shown on the DRAWINGS or specified, and items which may not be specifically be shown or specified but which are required to provide a complete and proper installation
2) Fabrication and installation of steel rebar reinforcement
3) Formwork
4) Finishing
5) Exploratory excavating and potholing
6) Excavation, loading, stockpiling or Hauling offsite and proper disposal of excess excavated material not re-used onsite
7) Furnishing and installing structural foundation fill (Control Density Fill) between top of excavated bedrock and reinforced concrete structures
8) Preparing and stabilizing subgrade
9) Drilling and installing dowels into bedrock
10) Supporting excavations, shoring, or laying slopes back if shoring is not used
11) Concrete curing
12) Cold and hot weather concrete protection
13) Protecting aboveground and underground utilities and service connections Disposing of debris, pipe, excess excavated materials, and damaged materials
14) Providing all other related and necessary labor, equipment, and materials to complete the WORK as designed and intended to a satisfactory and properly functioning condition

b. Payments will be based on units completed and accepted.

Bid Item	Pay Unit
Reinforced Concrete, River Path	CY

Bid Item #R2 –All Boulders and Core Rock in Vanes, Imported

a. The measurement for payment for this item will be the number of cubic yards of all imported boulders including all Surface Boulders, and Core Rock, placed in accordance with the DRAWINGS and SPECIFICATIONS or as otherwise directed by the

ENGINEER. Measurement will be based on the actual area of harvested surface boulders, placed multiplied times the minimum depth shown on the Drawings. No separate measurement for payment will be made for any labor, equipment, and materials required for this item. The unit price will include all the CONTRACTOR's costs. This BID item includes, but is not limited to:

1) Excavating, backfilling, and compacting
2) Preparing and stabilizing subgrade
3) Furnishing and installing structural foundation fill (Control Density Fill) between top of excavated bedrock and boulders to be grouted
4) Excavation, loading, stockpiling or Hauling offsite and proper disposal of excess excavated material not re-used onsite
5) Importing/furnishing, sorting, stockpiling, cross hauling, handling, and placing boulders
6) Boulder preparation for grouting – washing/scrubbing surfaces of soil & debris
7) Disposing rejected boulders
8) Suppling and installation of all stainless steel attachment hardware
9) Providing all other related and necessary labor, equipment, and materials to complete the WORK

Payment will be based on the units completed and accepted.

Bid Item	Pay Unit
R2	CY

Bid Item #R3 – Feature Boulders, Imported

a. The measurement for payment for this item will be per each loose and grouted Feature Boulder placed in accordance with the DRAWINGS and SPECIFICATIONS or as otherwise directed by the ENGINEER. The unit price will include all the CONTRACTOR's costs. This BID item includes, but is not limited to:

1) Excavating, backfilling, and compacting
2) Preparing and stabilizing subgrade
3) Furnishing and installing structural foundation fill (Control Density Fill) between top of excavated bedrock and feature boulders to be grouted
4) Excavation, loading, stockpiling or Hauling offsite and proper disposal of excess excavated material not re-used onsite
5) Importing/furnishing, sorting, stockpiling, cross hauling, handling, and placing feature boulders
6) Boulder preparation for grouting – washing/scrubbing surfaces of soil & debris
7) Disposing rejected boulders
8) Providing all other related and necessary labor, equipment, and materials to complete the WORK

b. Payment will be based on units completed and accepted.

Bid Item	Pay Unit
R3	EA

Bid Item #R4 –Void Permeated Rip Rap

a. The measurement for payment for this item will be the actual number of cubic yards of void-permeated riprap placed in accordance with the DRAWINGS and SPECIFICATIONS or as otherwise directed by the ENGINEER. No measurement of this item will be made unless changes to the CONTRACT DOCUMENTS are made, in which case the ENGINEER will perform measurement of the modified volume. The unit price will include all the CONTRACTOR's costs. This BID item includes, but is not limited to:

1) Furnishing, transporting, placing, and washing in sands and gravel materials for filling voids
2) Excavating, backfilling, and compacting/plating
3) Removing and disposing excavated material and debris
4) Providing compacted fill required to mix with and bury riprap
5) Providing all other related and necessary labor, equipment, and materials to complete the WORK

b. Payment will be based on units completed and accepted.

Bid Item	Pay Unit
R4	CY

Bid Item #R5 – Grout

a. The unit of measurement for payment will be the cubic yard. Measurement will be according to certified tickets (initialed by the Engineer) from the mixing plant or other approved volume measuring techniques, for all grout placed in boulders to be grouted, in accordance with the dimensions shown on the Drawings and accepted by the Engineer. The unit price will include all the CONTRACTOR's costs, all related and necessary labor, equipment, and materials to complete the WORK as designed and intended to a satisfactory and properly functioning condition. This BID item includes, but is not limited to:

1) Furnishing and installing the grout as shown on the DRAWINGS or specified, and items which may not be specifically be shown or specified but which are required to provide a complete and proper installation.
2) Fibermesh reinforcement,
3) Pumping and injection equipment,
4) Vibration, finishing, protecting,
5) Concrete curing,
6) Cold and hot weather concrete protection
7) Clean- up including removal of all excess grout on boulders.
8) Treatment of the surface with stains or dyes

b. Payment will be based on units completed and accepted.

Bid Item	Pay Unit
R5	CY

Bid Item #R6 –Excavation, Cobble and Boulder Harvesting and Placement

a. No separate measurement for payment will be made for any labor, equipment, and materials required for this item. The lump sum price will include all the CONTRACTOR's costs.
The lump sum price will include all the CONTRACTOR's costs. This BID item includes, but is not limited to:

1) Harvesting, hauling, stockpiling, sorting/handling of all excavated material from the site to produce the cobble material as specified,
2) Harvesting, hauling, stockpiling, sorting/handling of all excavated material from the site to extract all boulders to use for backfill and armoring of the surface in the river bed and along the disturbed banks.
3) Excavation, subgrade preparation, placement to design grades and in accordance with details on the Contract Drawings and as directed by the Engineer,
4) Removing and disposing excavated material and debris
5) Placing a layer of sands and gravels over the Cobble and backfilled banks.
6) Providing all other related and necessary labor, equipment, and materials to complete the WORK

b. Payment will be based on units completed and accepted.

- END OF SECTION

EXHIBIT C

Bid Proposal Worksheet

Base Bid Includes:

Boat Ramp, w Vanes, Cobble Beach - All related work as shown on Sheet 5; Vane 1, Vane 2 (details sheet 6)

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No.	Item	Quantity	Unit	Unit Price	Extended
G1	Mobilization	1	LS	$35,230	$35,230
G2	Clearing and Grubbing, Traffic Control, Surveying, Construction Access, Water Control, Erosion and Sediment Control	1	LS	$86,100	$86,100
G3	Underground utilities	Contractor To Provide	LS	$77,245	$77,245
G4	Road and parking lot construction including installation of culverts	Contractor To Provide	-	-	Not included
G5	Drainage swale construction	Contractor To Provide	-	-	Not included
G6	Fence construction	Contractor To Provide	750 LF	$38.00	$28,500
R1	Reinforced Concrete, Boat Ramp	65	CY	$1,100	$71,500
R2	All Boulders and Core Rock in Vanes, Imported	80	CY	$385.00	$30.800

R3	Feature Boulders, Imported	12	EA	$925.00	$11,000
R4	Void Permeated Rip Rap	337	CY	$155.00	$52,235
R5	Grout	27	CY	$471.00	$12,717
R6	Excavation, Cobble and Boulder Harvesting and Placement	1	LS	$23,000	$23,000
Total (Bid items - Base Bid)					$428,327

EXHIBIT D

NOTICE TO PROCEED

To: (company name)_____

Date: (date)_____

Project: SHADY ISLAND BOAT RAMP AND PARK

You are hereby authorized to commence Work in accordance with the agreement dated __ _____, on or before _____, and you are to complete the Work within __ _____ calendar days thereafter. The date of completion of all work is, therefore (date)_____.

All Change Orders, payment requests, communication, etc., should go through the Gunnison County Sustainable Operations Director, John Cattles. Change orders and payment requests must be submitted, in writing, and approved by Gunnison County Manager, Matthew Birnie.

GUNNISON COUNTY

By: _____

EXHIBIT E

CHANGE ORDER FORM

Order No. _____

Date: _____

Agreement Date: _____

PROJECT: SHADY ISLAND BOAT RAMP AND PARK

OWNER: GUNNISON COUNTY

CONTRACTOR: _____

The following changes are hereby made to the CONTRACT DOCUMENTS:

Justification:

Change to CONTRACT PRICE:

Original CONTRACT PRICE $ _____

Current CONTRACT PRICE adjusted by previous CHANGE ORDER $_____

The CONTRACT PRICE due to this CHANGE ORDER will be (increased) (decreased)

by: $ _____

The new CONTRACT PRICE including this CHANGE ORDER will be $ _____

Change to CONTRACT TIME:

The CONTRACT TIME will be (increased) (decreased) by _____ calendar

days.

The date for completion of all work will be _____ (Date).

Approvals Required:
To be effective this Order must be approved by Gunnison County if it changes the scope or objective of the PROJECT, or as may otherwise be required by the GENERAL CONDITIONS.

Requested by: _____

Recommended by: _____

Ordered by: _____

Accepted by: _____

Gunnison County Approval (where applicable) _____